

03.01.2024
Item No.2
Ct. No.1
PG/KS

M.A.T. 1951 of 2023
With
IA No. CAN 1 of 2023
Mrs. Poonam Khem alias Poonam Makhani
Versus
CESC Limited & Ors.

Mr. Rachit Lakhmani
Mr. Piyush Kumar

.....for the Appellant

Ms. Ashmita Chakrabortyfor the State

Mr. Debanjan Mukherjee

.....for the CESC

Mr. Partha Pratim Roy

.....for the respondent no.5

1. This intra-Court appeal by the respondent in W.P.A. 16397 of 2023 is directed against the order dated 13th September, 2023. The said writ petition was filed by the respondent herein praying for direction to restore the electricity connection to the space, which was in occupation of the respondent/writ petitioner in which the respondent was carrying on business.

2. The learned writ Court without calling for affidavits on the first date of hearing, has allowed the writ petition by the impugned order by holding that electricity and water connection cannot be denied to a person even if he is occupying any premises illegally. As a broad proposition, we may not have any quarrel over the said finding recorded by the learned Single

Bench. However, the facts of the present case compels us to take a different view. This is so because there appears to have been a dispute between the respondent/writ petitioner and the appellant, the owner of the premises. The respondent/writ petitioner has filed a title suit in Title Suit No.1562 of 2022 on the file of the 3rd Additional Civil Judge (Junior Division), Alipore. In the said suit, an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure was taken out, wherein the respondent/writ petitioner prayed for an order of temporary injunction from interfering with his enjoyment of all the essential services, which included supply of electricity and water. An *ex parte* order was passed by the learned Trial Judge on 28th September, 2021. Subsequently, the appellant/owner of the premises entered appearance and put forth his case and the learned Trial Court by order dated 11th April, 2023 has dismissed the application for temporary injunction. Thus, it can be seen that the prayers sought for in the interlocutory application in the title suit and the prayer sought for in the writ petition are identical. One more fact, which is to be taken note of is that the respondent/writ petitioner did not approach the learned writ Court with clean hands. We say so because in paragraph 6 of the writ petition, though the respondent/writ petitioner mentions

about the filing of the title suit and has annexed the copy of the plaint as Annexure – P/2, the orders passed by the learned Trial Court and the interlocutory applications have not been disclosed. Thus, the respondent/writ petitioner is guilty of suppression of vital facts before this Court.

3. One other factor, which has weighed in our mind is that the appellant/the owner of the premises has also filed a counter-claim in the suit, which is also pending.

4. Thus, in the facts and circumstances, the learned writ Court ought not to have directed grant of electricity connection and also ordered for police assistance at the cost of the respondent/writ petitioner.

5. For the above reasons, the appeal is allowed and the order passed in the writ petition dated 13th September, 2023 is set aside and the electricity department viz. the CESC Limited is directed to disconnect the electricity supply within 48 hours from date and restore *status quo ante* prior to the order passed in the writ petition and remove any new meter, which has been installed.

6. This order will not preclude the respondent/writ petitioner from questioning the order passed by the Civil Court or for seeking appropriate relief in the pending civil suit.

7. No costs.
8. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)