
Sri Sunil Kumar Pal Vs CESC Limited and Others

W. P. 24833 (W) of 2008

Court: Calcutta High Court

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.