

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 22092 of 2023

Prashant Gupta

Versus

The State of West Bengal & Ors.

For the petitioner : Mr. Suddhasatta Banerjee,
Mr. Swapan Nath,
Mr Asif Hossain.

For the State : Mr. Asish Kumar Guha,
Mr. Anirban Dutta.

For the respondent
No. 11 : Mr. Anindya Bose,
Mr. Soumya Sankar Chini.

For the CESC : Mr. Debanjan Mukherjee,
Mr. Aziz Amin.

Lastly heard on : 14.03.2024

Judgment on : 14.03.2024

Jay Sengupta, J:

This is an application *inter alia*, praying for direction upon the respondent police authorities to act in compliance with an order dated 26.07.2023 passed by an Executive Magistrate, 2nd Court at Alipore in a proceeding under Section 144(2) of the Code of Criminal Procedure and for ensuring that respondent nos. 6 to 9

forthwith restore the essential services i.e., electricity and water connections at the premises in question.

Learned counsel appearing for the petitioner submits as follows. The petitioner has purchased the property in question from the erstwhile promoter/developer of the property but the association of residents started raising dispute as if, the property was a portion of the parking space and could not be utilized for running an office. Earlier water and electricity connection had been provided. However, subsequently the private respondents/members and staff of the building association disconnected those essential services. This prompted the petitioner to approach the Executive Magistrate under Section 144(2) of the Code of Criminal Procedure. A favourable order was granted directing the police authorities to ensure that the petitioner gets the essential services. However, the private respondents had been unnecessarily harassing the petitioner and depriving him of his fundamental rights to get water and electricity services. In fact, there was a change approved in the sanctioned plan of the Corporation to that effect, which has been challenged by the association. But, there is no stay on the conversion/alteration in the plan. A Civil Suit filed by the respondent association challenging the sale deed is also pending before a Civil Court and there is only an order of *status quo* granted there. Reliance is placed on the decision of the Full Bench of this Court in ***Abhimanyu Mazumdar vs. The Superintendent Engineer and Another*** reported at ***AIR 2011 Cal 64 (FB)***. There this Court decided that right to have electricity supply comes within the sweep of Article 21 of the Constitution of India. Moreover, an owners' association cannot do acts contrary to individuals' rights as guaranteed under Article 19(1)(g) of the Constitution of India. For instance, a right to carry on a business cannot be interfered that unless sanctioned by law. On this reliance is placed on an unreported decision of this

Court in ***Nemichand Bamalwa & Sons (J) and Another vs. State of West Bengal & Others*** decided on ***17.10.2023 in WPA No. 29165 of 2022.***

Learned counsel appearing on behalf of the State relies on the report filed earlier and submits as follows. An investigation was done on the FIR lodged against the members and staff of the association for disconnecting essential services. A charge-sheet has been filed in the same. It appears from the report of the police dated 15.09.2023 that during investigation the erstwhile promoter/developer confirmed that they executed the deed no. 190105767 of 2015 in the name of Prasant Gupta and he paid maintenance and electrical charges. The association had no right to disconnect electricity and water connection of the petitioner.

Learned counsel appearing on behalf of the respondent no. 11 submits as follows. The respondent no. 11 was the developer of the property who had sold the said property to the petitioner. The revised plan for having an office at the said place was sanctioned by the Corporation. The association subsequently challenged it before the Tribunal and the same is pending.

Learned counsel appearing on behalf of the C.E.S.C. Limited submits as follows. As per agreement with the association, a high tension electricity connection was given to the said association. This cannot be altered into a low tension one. Therefore, it would be for the association to supply electricity to the individual consumers inside the complex and to issue bills to them.

Learned counsel appearing on behalf of the respondent nos. 6 to 10 submits as follows. The association has already challenged the sale deed as well as the altered plan i.e., the plan purportedly sanctioned by the Corporation allowing change of user. No consent was taken of the association for making such

alteration in the plan. The association has also challenged the sale deed before a Civil Court and an order was granted directing the maintenance of *status quo*. The petitioner does not have a right to occupy the space in question in the property. Therefore, there is no question of granting any electricity or water connection in the same. In fact, there are inconsistencies in the averments made by the petitioner. While in the writ petition it is stated that connections were stopped in 2018, in an application seeking police help, it was mentioned that the disconnection was done in 2023.

It appears that the owners of the units in the building complex, through their association, has challenged the sale deed executed by the erstwhile promoter/developer in favour of the present petitioner. It also appears that they have challenged the sanction of an altered plan as issued by the Corporation permitting change of user for the portion of the premises in question. Therefore, it shall be open to the adverse parties to present their respective cases before the said fora.

Either of the parties shall be at liberty to establish any further right in respect of the property before the Civil Court.

However, at this stage, there is a sale deed which shows that the property in question was conveyed by the developer to the petitioner and there is a sanctioned plan permitting a change of user.

There are also reports given by the police that the association could not have legally disconnected electricity and water supply to the said portion occupied by the petitioner, although, this is strongly disputed by the petitioner.

Even if the petitioner was occupying the portion of the premises as a trespasser, he could not be deprived of essential services that are guaranteed to all

citizens like electricity connection and water supply. A reference is made to the decisions in ***Abhimanyu Mazumdar (supra) and Nemichand Bamalwa & Sons (J) and Another (supra)***.

Therefore, till the issues regarding the sale deed and the sanctioned plan are finally decided by the Civil Court and/or the Tribunal, respectively and till any order to the contrary is passed, the respondent nos. 6 to 10 shall not disconnect electricity and water supply to the petitioner at the portion of the premises in question. If they have already disconnected such supply, they shall restore the supplies forthwith, positively within seven days from this date.

With these observations, the writ petition is disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Jay Sengupta, J.)