

AD-03
Ct No.09
28.03.2023
TN

WPA No. 23359 of 2022

Sanjoy Paul
Vs.
Calcutta Electric Supply Corporation Ltd.
(CESC) and others

Mr. Rajendra Banerjee,
Mr. Dip Jyoti Chakraborty
.... for the petitioner

Mr. Debanjan Mukherji
.... for the CESC Limited

Mr. Ayan Banerjee,
Mr. Surajit Biswas,
Mr. Arijeet Bera,
Mr. Aqsa Khan
.... for the private respondent no.6

Learned counsel for the petitioner contends that the private respondent has no *locus standi* to object to the petitioner's application for shifting of an existing electricity service connection and increase in load.

It is contended by the petitioner that initially a demolition notice was issued by the Howrah Municipal Corporation to the petitioner in respect of the concerned premises. Subsequently, the previous construction was demolished and upon obtaining a valid sanction plan, the present petitioner is constructing a new building. For such purpose, the

shifting of the service connection and the increase in load have been applied for.

The CESC Limited, it is contended, does not have any objection otherwise to give such connection apart from obstruction being raised by the private respondent.

Learned counsel for the CESC Limited submits on instruction that, in principle, the CESC Limited has no objection to shift the electricity connection and increase the load as sought by the petitioner upon the petitioner complying with all formalities. However, it is submitted that the private respondent is objecting to the same.

Learned counsel appearing for the petitioner, at this juncture, places reliance on a full Bench judgment of this court reported at *AIR 2011 Calcutta 64 [Abhimanyu Mazumdar vs. Superintending Engineer and another]* for the proposition that if any person is in settled possession of a property, irrespective of the lawfulness of his title, the person is entitled to get an electricity connection independently within the contemplation of Section 43 of the Electricity Act, 2003 (hereinafter referred to as “the 2003 Act”).

Learned counsel appearing for the petitioner further submits that the private respondent is objecting to the electricity connection shifting because

of personal grudge, since a previous illegal activity of the private respondent was challenged by the petitioner by way of another writ petition.

Learned counsel appearing for the private respondent controverts the contentions of the petitioner. It is submitted that the petitioner was previously served with a 'stop work' notice and a subsequent demolition notice. Thereafter, the petitioner has been making a new construction, again in deviation from the Municipal Laws.

As such, the Howrah Municipal Corporation has issued a fresh 'stop work' notice to the petitioner. It is submitted that under Section 178(2) of the Howrah Municipal Corporation Act, 1980 (hereinafter referred to as "the 1980 Act"), no person shall occupy or permit to be occupied any such building or use or permit to be used any building or a part thereof affected by any work until permission has been granted by the Commissioner, in the event no completion certificate has been issued.

In the present case, it is argued, the said provision is a clear bar to the petitioner making the construction. Hence, the shifting of electricity and increase in load, if granted, will be in direct contravention of Section 178(2) of the 1980 Act. It is further apprehended by the private respondent that in

the event the load is allowed to be increased, the petitioner shall induct third parties and create third party rights in respect of the building, despite the same being an illegal construction.

In the present case, the dispute raised by the private respondent is regarding the legality of the construction being made by the petitioner.

However, even within the contemplation of Municipal Law, mere issuance of a stop work notice itself does not taint a building to be illegal, unless a demolition notice is served.

There is a clear provision even under the Howrah Municipal Corporation Act, 1980 for an opportunity being given to the accused person to represent himself on the question of whether the construction is being made illegal.

Hence, at this juncture, it cannot be said beyond doubt that the petitioner is making unauthorized construction. Insofar as Section 178(2) of the 1980 Act is concerned, the petitioner has argued that, as envisaged in Article 254 of the Constitution of India, the State Legislation has to give way to a special Statute enacted by the Parliament. The Electricity Act, 2003, being an Act of the Legislature, while the Howrah Municipal Corporation Act, 1980 is a State statute, the said proposition

would otherwise be applicable. However, in the present case, as rightly submitted by the private respondent, there is no clear conflict between Section 43 of the 2003 Act and Section 178(2) of the 1980 Act, since the two provisions are not mutually exclusive and can operate harmoniously.

However, at the present juncture, it would be premature to say that if an existing electricity connection at the same premises is merely shifted to some other place and the load is permitted to be increased, the same will amount to permitting the petitioner to occupy a building which is without completion certificate.

The shifting and increase of load sought is not a new instance of grant of fresh electricity connection to the petitioner, which would attract the provisions of Section 178(2) of the 1980 Act, since no new permission or occupation is being created by virtue of shifting and/or increase in load.

By the same logic, Section 43 of the 2003 Act is also not applicable as the petitioner is not seeking a new and independent electricity connection.

Whatever may be the fate of the proceeding going on before the Howrah Municipal Corporation regarding the legality or otherwise of the construction made by the petitioner, the same cannot be a

deterrent at the present moment to permitting the petitioner to shift his existing electricity connection to a different place within his own premises and to increase the load thereof.

Hence, WPA No. 23359 of 2022 is allowed, thereby directing the CESC Limited to shift the existing electricity service connection of the petitioner as sought by the petitioner and to ensure that the increased load is given, of course, subject to feasibility and compliance of all formalities by the petitioner in that regard. It is, however, made clear that such shifting and/or increase in load of the electricity meter shall not *ipso facto* create any special equity or right in favour of the petitioner, which the petitioner otherwise does not have in law, and shall abide by the outcome of the proceeding before the Howrah Municipal Corporation with regard to the legality or otherwise of the construction being made by the petitioner.

In the event the CESC personnel are obstructed by the private respondent and/or his men and agents in shifting such connection and/or increasing the load, it will be open to the CESC personnel to approach respondent no.5, the Officer-in-Charge, Acharya Jagadish Chandra Bose Botanical Garden Police Station for police assistance. If so approached, such assistance shall be given at the cost of the

petitioner by respondent no.5 by acting on a server copy of this order.

It is further reiterated that the shifting of electricity connection and/or increase in load shall not in any manner prejudice the rights of the Howrah Municipal Corporation or the private respondent to object to any illegality, if committed by the petitioner in making the construction.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)