

27.06.2024
Ct. No. 09
Item No.15
Cp

WPA No. 6635 of 2024

Kashinath Maity
Vs.
The Chairman, CESC Ltd. & Ors.

Mr. Dipankar Aditya
Ms. Tina Biswas

..... for the petitioner.

Dr. Madhusudan Saha Roy
Mr. Debanjan Mukherjee

.....for the CESC Ltd.

Mr. Rajendra Chakravarti

.....for the respondent no. 4.

1. The petitioner alleges that the CESC authorities, on the dictates of the Rishra Municipality, disconnected his electricity supply. The petitioner claims to be the tenant in respect of a land which was found to be illegally converted from a water body.
2. A public interest litigation had been instituted by some of the shebaites of 'Shri Shri Gour Nitai Jew Trust' before this court with the allegation that a water body had been encroached by some private parties and construction was being put up with the tacit consent of the Rishra Municipality. The Hon'ble Division Bench held that even if the water body was not in existence, but as it was recorded as a pond in the revenue records, the conversion was unauthorized and illegal.

Therefore, the municipality should take steps, in accordance with law. The municipality was directed to issue notices to all, before conducting an inspection of the area. If it was found that the water body had been illegally converted, steps were directed to be taken to restore the same to its original position. The direction was upon the commissioner of the municipality. The order was not complied.

3. A contempt application had been filed by the writ petitioners of WPA (P) 182 of 2023. In the contempt proceeding, the petitioner intervened and the petitioner submitted that he was inducted as a tenant by one of the shebaitis and the internal dispute among the shebaitis/trustees should not affect the right of the petitioner. Upon recording the submissions of the petitioner, the contempt application was disposed of with a direction upon the executive officer of the municipality to issue notice to all the occupants of the property in question including the intervenor who had already filed an application before the municipality and upon hearing all the parties, the order was directed to be complied with.
4. The interpretation of these two orders of the Hon'ble Division Bench, leads this court to hold that the disconnection was effected by the CESC upon direction of the municipality.

5. The learned advocate for the municipality appears before this court and submits that not only the electricity connection of the petitioner, but of all the persons who were enjoying electricity on the constructions over the water body, had been disconnected. This was one of the steps towards compliance of the order of the Hon'ble Division Bench. The Hon'ble Division Bench had directed that the water body had to be restored. The constructions on such land which were found to be unauthorized, would either have to be removed or demolished, so that the pond could be restored to its original state.
6. Under such circumstances, this court cannot pass any orders directing the CESC Limited to reconnect the supply of the petitioner. Moreover, the petitioner intervened in the contempt proceeding before Their Lordships and made his submissions, but failed to get any order of restoration of supply. The order dated May 21, 2024 was passed upon hearing the petitioner as well. Thus, the issue is now barred by constructive res judicata.
7. Hence, the writ petition fails.
8. It is made clear if the disconnection had been effected in compliance of an order passed in the public interest litigation, similar treatment should be given to all

similarly situated persons. The municipality cannot pick and choose.

9. There shall be no order as to costs.
10. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)