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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 07.11.2023

+ LPA 738/2023 & CM APPL. 57628-31/2023

ALL INDIA PANCHAYAT PARISHAD REGD Petitioner

versus

GOVERNMENT OF NCT OF DELHI & ANR Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Umesh Sharma, Advocate

For the Respondent : Mr. Anupam Srivastava, ASC for R-1.
Mr. Sharique Hussain, Advocate for R-2/BSES.**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)**

1. This is a Letters Patent Appeal filed under Clause X of the Letters Patent Act, 1866 and the Delhi High Court Rules, 2018 assailing the order dated 21.07.2023 passed by the learned Single Judge of this Court in WP (C) No. 17396/2022 captioned “*All India Panchayat Parishad Regd Vs. Government of NCT Of Delhi & Anr.*”

2. Facts as culled out from the petition filed by the petitioner are as follows: —

“4.1 *That the Petitioner is a registered society under the 1860 Act and working for the propagating Panchayat Raj and to bring Panchayat Raj Institutions from the village level, District level on one platform. The Government of India*



has duly recognized the Petitioner and has also allotted the land to build a Panchayat Bhawan. The present activity of the Petitioner is being carried from the said campus.

- 4.2 *That there was an inter se dispute in the executive committee of the Petitioner as some unauthorized persons were impersonating as the office bearers of the Petitioner society were trying to grab the said organization. The Petitioner executive resisted the same and approached the courts and finally a decree of Permanent Injunction was passed against the said person in CS (OS) No. 94579/2016 (Initially filed in 2002) by the court of Senior Civil Judge at Tis Hazari Courts, Delhi leading to the decree and judgment dated 17/9/2019 by the court of Sh. Anshul Mehta, CJ-04, Central, THC/Delhi. The reference of the said dispute .is being made for the purposes of disclosure as the same has no relation with the present writ petition in view of the law as the Respondent No.2 has no right to refuse electricity connection on the grounds of any court case or NOC etc. The ownership and possession of the Petitioner is nowhere in dispute at it is in exclusive possession of the property.*
- 4.3. *That there are number of electric meters installed inside the campus of the Petitioner as several portions are occupied by several persons. As such not much details of the said connections is available with the Petitioner but the Petitioner doubts that some of the said connections have been obtained irregularly and the Petitioner apprehends that the Petitioner may have to face the liability of dues of electric consumptions against such irregularly obtained connections. The Petitioner has specifically written to the Respondent No.2 in this regard however the Respondent No.2 instead of looking into the same and doing the needful has started harassing the Petitioner on false, flimsy and untenable grounds.*
- 4.4. *That to dedicate the entire time and energy, the President of the Petitioner society Sh. Balmiki Prasad Singh, who is a senior citizen and a veteran of the field of Panchyati Raj*



institutions in India is residing within the premises which part is named as Guest House. Several members, visiting guests also reside in the said Guest House from time to time in connection with the work of the society hence the electric connection to the said part is essential and important requirement for the said area.

4.5. *That the Petitioner applied for the grant of electric connection to the Guest House part vide his application dated 24/11/2022 bearing Request Application No. ANMVR221122C)514, Order No. 8006037218 at Ground Floor, 368, Balwant Rai Mehta Panchayat Bhawan, Mayur Vihar, Phase-I, New Delhi.*

4.6. *That the Respondent vide its communication on the web portal refused to grant the electricity connection on the ground by passing the following orders:-*

“Ownership dispute / Court Case”

4.7. *That the Respondent No.2 had earlier also refused to grant electric connection to the Petitioner on such grounds against which the Petitioner has filed CS (OS) 282/2021, before the court of Senior Civil Judge, Karkardooma, Delhi and the said suit is still pending. The interim application as filed by the Petitioner before the court was also dismissed on the grounds of the stand taken by the Respondent No.2. The Respondent No.2 after filing of the said civil suit started harassing the Petitioner and even has disconnected the electricity supply of the adjoining part of the building on the ground that the Guest House should have commercial electric connection. The said suit is pending however looking at the urgency of the matter, the present application for grant of electricity was made which is also refused by the Respondent No.2.*

4.8. *That the officials of the Respondent No.2 after filing of the said suit in 2021 by the Petitioner visited the campus of the Petitioner under the garb of verifying the electric connection and disconnected several supplies. The part for*



which the present writ is being filed was getting electricity from a meter installed in the adjoining part of the building was disconnected by the said officials as a result of which there is no electricity in the Guest House where the President of the society is residing.

