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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 20.05.2024**Pronounced on: 01.07.2024*+ **W.P.(CRL) 104/2024, CRL.M.A. 874/2024 & CRL.M.A. 5661/2024**

SWATI SAISTA

..... Petitioner

Through: Petitioner in person (appeared through VC)

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rahul Tyagi, ASC for the State with Ms. Mansi Gosain, Mr. Mukesh Dagar, Mr. Naresh Dagar, Mr. Vivek Sharma, Ms. Soumya and Mr. Rohan Sharma, Advocates along with SI Rashmi, P.S. Dwarka South.

Mr. Manish Srivastava, Mr. Moksh Arora and Mr. Santosh Ramdurg, Advs. for BRPL.

Ms. Snigdha Dash, Adv. for R-5.

Mr. Ajit Kumar, Mr. O. B. Lal, Mr. Pulkit, Mr. Dinesh Bhadauria, Mr. R.C. Verma, Mr. Bharat Bhushan Sharma, Mr. Puneet Gupta & Mr. Ayush, Advs. for R-6.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**



JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present writ petition under Article 226 of the Constitution of India, read with Section 166 of the Indian Penal Code, 1860 ('IPC') has been filed on behalf of the petitioner, praying as follows:

“A) Issue a writ of mandamus and/or any other appropriate writ, order and/or direction in the nature thereof, thereby directing the concerned to take appropriate action to restore Electricity to the residence of the Petitioner, located at Flat No. B-503, Meghdoot Apartment, Meghdoot CGHS Ltd., Plot No. 19, Sector - 7, Dwarka, New Delhi - 110 075 and also to ensure registration of F.L.R. against Respondents No. 5, 6 and 7, in accordance with the relevant provisions of the Law, for their role in violating fundamental right of the Petitioner.

B) Order criminal proceedings against Respondents No. 2, 3 and 4 for their failure to discharge their lawful duties and their wilful violation of the relevant provisions under Section 166 of the Indian Penal Code, for the negligence on their part to perform their duties and responsibilities even after 1 year since lodging complaint regarding the illegal disconnection of Electricity to the residence of the Petitioner.

C) Order Respondents No. 1, 2, 3, 4, 5, 6 and 7 to pay compensation to the Petitioner, for their role in violation of Fundamental Right of the Petitioner.

D) Provide such other relief as this Hon'ble Court may deem fit in the circumstances of the case.”

2. The case set out by the petitioner, in brief, is that she is a resident of flat no. B 503, Meghdoot Apartment, Meghdoot CGHS Ltd., Plot No. 19, Sector 7, Dwarka, New Delhi and is a 'consumer of electricity' as per the Electricity Act, 2003. She states that the said



flat is registered in the name of her husband Sh. Dharendra Kumar i.e. respondent no. 6, who had left her alone at the said address and had shifted to a new accommodation on 02.01.2019 along with their minor son. The petitioner states that she is a victim of domestic violence and she had filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('DV Act') on 11.01.2019 against her husband and the learned Mahila Court-02, Dwarka Courts, New Delhi was pleased to pass an interim protection order dated 07.09.2020 in CC No. 1582/2019, wherein her husband was restrained from committing any act of physical violence or harassment, and was also ordered to pay interim maintenance of Rs. 1,00,000/- per month to the present petitioner. It is stated that the said order was upheld by the learned Principal District & Sessions Judge on 01.10.2021 *vide* order passed in CA No. 169 and 180 of 2020.

3. The petitioner claims that she has been in the occupation of the abovesaid flat, which was not allotted in the name of the petitioner, but her husband Sh. Dharendra Kumar i.e. respondent no. 6 is the allottee of the said flat. It is the grievance of the petitioner that Meghdoot Cooperative Group Housing Society i.e. respondent no. 5, acting on behalf of her husband i.e. respondent no. 6 and in collusion with BSES Rajdhani Power Limited ('BRPL') i.e. respondent no. 7, had disconnected the electricity of the petitioner's flat on 15.11.2022, but had then restored it on 22.11.2022 after pasting a notice outside her flat that she must pay her electricity dues, and had again disconnected it on 29.11.2022. She states that these acts have caused severe hardship and mental harassment to the petitioner, depriving



her of her fundamental right under Article 21 of the Constitution of India.

