

(2010) 02 CAL CK 0021

Calcutta High Court

Case No: W. P. 24833 (W) of 2008

Sri Sunil Kumar Pal

APPELLANT

Vs

CESC Limited and Others

RESPONDENT

Date of Decision: Feb. 18, 2010**Acts Referred:**

- Constitution of India, 1950 - Article 21, 226

Hon'ble Judges: Syamal Kanti Chakrabarti, J**Bench:** Single Bench

Advocate: Tapas Bhattacharya and P.S. Basu, for the Appellant; Somnath Bose, for CESC, Krishnendu Banerjee, for Respondent No. 5, Priya Brata Thakur and P. Ghosh, for the Respondent

Judgement

Syamal Kanti Chakrabarti, J.

The present writ Petitioner Sri Sunil Kumar Pal has claimed in his application under Article 226 of the Constitution that he purchased a flat from the Respondent No. 4 by a registered deed dated 24th August, 2007 and took possession of the said flat being No. A/5/5 (3rd floor) type A Building No. 5, Flat No. 5, G-8 at Baghajatin Housing Complex, Kolkata - 700 094. Thereafter, he filed an application for supply of electricity to the said premises before the Respondent Nos. 1 and 2 and deposited all necessary fees required for the purpose as per their quotation. The Respondent No. 2 in their letter dated 25.01.2008 has intimated the Petitioner that when their men and agents went to the premises for inspection and installation of the meter they were not given free access to the meter room by the private Respondent No. 5 and his men and agents for which they were unable to effect the supply of electricity as prayed for. The Respondent No. 5, Secretary, Baitalik Co-operative Housing Society Ltd. has, however, contended in their affidavit-in-opposition that they have not opposed the move. In fact it is a common meter room and as per decision of the KMDA the said cooperative society is now maintaining all the common facilities and common areas which is accessible only to the members of the society. The

Petitioner has not become a member of the cooperative society though stipulated in the Deed of Transfer as yet. Therefore, he is not entitled to avail himself of the common meter room for the supply of electricity as claimed.

2. Having heard learned advocates for both the parties and after perusal of all the materials on record, I find that in the information brochure for induction of bona fide purchaser including non-resident Indian citizen (Annexure R - 5/3 to the AO filed by the Respondent No. 5) it appears that under the head "ELIGIBILITY" the following provision has been made:

ii) The CMDA may, at its discretion, relax any of these conditions in suitable cases without assigning any reason.

3. They have also identified the common areas and facilities and stipulated in the brochure that while the individual apartments including all structures, fixtures, installations and facilities will have to be maintained by the respective owners thereof, the main structure, installation, lift, common areas and facilities etc. appertaining to the society will have to be maintained and managed by such cooperative housing society. The CMDA shall have no liability or responsibility for the maintenance and management of the estate including all common areas, structures, fixtures, installation and facilities. It was further clarified that maintenance includes operation, repair and replacement. While assigning the value of the flat they have also annexed the details of the areas and indicated the provision of electrical installation in each type of flat with 5 ampere and 15 ampere plug points.

4. Now on account of resistance from the Respondent No. 5, the Respondent Nos. 1 and 2 though received the fees are unable to ensure supply of electricity to the premises purchased by the present writ Petitioner.

5. From the letter of KMDA (R - 5/2 annexed to the AO) it is evident that the execution of the Sale Deed in favour of the present Petitioner was effected in terms of an order of this Hon"ble Court in writ petition No. 16945(W) of 2006. By the said order this Hon"ble Court directed that after the draft Sale Deed is settled by the Petitioner the same shall be executed and registered by the KMDA within a period of four weeks from the date of its submission by the Petitioner. It is needless to mention that the Petitioner shall put in the necessary changes and registration fees as required for the said purpose.

6. I have already pointed out that in the information brochure it has been clearly stated that the KMDA has absolute discretion to relax the condition of their offer without assigning any reason in executing and registration of this Deed. I find that they have exercised this power and in the said indenture dated 23.08.2007 the common areas and facilities as per sanction plan approved by the Kolkata Municipal Corporation for the housing project known as KMDA Housing Complex at Baghajatin has been enumerated in the Third Schedule to the said Deed (Annexure P - 1 to the

writ petition) which is quoted below:

THIRD SCHEDULE REFERRED TO ABOVE

(Common areas and facilities)

Full details of common areas and facilities as per sanctioned plan approved by the Kolkata Municipal Corporation for the Housing Project known as KMDA Housing Complex at Baghajatin.

