

18 **25.03.
2025**

Ct. No. 28

Ab

WPA 26469 of 2024

Pabitra Kumar Ghosh

Vs.

The State of West Bengal and others.

**Mr. Jayanta Narayan Chatterjee,
Mr. Supratim Naskar,
Ms. Jayashree Patra,
Ms. Sreeparna Ghosh,
Ms. Pritha Sinha.**

... for the writ petitioner.

**Mr. Jayanta Samanta,
Mr. Kazi Sajjad Alam.**

... for the State.

Mr. Debanjan Mukherjee.

... for the WBSEDCL.

**Mr. Sabir Ahmed,
Mr. Tashim Ahmed,
Mr. Quazi Ezaz Ahmed.**

... for the respondent nos. 10 and 11.

The writ petition has been filed primarily seeking issuance of a Writ of Mandamus upon the respondent authorities commanding them to take appropriate action against the respondent nos. 10 and 11 on the ground that the said respondent nos. 10 and 11 have been operating a Diagnostic Centre in the name of M/s. Dishari Diagnostic Centre and one shop named as M/s. Ghosh Communication at the petitioner's residential house at Kirnagar Bazar, PO and PS – Kirnagar, Dist. – Birbhum.

Mr. Jayanta Narayan Chatterjee, learned Senior Advocate appearing on behalf of the writ petitioner, submits that the property in question is joint in nature and that the respondent nos. 10 and 11 have started the aforesaid two businesses there by utilizing almost the entirety of the joint property without the consent of the writ petitioner, who is a co-owner thereof. He submits that several representations made by his client to several authorities including the Pradhan of the relevant Gram Panchayat, the Circle Inspector, the Officer in-Charge, Kirnagar Police Station, the Block

Development Officer of the relevant Block, the Sub-Divisional Officer of the relevant Sub-Division, the District Magistrate and the Chief Medical Officer of Health, Birbhum, have yielded no result. It has been further submitted by him that on an application made by his client under the Right to Information Act, 2005 to the Chief Information Officer, Office of the CMOH, Suri, Birbhum, his client has been informed that the license in favour of M/s. Dishari Diagnostic Centre at Kirnagar Bazar, PO and PS – Kirnagar, Dist. – Birbhum, has been issued in conformity with the existing Rules and the provisions of law.

Mr. Chatterjee takes this Court through Rule 5(4), Rule 34 and Rule 45 of the West Bengal Clinical Establishment (Registration, Regulation and Transparency) Rules, 2017 (in short 'said Rules'), to submit that in getting any license for the purpose of operating a clinical establishment not only the consent of the co-owners is required but a co-owner would also be vicariously liable for the activities of a clinical establishment operator at the premises whereof such person is the co-owner. Mr. Chatterjee seeks to emphasize that the provision of vicarious liability embedded in Rule 45 of the said Rules clearly hints that no license could have been granted in favour of a co-owner unless the consent of the other co-owner was obtained and produced before the Licensing Authorities. Mr. Chatterjee submits that since his client being the writ petitioner has not given any such consent, the license alleged to have been issued in favour of the writ petitioner by the Licensing Authorities is sans any legal basis and, as such, he seeks the reliefs as prayed for in the writ petition. He further submits that the respondent, West Bengal State Electricity Distribution Company Limited (hereafter "WBSEDCL"), ought not to have granted commercial electricity connection at the premises in question when the same was residential in

nature.

Mr. Sabir Ahmed, learned Advocate appearing on behalf of the respondent nos. 10 and 11, takes a preliminary point as regards maintainability of the writ petition. He submits that the writ petition raises questions, which are seriously disputed and, as such, the writ petition should not be entertained at all. It is further submitted by Mr. Ahmed that the writ petitioner is in possession of a portion of the joint property and not the entirety thereof, as has been wrongly submitted on behalf of the writ petitioner and that as a co-owner, his client has every right to use the property in the manner his client chooses to. It has been also submitted by Mr. Ahmed that since the property is un-partitioned and every co-owner thereof has equal right on every inch of un-partitioned property, therefore, no consent of the co-owner would be required and the concept of consent would not apply to the instant case.

Mr. Debanjan Mukherjee, learned Advocate appearing on behalf of the WBSEDCL, submits that commercial connection has been granted at the premises in question because upon inspection it was found that the user of the premises was commercial in nature and that the applicant was in possession of the property. In such situation, it is submitted by Mr. Mukherjee that no consent of any other person was required.

Having heard the learned Advocates for the parties and having considered the material on record, this Court of the view that writ remedy would not be the appropriate remedy for the writ petitioner. It is an admitted position today that the principal warring parties i.e. the writ petitioner and the private respondent nos. 10 and 11 are the joint owners of the subject property, as it is yet to be partitioned by metes and bounds.

Mr. Chatterjee's contention that the license in

question has been granted de hors the Rules need not be dealt with by this Court inasmuch as the provisions of Section 20 of the West Bengal Clinical Establishments (Registration, Regulation and Transparency) Act, 2017 (in short 'said Act') vest ample power with the Licensing Authority to cancel a license in case the same has been obtained de hors the rules. Section 20 of the said Act reads as under:

“20. (1) If, at any time after any clinical establishment has been registered and licensed, the licensing authority is satisfied.-

(a) that the conditions of the registration and licensing are not being complied with; or

(b) That any of the grounds which would have entitled the licensing authority to refuse the application for registration and license, exist; or

(c) that the person entrusted with the management of the clinical establishment has violated any of the directions including improvement notice of the licensing authority or the Commission; or

(d) that the person entrusted with the management of the clinical establishment has contravened any of the provision of this Act and rules made thereunder,

the licensing authority, notwithstanding anything contained in section 23, may issue a show cause notice as to why its registration and license under this Act should not be cancelled for reasons to be mentioned in the notice.

(2) If after giving a reasonable opportunity of being heard to the clinical establishments, the licensing authority is satisfied that there has been a breach of any of the provisions of this Act or the rules made thereunder, he may, without prejudice to any other action that he may take against such clinical establishment, cancel its registration and license.”

There is also a provision for appeal under Rule 41 of the said Rules. Rule 41(2) of the said Rules gives right to any appellant aggrieved by the order of the licensing authority to prefer an appeal to the appellate authority against such order. In such view of the matter there is no dearth of remedy in the relevant statute (i.e. the said Act and the Rules) for any person aggrieved on such score. In fact the said Act and the Rules together

form a complete Code and provide a two tier grievance redressal mechanism.

In so far as the contention of the writ petitioner regarding the grant of commercial electricity connection at the premises in question is concerned, this Court is of the view that the WBSEDCL Authorities cannot be faulted for having granted commercial connection if the user of the premises in question was commercial in nature. The electricity utility company would not have any power or authority to go into the correctness or the validity of the nature of the user till such time a competent authority rules on it.

In the instant case, there is a license granted in favour of the writ petitioner by a competent authority permitting the writ petitioner to operate the clinical establishment from the premises in question and such being the position, the WBSEDCL Authorities cannot be faulted for having granted commercial connection at the premises in question.

In so far as Mr. Chatterjee's contention as regards utilizing the entirety of the joint property for commercial purpose is concerned, writ remedy again would not be the appropriate remedy. Questions pertaining to nature of user of a joint property cannot be resolved in summary proceedings. Such questions and grievances would need to be addressed in a properly constituted suit before a competent Civil Court.

In view of the aforesaid, no order as prayed for can be passed in the instant writ petition.

WPA 26469 of 2024 stands disposed of with the aforesaid observations.

There shall, however, be no order as to costs.

(Om Narayan Rai, J.)