4. The Petitioner, who appears in person, submits that respondent no. 5, i.e. the Housing Society had illegally disconnected her electricity connection on 29.11.2022, which was supplied by respondent no. 7 to the petitioner's flat. She further states that she has filed several complaints against respondent no. 5 and 6 with the police i.e. respondents no. 2, 3 and 4, however, they have failed to take any action and has rather closed her complaints *inter alia* by stating that the dispute is of civil nature. In this regard, she states that one complaint was filed on 15.11.2022 under Section 31 of DV Act with the police regarding the breach of interim protection passed by the learned Mahila Court, and the another complaint was filed on 22.11.2022 with the police requesting that action be taken against her husband and the housing society. She further states that she had made several PCR calls also, details of which have been mentioned in the petition. It is further submitted by her that she had also addressed a complaint to National Commission for Women (NCW) i.e. respondent no. 8, however, it had closed her complaint on the ground that the same pertains to a civil dispute.

5. The petitioner, thus, states that the respondent no. 2, 3 and 4 have not taken any appropriate action, in accordance with the provisions of DV Act, regarding the illegal disconnection of the electricity of the petitioner's residence by respondent no. 5, despite having a legal obligation to do so and they have violated Section 166 of IPC. Further, their inaction has resulted in violation of



fundamental rights of the petitioner. She also states that by illegally and arbitrarily disconnecting electricity of her residence, without following any due process of law and by asking her to pay Rs. 22,112/- without any proof or basis for the claim, the housing society i.e. respondent no. 5 has violated her fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India. She then submits that BRPL i.e. respondent no. 7 has encouraged the respondent no. 5 to do illegal resale business of electricity by allowing it to control the supply of electricity in the society and is thus involved in the disconnection of electricity of petitioner's residence, even though there were no pending dues to the respondent no. 7. She also states that the conduct of respondent no. 2, 3 and 4 reflects lawlessness in the State and all the respondents are liable to pay compensation to her since her fundamental right has been violated. It is also submitted by her that if at all there is some electricity bill due, it is her husband i.e. respondent no. 6 who is obliged to pay the same as he is the owner of the flat in question and he has flouted the orders of the learned Mahila Court.

6. She has further pointed out that though she had earlier filed a petition i.e. W.P.(Crl.) 2591/2023 before this Court which was dismissed by Co-ordinate Bench on 20.09.2023, the same however cannot bar the petitioner to file the present petition, due to following reasons: *firstly*, she states that the principle of *res judicata* does not apply to writ petitions, and *secondly*, she submits that the petition which was filed earlier was not actually a writ petition since it was not filed under Article 226 of Constitution of India but was titled as a



‘writ petition under Section 482 of Cr.P.C. read with Article 21 of Constitution of India’ as she had removed ‘Article 226’ from the title of the petition after she had some confusion due to an objection raised by the registry, which thus, means that the petition which was dismissed by the Co-ordinate Bench was not a writ petition under Article 226 of Constitution of India.

7. Notice was issued in the present petition on 10.01.2024. Counter Affidavit/Status Reports have been already filed on behalf of respondent no. 3 i.e. SHO, P.S. Dwarka, respondent no. 5 i.e. the housing society, and respondent no. 7 i.e. BRPL.

8. Learned ASC, who appears on behalf of the State, argues that the petitioner had filed complaints with the police, alleging illegal disconnection of the electricity of her residence and had also sought criminal action against some of the respondents herein, however no case for registration of FIR was made out. It is submitted that the prayer *qua* initiation of criminal action against the police officials under Section 166 of IPC for their failure to take action on complaints of the petitioner is devoid of any merit as the electricity connection had been disconnected by the housing society due to non-payment of electricity bills. It is further pointed out that a similar petition seeking similar reliefs was earlier dismissed by Co-ordinate Bench on 20.09.2023. Therefore, it is prayed that the present petition be dismissed since it is frivolous in nature.

