

OD-4

ORDER SHEET

WPO 404 of 2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SRI KAMAL NARAYAN MISHRA
VS.
THE STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 11th July, 2024.

Mr. Krishnendu Bhattacharya, Mr. Amit
Gupta, Ms. Shalini Bairagi, Advocates for the petitioner.

Mr. Arijit Dey, Ms. Sabnam De, Advocates for
K.M.C.
Mr. Abhijit Roy, Advocate for respondent nos.9 & 10.

Mr. Somnath Bose, Advocate for CESC Limited.

Ms. Rajlakshmi Ghatak, Advocate for the State.

The Court : This writ petition has been filed for a direction upon the CESC authorities to disconnect the supply given to the respondent nos.9 and 10. It is contended that the said respondents are not in possession of the property. The said respondents do not have any claim on the property. They are neither co-sharers nor tenants in respect of the property and the CESC authorities had illegally granted connection on the basis of a fake trade licence. Reliance has been placed on a communication of the Kolkata Municipal Corporation under the Right to Information Act, which indicates that no certificate of enlistment had ever been issued in favour of Smt. Shipra Bhattacharjee, in respect of premises No.5, B. K. Paul Avenue.

Learned Advocate for the CESC Limited submits that an inspection was made. The respondent nos.9 and 10 were found in possession and the connection was granted.

Learned Advocate for the Kolkata Municipal Corporation submits that municipal assessment book indicates that the petitioner has been recorded as the owner of premises no.5/1, Butto Kristo Paul Avenue and the dispute in this writ petition is with regard to the electricity connection to premises no.5, B. K. Paul Avenue.

Having heard the learned Advocates for the respective parties, the dispute now revolves around the right of the respondent nos.9 and 10 to obtain connection from the CESC Limited in respect of the property. Although it has been submitted by the petitioner that the respondent nos.9 and 10 are not in occupation of any portion of the property, a complaint has been filed by the petitioner before the learned Additional Chief Metropolitan-I, Calcutta, being Misc. C. Case No.120/2022, which indicates that the petitioner was aggrieved by the illegal activity of Usha Das and Shipra Bhattacharjee (claimed herself to be an advocate) who had forcibly trespassed into the property and had tried to occupy 95 sq. ft. in the said property. A police investigation was conducted pursuant to the said complaint and the police authorities have filed a report in a final form by closing the investigation, and declaring the dispute to be civil in nature. According to the police report, during the course of investigation, the petitioner was examined under Section 91 of the Criminal Procedure Code. The petitioner produced photocopies of some documents which revealed that he had purchased the property from one Janardan Mishra, but as per

the KMC records the owner was found to be one Surendra Mohan Das. The petitioner failed to produce documents regarding the ownership of Janardan Mishra and how Janardan Mishra had got the property from Surendra Mohan Das. The petitioner failed to file any other document. The respondents also filed photocopies of documents which reveal that Usha Das was one of the legal heirs of late Surendra Mohan Das. However, Usha Das also failed to produce any document about her legal ownership. After physical verification it was found that neither the petitioner nor Usha and Shipra resided in the premises. The occupants/tenants reside therein and they knew that the petitioner was the owner. Shipra Bhattacharjee had taken a meter in her name at the premises and a document has been produced before this Court which shows that by a general Power of Attorney Usha Das nominated her sister Shipra to be her attorney and allowed her to look after the premises etc. From the police report it appears that there is a title dispute and there is also a dispute with regard to the validity and correctness of the possession of Shipra Bhattacharjee in respect of the premises in question. A Writ Court cannot adjudicate such issues. It is also well settled that a person in occupation is entitled to electricity irrespective of whether such occupation is legal or illegal. When CESC authorities have found Shipra Bhattacharjee to be in occupation and have granted connection and the police report also indicates that there are tenants and other occupiers who are using the respective connection, direction upon the CESC Limited to disconnect the supply would not be in accordance with law. The petitioner's remedy would be in any other proceeding.

It is now submitted by the petitioner that the meter through which

Sipra is enjoying connection has been fixed at 5/1, B. K. Paul Avenue although after separation of the premises, premises nos.5 and 5/1, B. K. Paul Avenue have become separate holdings and the KMC's assessment register will also indicate the same.

This issue is not the subject matter of the writ petition. Thus, if the petitioner approaches the CESC authority with a prayer for shifting of the meter of Shipra, such prayer shall be disposed of in accordance with law by the CESC Limited upon inspection in presence of all parties. If it is found that Shipra is in occupation of premises 5, B.K. Paul Avenue, which is separate from 5/1 B.K. Paul Avenue, as per the municipal records, the meter will be shifted to premises No.5, B.K. Paul Avenue, for which costs to be borne by Shipra.

With the above observation, the writ petition is disposed of.

(SHAMPA SARKAR, J.)