- 4.9. *That the officials of the Respondent No.2 stated that since it is a Guest House, only commercial electricity connection for the same can be operated.*
- 4.10. *That the sudden and arbitrary action of the Respondent No.2 has left the Petitioner without any remedy and the President of the Petitioner society who is a senior citizen is being forced to live in the Guest House without electricity.*
- 4.11. *That the Petitioner filed a writ petition bearing No. 17396/2022 which came up for hearing on 20/12/2022 on which the Learned Single Judge issued notice considering and noting the entire facts of the case but refused to grant any interim orders for the grant of temporary connection of electricity as an interim measure pending the writ petition. The Petitioner being aggrieved by the same is before the court.*
- 4.12. *That the Petitioner was aggrieved by the issuance of notice only by the Learned Single Judge without considering the hardship being caused to him hence approached this Hon'ble Court and filed LPA No.22/2023 which was dismissed by orders dated 12/1/2023 passed by the court.*
- 4.13. *That the said writ petition came up for hearing thereafter before the court on various dates.*
- 4.14. *That on 11/4/2023, the counsel for the Petitioner had waited for the case to be called throughout the day- but the same could not be called by 4.15 PM hence left and it seems that the court has thereafter recorded the default on the part of the Petitioner and adjourned the matter for a longer date without considering the hardship of the Petitioner. The could (sic) did not consider that its earlier*



direction dated 16/2/2023 to the Respondent No.2 DISCOM was not complied and no status report was filed.

4.16. That the Petitioner filed an application for early hearing bearing CM No. 3683 1/2023 stating the entire facts, the said application was listed before the court on 21/7/2023, the court allowed the said application for early hearing and took up the writ for hearing on 21/7/2023 itself. The court thereafter passed the impugned orders.”

3. Learned Counsel appearing for the appellant submits that the learned Single Judge had erroneously dismissed the Writ Petition by way of the impugned order on the premise that since the appellant herein has been pursuing its remedies before the Civil Court, a writ petition under Article 226 of the Constitution of India for the same relief shall not lie.

4. Learned Counsel submits that no doubt a Civil Suit seeking grant of electricity connection for the same premises had indeed been filed, yet according to Learned Counsel, learned Single Judge overlooked the fact that the Writ Petition as laid was in respect of another application seeking electricity connection from the respondent which was rejected and was a cause of action based on deprivation of fundamental rights. According to Learned Counsel the right of a citizen to be supplied electricity is a fundamental right and any violation or breach of such fundamental right could be redressed only by way of a petition under Article 226 of Constitution of India.

5. We have heard the learned Counsel appearing for the appellant and perused the entire record of the appeal and also perused the impugned judgement of the learned Single Judge.



6. The present appeal appears to be a classic case of misuse and abuse of the process of law. In that, the appellant before us through the counsel, had candidly admitted that insofar as the premises belonging to the appellant is concerned, there were already 10 electricity connections available with it and it is now seeking a fresh connection in respect of a portion of the premises designated as a “guest house”. The application dated 24.11.2022 seeking electricity connection was rejected by the respondent no. 2 with the remarks “ownership dispute/court case”.

7. Learned Counsel submits that the respondent no. 2 had no right or authority to refuse the electricity connection on such ground.

8. In order to appreciate the circumstances under which the Learned Single Judge was constrained to pass the impugned order, it would be apposite to extract the relevant paras hereunder:-

“3. In the writ petition, the petitioner has adverted to the fact that it has already filed a civil suit against the respondents in respect of grant of electricity connection in the same premises. The averment in this regard is as follows:-

“4.7. That the Respondent No.2 had. earlier also refused to grant electric connection to the Petitioner on such grounds against which the Petitioner has filed CS (OS) 282/2021, before the court of Senior Civil Judge, Karkardooma, Delhi and the said suit is still pending. The interim application as filed by the Petitioner before the court was also dismissed on the grounds of the stand taken by the respondent No.2. The Respondent No.2 after filing of the said civil suit started harassing the Petitioner and even has disconnected the electricity supply of the adjoining part of the building on the ground that the Guest House should have commercial electric connection. The said suit is pending however looking at the urgency of the matter, the present application for



grant of electricity was made which is also refused by the Respondent No.2.”

[Emphasis supplied.]

4. As stated above, the plaintiffs application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, was dismissed by the Trial Court. Curiously, the order of the Trial Court dated 10.11.2021 has not been annexed to the writ petition. However, a copy thereof has been handed up in Court, and is taken on record. It inter alia records as follows:-

“6. The defendant has vehemently opposed the contentions of the plaintiff. It has been admitted that the plaintiff had applied for fresh electricity connection vide request no. 8004502759 dated 19.08.2020 for commercial purpose. In respect thereof the defendant issued a deficiency letter dated 02.09.2020 duty informing the plaintiff that the premises is already electrified by domestic connection and that two dues are pending against the said premises-one in respect of regular connection and another against the enforcement, bill or Theft Bill, and the due amount is Rs. 23,716/- Rs. 1 16.488/- respectively. It has been further averted that there is also ownership dispute qua the premises in question. The plaintiff was asked to remove the deficiencies as per Deficiency Letter within 7 days. However, the plaintiff failed to do so.