9. Learned counsel appearing on behalf of respondent no. 7 i.e. BRPL argues that in terms of Regulation 12 of the Delhi Electricity Regulatory Commission (Supply Code and Performance Standards)



Regulations, 2017, BRPL provides single point supply to the group housing societies, which thereafter is responsible for providing supply to individual beneficiaries and further collecting charges as per applicable tariff order and the cost of energy from individual beneficiaries and for remitting the charges for the entire electricity availed at such single point of supply as per the bill within such time as indicated in the bill. It is submitted that BRPL has provided single point supply to respondent no. 5 and therefore, it is the responsibility of respondent no. 5 to provide electricity supply to individual beneficiaries which includes the petitioner and it is an admitted case of the petitioner that the electricity supply of the subject premises has been disconnected by respondent no. 5. It is further submitted that these points were also taken note of by the Co-ordinate Bench while dismissing the similar writ petition on 20.09.2023.

10. Learned counsel who appears on behalf of respondent no. 5 i.e. Meghdoot Cooperative Group Housing Society argues, at the outset, that the present petition is barred by the principle of *res judicata* since a similar writ petition seeking identical reliefs was earlier dismissed by Co-ordinate Bench of this Court vide order dated 20.09.2023, wherein similar arguments of the petitioner were rejected. It is submitted that there has been no illegal disconnection of electricity of the petitioner's residence and that the petitioner is a habitual defaulter and has voluntarily chosen not to pay her electricity bills, despite various reminders since July, 2022. It is further submitted that the housing society has taken a single point supply from respondent no. 7 and it supplies electricity to all its society



members and collects the tariff from them. It is stated that the petitioner has not only defaulted in paying the electricity bill but also the annual maintenance, water charges, etc. and the total arrears as on date are about Rs. 8 lakhs. Therefore, it is prayed that the present petition be dismissed.

11. This Court has heard arguments addressed by the petitioner and the respondents, and has gone through the material placed on record.

12. The petitioner herein, who is currently residing in a flat in Meghdoot Cooperative Group Housing Society, asserts that the said flat, though not allotted in her name, is her place of residence, where she lives alone since her husband had left her few years back and that she has an interim protection order passed under DV Act in her favour. Her grievance is that the housing society i.e. respondent no. 5 has unjustifiably disconnected the electricity supply of her flat, and her husband i.e. respondent no. 6 and the BRPL i.e. respondent no. 7 are in cahoots with the society. Her next grievance is that respondent no. 2 to 4 i.e. the police officials have failed to take any action on her complaints and being public servants, they have disobeyed the law are liable to be prosecuted. She further prays that compensation should be awarded to her as her fundamental rights have been violated by the respondents.

13. The respondents, at the outset, have asserted that the present petition is not maintainable since it is barred by the principle of *res judicata*, and the petitioner cannot be allowed to re-agitate the same issue again and again and file similar writ petitions seeking identical



reliefs. The petitioner has refuted these arguments by stating that no writ petition was filed earlier by her before this Court and further that principle of *res judicata* is not applicable in case of writ petitions.

14. After examining the records of the present case, this Court finds force in the argument raised on behalf of the respondents that a similar petition seeking similar reliefs has already been decided and dismissed by the Coordinate Bench of this Court on 20.09.2023. A perusal of the contents of the said writ petition i.e. W.P.(Crl.) 2591/2023 as well as the order dated 20.09.2023 reveals that the petitioner had sought the following reliefs in that petition:

“a) Issue a writ of mandamus and/or any other appropriate writ, order and/or direction in the nature thereof, thereby directing the Respondent No. 1 to take appropriate action to restore Electricity to the residence of the Petitioner and to pay Compensation to the Petitioner and also to ensure registration of F.I.R. against the Respondents No. 5 and 6, in accordance with the relevant provisions of the Law.

b) Order criminal proceedings against Respondents No. 2, 3 and 4 for their failure to discharge their lawful duties and their wilful violation of the relevant provisions under Section 166 of the Indian Penal Code, for the negligence on their part to perform their duties and responsibilities even after 8 months since lodging complaint regarding the illegal disconnection of Electricity to the residence of the Petitioner.

c) Provide such other relief as this Hon'ble Court may deem fit in the circumstances of the case.”

