

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
W.P.A 17592 of 2024

Reserved on : 24.09.2024
Pronounced on: 01.10.2024

Subhankar Ghosh

...Petitioner

-Vs-

The Director General & Inspector General of Police
West Bengal & Ors.

...Respondents

Present:-

Mr. Subhankar Ghosh

... petitioner-in-person

Mr. Vimal Kumar Shahi
Ms. Pratiti Das

... for the State

Mr. Prasanta Kumar Das
Mr. Md. Baharuzzaman

... for the respondent nos. 6 & 7

Rajarshi Bharadwaj, J:

1. The petitioner appearing in person, seeking financial assistance under the Pradhan Mantri Mudra Yojana (PMMY) for merchandising edible tea cups through a retail outlet, entered into a tenancy agreement on 13th March, 2024 for a commercial garage space at Dream Shelter Apartment, Kolkata.

2. The petitioner submitted a loan proposal to the State Bank of India, SMEC Bidhannagar, which was returned for rectification on 30th March, 2024. Concurrently, the petitioner applied for an electricity connection on 10th June, 2024.

3. On 16th June, 2024, during the installation of the electric meter, the private respondents no. 6 and 7 unlawfully obstructed the personnel of CESC Limited from completing the work. The petitioner alleges that they were threatened and extorted by the private respondents, leading to a complaint being lodged on the same date with Dum Dum Police Station, which was not registered.

4. The petitioner, thereafter, approached the Executive Magistrate at Barrackpore, filing a petition under Section 144(2) of the Code of Criminal Procedure (Cr.P.C), seeking assistance for the lawful installation of the electric meter. On 21st June, 2024, the Learned Executive Magistrate directed the Officer-in-Charge (O/C) Dum Dum Police Station to ensure no disturbance during the installation and to submit a report on the matter by 30th July, 2024.

5. Despite the Executive Magistrate's direction, the police failed to act, and no report was submitted by the stipulated date. The petitioner further states that repeated attempts to communicate the Executive Magistrate's order to the concerned authorities, including a letter dated 25th June, 2024, yielded no results.

6. On 07th August, 2024, private respondent No. 7, being the owner of the rented garage and Respondent No. 6, being an adjacent flat owner, along with other residents, vehemently obstructed the CESC personnel and police officers from lawfully installing the electric meter. The private respondents incited other residents to prevent CESC officials from accessing the Main Distribution Box. This conduct violated the order dated 21st June, 2024, passed by the Executive Magistrate at Barrackpore in M.P Case No. 1740 of 2024 under Section 144(2) Cr.P.C. The petitioner asserts that these acts are cognizable offenses punishable under Sections 188 and 186 of the Indian Penal Code, and also amount to Contempt of Court under the Contempt of Court Act,

1971. The entire incident has been videographed and can be produced as evidence.

7. The petitioner submits that the inaction of the police authorities, despite a clear court order under Section 144(2) Cr.P.C, constitutes wilful disobedience of a lawful directive. The respondents' actions in obstructing essential services, such as electricity, infringe upon the petitioner's fundamental right to life, as enshrined under Article 21 of the Constitution of India. Furthermore, the petitioner contends that the respondents' actions on 07th August, 2024, including the forceful prevention of lawful electricity installation and incitement of other residents, are in direct violation of the court's prior order.

8. A report has been filed by the Officer-in-Charge of Dum Dum Police Station, Respondent No. S, acknowledges that the officer has reviewed and understood the contentions of the writ petition. Following an investigation into the matter, it was found that the petitioner entered a rental agreement with the owner, Respondent No. 7, for the use of a garage, agreeing to install an electric meter. However, objections were raised by other residents due to safety concerns over a 440-volt electric connection. A dispute arose, leading to a police complaint and the filing of Dum Dum PS Case No. 277/24 under Sections 420 and 506 of the IPC. The garage remains under lock and key pending court action.

9. The learned counsel representing private respondent No. 6 and 7 submits that the report submitted by respondent No. 5 does not address the fundamental issue at hand, which is the root cause of the dispute between the petitioner and respondent No. 7. The dispute stems from the non-compliance with the terms of the agreement entered into between the parties. Moreover, the counsel points out that the agreement, along with its supplementation, is

not only ante-dated but also lacks adequate stamping, thereby rendering the document legally invalid under relevant provisions.

10. Further, it is submitted that the premises leased to the petitioner by respondent No. 7 were exclusively meant for garage use, as stipulated in the deed of conveyance. Any other commercial usage of the premises, such as the petitioner's proposed business activity, violates the terms of the lease. The counsel also brings attention to procedural discrepancies in the case, highlighting that the next hearing in M.P. Case No. 1740 of 2024 was scheduled for 30th June, 2024, yet the report indicates that it will be submitted on 13th September, 2024, which creates inconsistencies in the timeline.

11. In addition, the learned counsel submits that the order issued by CESC pertains to respondent No. 6 and not respondent No. 7. Moreover, respondent No. 7's name was included as a witness in the CESC application without his consent, thereby rendering the application void ab initio. This is further aggravated by the fact that the petitioner's Aadhar card details provided in the application are alleged to be fictitious.

12. In light of the above submissions, the Learned counsel submits that the present dispute is purely civil in nature, and the agreement between the petitioner and respondent No. 7 should be considered void from the outset, making the petitioner's claims baseless.

13. Heard the Learned Counsel for the parties at length.

14. This Court takes serious note of the unlawful obstruction caused by the private respondents no. 6 and 7 during the electricity installation process on 16th June, 2024, and finds their actions to be in violation of the order passed by the Executive Magistrate on 21st June, 2024, under Section 144(2) Cr.P.C. The respondents' conduct, which includes inciting other residents to prevent

the lawful installation of electricity, is both illegal and in contempt of the court's prior order.

15. This Court also finds that the inaction of the police, despite being directed by the Executive Magistrate to ensure that no disturbance occurs, constitutes wilful negligence of their duties. The petitioner's fundamental right to life under Article 21 of the Constitution, which includes access to essential services such as electricity, has been unjustly infringed upon by both the private respondents and the police's failure to act.

16. Further, the submissions made by private respondents No. 6 and 7 regarding the lease agreement, its terms, and procedural discrepancies are unrelated to the immediate issue of the lawful installation of electricity. These disputes can be addressed separately in appropriate forum, but they do not justify the obstruction of essential services.

17. Therefore, this Court directs the police authorities herein the Officer-in-Charge of Dum Dum Police Station to provide immediate assistance to CESC to ensure immediate compliance with the order dated 21st June, 2024, and provide necessary police protection to CESC personnel for the installation of the electric meter without any further hindrance from the private respondents.

18. With the above directions, the writ petition being WPA 17592 of 2024 is disposed of.

19. All parties shall act on the server copy of this order duly obtained from the official website of this Court.

(RAJARSHI BHARADWAJ, J)

Kolkata

01.10.2024

PA (BS)