

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

MAT 1602 of 2022

With

CAN 1 of 2022

CAN 2 of 2022

Reserved on: 13.01.2023

Pronounced on: 18.01.2023

Tapan Das

...Appellant

-Vs-

The State of West Bengal and Others

...Respondents

Present:-

Mr. Bijoy Adhikary,
Mr. Bhaskar Chakraborty,
Mr. Subrata Mukherjee,
Ms. Susmita Adhikary, Advocates
... for the appellant

Mr. Tapan Kr. Mukherjee, Sr. Advocate
Ms. Debdooti Dutta, Advocate
... for the respondent Nos. 1 & 4

Mr. Biswaroop Biswas,
Mr. Shibendra Nath Chattopadhyay, Advocates
... for private respondent No. 6

Mr. Debanjan Mukherjee, Advocate
... for the CESC

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. This appeal has been filed by the writ petitioner challenging three different orders passed in different petitions being the order dated 26.04.2022 passed in W.P.A. No. 5480 of 2022, the order dated 22.06.2022 passed in W.P.A. No. 10460 of 2022 and the order dated 08.09.2022 passed in W.P.A. No. 16990 of 2022.

2. The facts as indicated in the orders under challenge are that the appellant had approached the writ Court with the plea that his father, respondent No. 5 in W.P.A. No. 5480 of 2022 had transferred his property comprising of the building in possession of the appellant and his father to the private respondent No. 6. The further plea was raised that the electricity meter at the premises was also transferred to the said respondent and at the instance of that respondent, electricity meter was disconnected, hence the appellant has claimed a new electricity connection in his name. In W.P.A. No. 5480 of 2022, learned Single Judge has passed the final order dated 26.04.2022 directing the CESC to hold an inspection at the premises in question for the purpose of assessing the feasibility and requisites for giving new electricity connection in the name of the appellant and thereafter to give connection to the appellant expeditiously if feasible on compliance of all formalities. It was kept open to the CESC personnel, if resisted at the time of carrying out such inspection and/or giving such connection, to approach the concerned police station and there was a direction to the Officer-in-Charge of the concerned police station to give such assistance to the CESC personnel at the cost of the appellant.

3. The appellant had filed second petition being W.P.A. No. 10460 of 2022 and raised the plea that after installation of the meter, due

to resistance of the private respondent, the appellant was not in a position to use the electricity meter. Learned Single Judge had disposed of the petition by leaving it open to the appellant to approach the appropriate criminal forum and/or civil forum for getting the adequate relief in this regard as the allegations in the petition were found to be within the ambit of the private dispute between the appellant and the private respondent.

4. The appellant had again filed the writ petition W.P.A. No. 16990 of 2022 seeking certain relief relating to enjoyment of the electricity against the licensee and private respondent. Learned Single Judge after taking note of the orders in the earlier petition has found the petition to be barred by res judicata.

5. Submission of the learned Counsel for the appellant is that the appellant has been deprived the electricity and that being the occupier, he is entitled to use the electricity and in support of his submission, he has placed reliance upon the judgment of Hon'ble Supreme Court in the matter of **Punjab State Electricity Board Ltd. vs. Zora Singh and Others** reported in (2005) 6 SCC 776 and in the matter of **Molay Kumar Acharya vs. Chairman-cum-Managing Director, W. B. State Electricity Distribution Co. Ltd. & Ors.** reported in AIR 2008 Cal 47.

6. Learned Counsel for the CESC has submitted that the order passed in W.P.A. No. 5480 of 2022 has been duly complied with and the appellant has been given the electricity connection from the existing board and thereafter the CESC is not concerned with the private dispute between the appellant and the private respondent.

7. Learned Counsel for the private respondent has objected to the maintainability of the appeal against the three orders passed in three

different petitions and has also submitted that the private respondent has purchased the entire property from the father of the appellant and the eviction suit is pending against the appellant and the appellant is a unauthorized occupier, therefore, writ is not a proper remedy.

8. We have heard learned Counsel for the parties and perused the record.

9. Learned Counsel for the appellant has failed to satisfy this Court as to how one appeal is maintained against three orders passed at different points of time in separate writ petitions. The cause title also indicates that the appellant has not impleaded Tarak Das who was the respondent No. 5 in W.P.A. No. 10460 of 2022. That apart, it is also noticed that the order dated 26th of April, 2022 passed in W.P.A. No. 5480 of 2022 is in favour of the appellant and learned Counsel for the appellant has failed to satisfy as to why that order has been challenged.

10. Record further reflects that in pursuance to the order of the learned Single Judge dated 26.04.2022 passed in W.P.A. No. 5480 of 2022, CESC has given the electricity connection to the appellant, hence the said order was duly complied with. After giving the electricity connection if the appellant is unable to use the same on account of some private dispute with the private respondent, then CESC cannot be held responsible for the same. Record further reflects that a number of disputed questions of facts are involved in the matter which cannot be adjudicated in exercise of the writ jurisdiction. The civil suit at the instance of the private respondent is already pending.

11. In the aforesaid circumstances, learned Single Judge has rightly passed the order dated 22.06.2022 in W.P.A. No. 10460 of 2022 giving liberty to the appellant to approach the criminal forum and/or civil

forum by noting that the allegations levelled against the private respondent fall within the ambit of private dispute between the appellant and the private respondent. Once the said view was taken by the learned Single Judge, then there was no justification on the part of the appellant to file fresh petition W.P.A. No. 16990 of 2022 substantially for the same relief. Learned Single Judge has rightly dismissed the W.P.A. No. 16990 of 2022 by order dated 08.09.2022 holding the petition to be barred by res judicata.

12. So far as the judgment in the matter of **Punjab State Electricity Board Ltd. (supra)** relied upon by learned counsel for the appellant is concerned, that was a case where large number of agriculturists had applied for grant of electrical connections and the Board had directed them to deposit security amount 13 years later and thereafter the National Commission had directed the Board to release connections to all the applicants by the specified date and to pay interest on the deposits, compensation and costs which was subject matter of challenge before the Hon'ble Supreme Court, hence that case stands on a different factual footing.

13. Similarly, the Single Bench judgment in the matter of **Molay Kumar Acharya (supra)** relied upon by learned Counsel for the appellant holds the licensee as occupier entitled to electricity connections. In the present case, electricity connection has already been granted to the appellant and the second writ petition was concerning subsequent dispute, hence the benefit of that judgment cannot be extended.

14. In the aforesaid circumstances of the case, we find no error in the orders of the learned Single Judge under challenge in this appeal and no case for interference is made out. The appeal is dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
18.01.2023

PA(SS)

(A.F.R. / N.A.F.R.)