15. A bare perusal of the aforesaid makes it clear that prayer (a) and (b) of W.P.(Crl.) 2591/2023 as well as the present petition i.e. W.P. (Crl.) 104/2024 are identical. The petitioner, in the present case, has added one additional prayer i.e. prayer (c) wherein she has sought



compensation from the respondents, however, the other substantive prayers are the same. Furthermore, the respondents arrayed in both these writ petitions are also same. It is also important to note that the Coordinate Bench *vide* order dated 20.09.2023 had dismissed W.P.(Crl.) 2591/2023 after recording the following submissions and reasons:

“5. The counsel for the respondent no.7 stated that the respondent no.7 has granted CGHS connection in the name of the respondent no.5 and in turn, the respondent no.5 is providing electricity connection to the occupants of the different flats in the society. The respondent no.7 is not directly responsible for disconnection of the electricity of the flat of the petitioner.

6. The counsel for the respondent no.5 stated that the arrears of electricity charges amounting to Rs.22,112/- upto August, 2023 have not been paid despite issuance of reminders notice dated 16.09.2023 bearing no.MC 23-24/109.

7. The petitioner on specifically being asked whether she is ready to pay the arrears of electricity charges on that she stated that her husband, Dhirender Kumar/respondent no.6 is liable to pay the electricity bill and as she is in the occupation of the flat, the respondent no.5 and 7 be directed to restore the electricity supply in the flat in question.

8. The petitioner is in occupation of the flat in question and as on August, 2023, a sum of Rs.22,112/- is still outstanding in respect of the flat in question which has not been paid despite notice dated 16.09.2023. As the electricity charges have not been paid either by the registered consumer or by occupier in that eventuality, the respondent no.5 is not obliged to restore the electricity supply in the flat in question. The petitioner is not entitled for the relief as prayed for. Hence, the present petition along with pending application is dismissed.”

16. Therefore, the Coordinate Bench has taken note of the fact that that BRPL has granted connection in the name of the housing society



and in turn, the society is providing electricity connection to the occupants of the different flats in the society, and BRPL is not directly responsible for disconnection of the electricity of the flat of the petitioner. The Bench has further categorically held that respondent no. 5 i.e. the housing society is not obliged to restore the electricity supply in the flat in question since the petitioner has not paid the due amount towards electricity bill i.e. Rs. 22,112/- despite notices/reminders. The statement of petitioner has also been recorded wherein she has refused to pay the bill and has rather stated that her husband is liable to pay the same.

17. Nonetheless, the petitioner has again approached this Court and re-agitated the same issues on same grounds.

18. The argument of the petitioner regarding W.P.(Crl.) 2591/2023 being not a writ petition in true sense since she had replaced the word ‘Article 226’ with ‘Section 482’ due to an alleged confusion created in her mind by the Registry cannot be of any help to her, for the reasons that: *firstly*, the petition was titled and then numbered as a ‘W.P. (CRL)’ which means Writ Petition (Criminal); *secondly*, the title of the petition itself mentioned the word ‘writ petition’; *thirdly*, in the entire content of the said petition, the petitioner had mentioned that she was filing a writ petition; and *fourthly*, the relief sought in the said petition *inter alia* was issuance of ‘writ of mandamus or any other appropriate writ’.

19. As far as the argument of petitioner regarding non-applicability of principle of *res judicata* in case of writ petitions is concerned, the same is without merit. In this regard, it would suffice to take note of



the observations of the Hon'ble Apex Court in case of *P. Bandopadhyaya v. Union of India* (2019) 13 SCC 42, wherein after referring to a decision rendered by Constitution Bench of Hon'ble Apex Court, it was held as under:

“8.11.Reference can be made to the decision of the Constitution Bench in *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & Ors.* wherein Sharma, J., on behalf of the five-judge bench, held: (SCC pp 740-41, para 35)