- a. Stair case on the floors
- b. Open Space including Car parking Space.
- c. Internal Road and Pathways.
- d. Internal Drainage.
- e. Internal Sewerage.
- f. Water supply arrangement.
- g. Boundary Wall and Main Gate.
- h. Percentage of individual interest in the common areas and facilities (Water Pump Water Tank, Water Pipes and other Plumbing Installation and full right of passage) appertaining to each apartment and it's owner for all purposes.

From the said schedule it will appear that the meter room in question has not been shown in the Schedule to the Deed coming within the common areas and facilities as claimed by the Respondent No. 5.

7. It is also agreed upon by the parties to such indenture to the following effect:

Besides the sole legal rights of the Purchaser of the said Apartment, the Purchaser has also legal right on proportionate undivided share and/or interest in the common areas including ground space, road, common access areas of the building including its roof and stair cases, lift and facilities mentioned and described in the THIRD SCHEDULE herein under written.

So the main meter board is installed at a place over which the Petitioner can claim a common interest under item (h) of Third Schedule to his deed as admittedly the same is situated on common areas now maintained by the Respondent No. 5.

8. It has been set at rest in different cases like 2000 WBLR (Cal) 533, (2009)1 WBLR (Cal) 989, (2008)3 WBLR (Cal) 413 etc. that electricity is an essential service in absence of which it is difficult to survive and as right to live a meaningful life with dignity was guaranteed as a fundamental right by Article 21 of the Constitution one cannot be deprived of such right only on an unestablished. It is also set at rest that the legality of an occupier of a premises cannot be a ground for refusal to supply electricity unless he is evicted from such premises under due process of law. It is admitted position that the present Petitioner is a bona fide purchaser for value and

executed the Indenture as a resident of England.

9. The claim of the Respondent No. 5 is that unless the writ Petitioner becomes a member of the cooperative society he cannot enjoy the common facilities which are maintained by the cooperative. I think this is a separate issue and not directly connected with the extension of electricity facility to the flat which is a condition precedent to the enjoyment of flat and only the question of sharing the expenditure for maintenance of common areas will arise when he will reside and enjoy the common facilities along with other members of the society. Resistance of the Respondent No. 5 or the refusal to give access to the Respondent Nos. 1 and 2 to give effect to the supply of electricity from the meter board is obviously a denial of right in favour of the Petitioner as guaranteed under Article 21 of the Constitution of India and as such I hold that it is a fit case where the Writ Court should interfere to safeguard the interest of the writ Petitioner to secure a basic amenity of civil life to lead a meaningful life with dignity.

10. Learned lawyer for the Respondent No. 5 has drawn my attention to the provision laid down in Section 95 of the West Bengal Co-operative Societies Act, 1983 which provided that any dispute concerning business of a cooperative society shall be referred to the Registrar and this Court has no jurisdiction to entertain the instant prayer. I hold that the above provision is not applicable in the case, because the demand of the writ Petitioner for supply of electricity to his rooms as a bona fide purchaser and occupier of a flat from the electricity department, i.e., the Respondent Nos. 1 and 2 herein cannot be treated as a dispute concerning business of the cooperative society because it is not an act assigned to the cooperative society to supply electricity to the bona fide purchaser for value of a flat which is constructed by the KMDA being owner of the property but subsequently the maintenance of entire complex in respect of certain common areas has been delegated to the cooperative society formed by the members of the society.

11. In the fitness of things, therefore, the Respondent Nos. 1 and 2 are directed to effect the supply of electricity to the Petitioner within three weeks from this date subject to compliance of any other formalities and the Respondent No. 5 is directed to give access to the men and agents of the Respondent Nos. 1 and 2 to the main meter board for supply of electricity to the flat of the Respondent and to make available the keys of the said meter room when called for by the Respondent Nos. 1 and 2. In case of failure the Respondent Nos. 1 and 2 are at liberty to seek assistance from the Respondent No. 3 and the Respondent No. 3 is directed to extend all help to the Respondent Nos. 1 and 2 for giving effect to this order.

12. This order is, however, issued without any prejudice to and reserving right of the private Respondent to claim any maintenance for using of the common space at appropriate moment and the Petitioner shall be precluded from claiming any advantage out of this order to decide any claim of maintenance by the Respondent No. 5.

13. The writ petition is thus disposed of.

14. Let urgent photostat copy of this order, duly countersigned by the Assistant Registrar (Court), be given to the parties upon compliance of all requisite formalities.