

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/1576/2023
MOHAMMED AFZAL SOLANKI @
MOHAMMED FAZAL SOLANKI.
VS
CESC LTD. & ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 8th September, 2023.

Mr. Syed E. Huda with
Sk. Aptabuddin &
S. Bhattacharya, Advs.
....for petitioner

Dr. Madhu Sudan Saha Ray, Adv.
... for CESC Ltd.

S.R. Islam , Adv.
... for the respondent no 5.

Learned Counsel for the petitioner contends that the petitioner purchased the property on September 1, 2021. Thereafter certain repair works were being undertaken, for which the charge of the building was given to private respondent no.5 by the petitioner since the private respondent no.5 and his family are the relatives of the petitioner. However, taking undue advantage thereof, the private respondent and his family obtained electricity connections at the premises in their names and started giving out that they are the owners of the property.

Regarding the other electricity connections given to other family members of the private respondent, transfers in the name of the petitioner have already been obtained. However, regarding the disputed

electricity connection, the petitioner has given a representation to the CESC Ltd. seeking a transfer of the same in the name of the petitioner.

It is contended that the petitioner has already filed a civil suit and has obtained status quo therein. The private respondent, although initially claiming to be the owner, has filed a suit for declaration of his tenancy right. However, no interim order was granted in favour of the private respondent in such suit.

It is submitted that in view of such contradictory stand taken by the private respondent and that the private respondent was merely in charge of the petitioner, the electricity given to the private respondent ought to be immediately transferred in the name of the petitioner.

It is further argued that the petitioner that the electricity connection was taken surreptitiously behind the back of the petitioner. Learned Counsel for the petitioner reiterates that the petitioner has already filed a Civil Suit and has entitled, as owner of the property, to know as to what are the documents which were produced by the private respondent to obtain the electricity connection from the CESC Ltd.

It is submitted by the learned Counsel for the petitioner that when the petitioner sought for information in that regard from the CESC Ltd., such information was refused on the ground that the CESC Ltd. does not fall within the purview of the Right to Information Act.

However, otherwise the petitioner/owner, it is submitted, is entitled to know about such documents.

Learned Counsel for the CESC Ltd. contends that the writ petition ought to be dismissed due to suppression of the material fact that the petitioner was never a consumer of electricity in the premises. The previous consumer was some other entity, it is submitted, even till the year 2022, i.e., after the purported date of purchase by the petitioner.

Learned Counsel for the private respondent argues that the private respondent is a tenant in respect of the property and already produced relevant documents in that regard before the Trial Court. Upon query of Court, learned counsel hands over photocopies of a purported rent bill as well as an electricity bill and a statement of electricity bills and payments during the financial year 2022-23 by the petitioner against his consumer number.

As it stands today, the proposition that the private respondent is a tenant in respect of the property is contentious. During pendency of the civil suits between the petitioner and the private respondent, it would be unwise for the Writ Court to conclusively observe that the petitioner either has or does not have any locus standi or jural relationship with regard to the property in dispute.

The private respondent has, however, furnished photocopies of a purported rent receipt and electricity bill before this Court, to indicate that there is sufficient prima facie proof of the petitioner's occupation with regard to the property. In any event, a presumption of correctness under Section 114 of the Evidence Act is attached to the official acts

done by the CESC Ltd., unless rebutted, to the extent that the CESC Ltd. should be presumed to have ascertained whether that the private respondent was in occupation of the property before giving electricity concoction. There being no rebuttal till date and the matter being sub judice before the civil Court, the writ court cannot dispel such presumption at this juncture.

Since the petitioner is already enjoying electricity connection with regard to the property and the CESC Ltd., being the distribution licensee, is of the opinion that the petitioner is entitled to such electricity connection, there cannot be any occasion or reason for the electricity connection to be transferred in favour of the petitioner.

The petitioner has also sought to insinuate that he is unsure as to which portion of the property pertains to the electricity connection of the private respondent. However, such argument is irrelevant. Even if the private respondent is in occupation of only a portion of the property, he is entitled to electricity supply. The electricity connection, once given, need not be necessarily restricted to the portion of the property, but stands in respect of the premises as such. Hence, there is no scope of interference in the present writ jurisdiction.

Accordingly, WPO/1576/2023 is dismissed without any order as to costs. The documents filed by the private respondent be kept on record.

Nothing in this order shall prejudice the rights and contentions of the petitioner and the private respondent in the civil suit pending between them. It is further clarified that the petitioner may to approach the Civil Court under Order 11 of Code of Civil Procedure for discovery/interrogatory/inspection of the relevant documents. If so approached, it will be open to the Civil Court to decide as to what documents fall within the purview of the said provision and to allow discovery/interrogatory/inspection to the petitioner accordingly, if he is otherwise entitled to the same in law.

(SABYASACHI BHATTACHARYYA, J.)