“35...It is well established that the principles of res judicata are applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he would have, in the event of his success, obtained in the earlier writ petition before the High Court. The petitioner in reply contended that since the special leave petition before this Court was dismissed in limine without giving any reason, the order cannot be relied upon for a plea of res judicata. The answer is that it is not the order of this Court dismissing the special leave petition which is being relied upon; the plea of res judicata has been pressed on the basis of the High Court's judgment which became final after the dismissal of the special leave petition. In similar situation a Constitution Bench of this Court in *Daryao v. State of UP* held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same reliefs filed by the same parties will be barred by the general principle of res judicata. *The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32...*”

(emphasis supplied)

Albeit the decision of the Constitution Bench was in the



context of a Writ Petition filed under Article 32, it would apply with greater force to bar a Writ Petition filed under Article 226, like the one filed by the present Appellants, by the operation of the principle of res judicata.”

20. Therefore, this Court is of the view that insofar as prayers (a) and (b) of the present petition are concerned, the same have already been decided by the Coordinate Bench *vide* order dated 20.09.2023, which has not been challenged by the petitioner. Furthermore, a petition seeking similar reliefs was then filed by the petitioner before the Hon’ble Apex Court under Article 32 of the Constitution of India, was dismissed *vide* order dated 04.12.2023.

21. Be that as it may, this Court deems it appropriate to deal with some arguments raised before it by the petitioner.

22. The status report filed on record by respondent no. 7 i.e. BRPL reveals that in terms of Regulation 12 of the Delhi Electricity Regulatory Commission (Supply Code and Performance Standards) Regulations, 2017, it provides single point supply to the Group Housing Societies, which thereafter, are responsible for providing supply to individual beneficiaries and collect tariff from them. Thus, the Group Housing Society, which in the present case is Meghdoot Housing Society, is responsible for providing supplies to the individual beneficiaries, including the present petitioner. The counter affidavit filed on behalf of respondent no. 5, i.e. Meghdoot Cooperative Group Housing Society, confirms the said position. It is further mentioned therein that the petitioner has not paid her electricity bills despite various reminders by the society. A perusal of



the electricity bills filed on record reveals that arrears of electricity charges, as of May 2024, are about Rs. 30,000/-. Therefore, the Coordinate Bench has already held in order dated 20.09.2023 that the housing society cannot be directed to restore the electricity connection *sans* the payment of due amount towards electricity bills, which has not been challenged till date.

23. As far as directions for taking action against police officials is concerned, the annexures filed by the petitioner herself reveal that the police officials, after examining the allegations in the complaints, have found that the dispute was civil in nature and that no cognizable offence was made out. As far as taking action under Section 31 of DV Act is concerned, this Court is of the opinion that when the electricity connection had been disconnected by the housing society due to non-payment of electricity bill, there would have been no occasion before the police officials to initiate any action against the husband of petitioner for breach of protection order passed under DV Act.

24. Insofar as the argument of the petitioner that her husband be directed to pay the electricity bill is concerned, this Court notes that the learned Mahila Court had directed the respondent no. 6 to pay an interim maintenance of Rs. 1 lacs per month to the petitioner. There were no other directions regarding payment of any other amount. Though the protection order was passed, no specific residence order was required to be passed at that stage since the husband of the petitioner had himself left the residence and shifted to some other house. In this Court's opinion, if the grievance of the petitioner is that



her husband has not paid her the amount of interim maintenance, she is at liberty to approach the learned Trial Court and avail her remedies as per law. However, in writ jurisdiction and in the present case, this Court cannot direct the husband of the petitioner to either pay the electricity bill of the flat in question or pay the interim maintenance amount to the petitioner, if not paid since the case filed under the DV Act is already *sub-judice* before the learned Trial Court.

25. In view of the above observations, this Court is further of the opinion that no case for breach of any fundamental right and consequent award of compensation to the petitioner is made out.

26. Therefore, this Court finds no ground to grant any relief as prayed for in the present petition.

27. Accordingly, the petition is dismissed, alongwith all pending applications.

28. The date fixed i.e. 29.08.2024 stands canceled.

29. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 01, 2024/at/ns