7. The defendant has infact again inspected the site after receiving the summons of the suit and it was found that the premises is having total area of 7.5 acres and is being used for the purpose of Nursery, Offices, Quarters, Guest House etc. The premises is already electrified through 10 meters having no.35482989, 35483825, 35483825, 35483821, 35482983, 35483824, 35483820, 35483822, 35482983, 25351290 and 17142867 . Lastly, there is no authority letter in the name of Sh. Balmiki Prashad Singh by the plaintiff's Socety.



8. I have heard the submission on behalf of both the parties and perused the entire record carefully.

9. As per the defendant, the premises of the plaintiff has already been electrified through 10 meters. The Site Revisit Report dated 27.07.2021 has been placed on record. Even the plaintiff has admitted that electricity connections are available at the premises.

10. Also, as per the Letter of defendant dated 02.09.2020, which has been placed on record by the plaintiff, Domestic connection already exists in the suit premises and dues are outstanding. It is not that the request of the plaintiff was outright rejected by the defendant. Infact, defendant granted 7 days' time to the plaintiff to complete commercial formalities within 7 days. However, instead of paying the due bills, the plaintiff has filed the present suit. Also, the plaintiff's letter dated 21.09.2021, it is mentioned that various unofficial/illegal connection are installed in the premises without permission of the Adhyaksha, However, this has not been mentioned in the plaint. No details of the illegal connections has been provided by the plaintiff.

11. In order to grant interim injunction, three essential ingredients have to be satisfied. The plaintiff is required to establish that he has a prima facie case in his favour; that he will suffer grave and irreparable loss and damage would ensue to him in case interim protection was not granted and that the balance of convenience, interest of justice and equity are in his favour.

12. In the case at hand, the plaintiff has failed to show a prima facie case in its favour. Balance of convenience also does not lie in favour of the plaintiff. No irreparable loss shall be caused to the plaintiff if the relief is denied to him as the premises is already electrified.

13. In view of the above discussion, the application is dismissed."



[Emphasis supplied.]

5. This order has not been challenged by the writ petitioner. The suit also remains pending. The grounds mentioned in the aforesaid order with regard to the fact that the premises of the petitioner has already been supplied with electricity through 10 meters, and that there are dues outstanding in respect of the electricity connection to the said premises, thus, remain unchallenged and would apply equally to the rejection of the petitioner's subsequent application, which is the subject matter of the present writ petition."

(Bold portion as marked by learned Single Judge)

From the aforesaid observations, it is apparent that the appellant had attempted to mislead the learned Single Judge inasmuch as the order of the learned Trial Court dated 10.11.2021 dismissing the application under Order XXXIX Rules 1 and 2 of CPC, 1908 was concealed. A copy thereof was furnished by the learned Counsel for the respondent. A perusal of the order dated 10.11.2021 of the learned Trial Court, as extracted in the impugned judgement, would bring to fore that the appellant had been dishonest in his approach before the civil court as also before the learned Single Judge. That apart the said order, admittedly, has never been challenged till date. Moreover the suit is stated to be still pending.

9. It is well settled that grant of relief under writ jurisdiction is purely discretionary and is to be exercised on sound principles. Simultaneously, it is also well settled by now that such discretionary relief can be granted only to a party which approaches the Court with clean hands and does not conceal relevant and material facts, even if the same are to its detriment. We find that in the present case the appellant has transgressed the same, thereby disentitling itself from any such discretion.



10. It is trite that when there is an alternate and efficacious remedy available to a litigant, then the invocation of extraordinary jurisdiction under Article 226 of the Constitution of India, 1950 ought not to be permitted. In the present case, admittedly, the appellant had already invoked its rights under the ordinary Civil Law by filing a civil suit which is stated to be still pending, and as such, the petition under Article 226 of the Constitution of India is not maintainable.

11. The aforesaid facts as noted by learned Single Judge are enough to disentitle the appellant of the discretionary relief envisaged in Article 226 of the Constitution of India. Moreover, the abuse of process of law is apparent.

12. In view of the above, we are not inclined to interfere with the impugned judgement passed by the learned Single Judge and as such the Appeal is dismissed being devoid of merits however, without any order as to costs.

13. Pending applications stand disposed of.

(TUSHAR RAO GEDELA)
JUDGE

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

NOVEMBER 7, 2023/rl