

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Before:

**The Hon'ble The Chief Justice T. S. Sivagnanam
and
The Hon'ble Justice Hiranmay Bhattacharyya**

**MAT/856/2023
IA NO: CAN/1/2023
SMT. PRITHA NANDY
VS
CALCUTTA ELECTRIC SUPPLY CORPORATION AND ORS.**

For the Appellant : Mr. Piyush Chaturvedi,
Ms. Kaberi Ghosh (Dey) ...advocates

For the CESC : Mr. Suman Ghosh ...advocate

For Respondent No.5. : Mr. Sumitava Chakrabortyadvocate

For the Respondent
Nos.6 and 7 : Mr. Subir Sanyal,
Mr. Biswajib Ghoshadvocates

Reserved on : 24.04.2024

Judgment on : 30.04.2024

Hiranmay Bhattacharyya, J.:-

1. This intra court appeal is at the instance of the writ petitioner and is directed against an order dated April 19, 2023 passed by a learned Single Judge in WPA No. 22328 of 2022. By the order impugned, the writ petition was disposed of with the observation that there is no scope of interference in the writ petition.

2. The appellant filed the writ petition praying for disconnection of the electricity connection of the 7th respondent and for a direction to shift the meter boxes to the pre existing meter room in the ground floor of the premises in question.
3. It is the case of the appellant that the authorities of CESC Limited shifted all the meter box from the pre-existing meter room to another place in the premises being no. 99/A Bidhan Sarani under Police Station Shyampukur, Kolkata-4 without obtaining her consent. The appellant claims to be the joint owner of the aforesaid property along with her sister-in-law having undivided half share in the said property. It is the further case of the appellant that the private respondent do not have any right to obtain supply of electricity in respect of the shop room.
4. Mr. Chaturvedi learned advocate appearing for the appellant submitted that the authorities of CESC Ltd. shifted the existing electricity meters without serving any notice upon the appellant who is a co-owner of the property and without obtaining her consent. He further submitted that the electricity meters were initially installed in a room which was used as a eatery under the name and style “Manmatha Cabin” and the electricity meter board position had been shifted to a different location. He invited the attention of the court to the photographs of the present location of the meter board position and submitted that the present meter board position is causing inconvenience to the appellant.
5. Mr. Sanyal learned advocate appearing for the private respondent submitted that there is no requirement under the Electricity Act 2003 to serve any written notice upon the occupiers of the premises for the purpose of altering the electric meter board position and in support of such contention he placed reliance upon Section 163 of the Electricity Act 2003. He further submitted that by an agreement dated 01.01.2022 the private respondent no. 6 was inducted as a tenant in a shop room by the

husband of the appellant herein and one Smt. Annapurna Nandy, i.e., the 5th respondent, who happens to be the sister-in-law of the appellant herein. He further contended that as per the said agreement, the private respondent was given liberty to install new electric meter in his own name for the shop room.

6. Mr. Ghosh, learned advocate appearing for the CESC Limited submitted that the licensee has shifted the meter board position from its original location to the present location after compliance of the requisite formalities in that regard. Pursuant to a direction of this Court, a bunch of documents in support of such contention has been filed which taken on record.
7. Heard the learned advocates for the parties and perused the materials placed.
8. The issue that arises for consideration in this appeal is whether service of notice upon the co-owner or taking his/her consent are mandatory requirements for altering the meter board position.
9. In order to decide the said issue it will be beneficial to refer to Section 163 of the Electricity Act 2003 which is extracted hereinafter.

“163. Power for licensee to enter premises and to remove fittings or other apparatus of licensee.- (1) A licensee or any person duly authorised by a licence may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which electricity is, or has been, supplied by him, of any premises or land, under, over, along, across, in or upon which the electric supply- lines or other works have been lawfully placed by him for the purpose of-

(a) Inspecting, testing, repairing or altering the electric supply-lines, meters, fittings, works and apparatus for the supply of electricity belonging to the licensee; or

(b) Ascertaining the amount of electricity supplied or the electrical quantity contained in the supply; or

(c) removing where a supply of electricity is no longer required, or where the licensee is authorised to take away and cut off such supply, any

electric supply-lines, meters, fittings, works or apparatus belonging to the licensee.

(2) A licensee or any person authorised as aforesaid may also, in pursuance of a special order in this behalf made by an Executive Magistrate and after giving not less than twenty-four hours notice in writing to the occupier,-

(a) enter any premises or land referred to in sub-section (1) for any of the purposes mentioned therein;

(b) enter any premises to which electricity is to be supplied by him, for the purpose of examining and testing the electric wires, fittings, works and apparatus for the use of electricity belonging to the consumer.

(3)Where a consumer refuses to allow a licensee or any person authorised as aforesaid to enter his premises or land in pursuance of the provisions of sub-section (1) or, sub-section (2), when such licensee or person has so entered, refuses to allow him to perform any act which he is authorised by those sub-sections to perform, or fails to give reasonable facilities for such entry or performance, the licensee may, after the expiry of twenty-four hours from the service of a notice in writing on the consumer, cut off the supply to the consumer for so long as such refusal or failure continues, but for no longer.”

10. Section 163 of the 2003 Act deals with the power of the licensee to enter any premises and to remove fittings or other apparatus of the licensee. Section 163(1) states that a licensee or a person duly authorised by a licensee may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which electricity has been supplied for the purpose of inspecting, testing, repairing or altering the electricity supply lines, meters, fittings, works and apparatus for the supply of electricity belonging to the licensee. Section 163(1) does not provide for service of notice upon the occupier for entering the premises for the purposes as indicated therein. It only requires the occupier to be informed of the intention of the licensee to enter any premises.
11. Subsection (3) of Section 163, however, mandates prior Service of notice in writing to cut off supply of a consumer in case such consumer refuses to allow the licensee to enter the premises to carry out the functions specified under subsection (1) and (2) of Section 163. Subsection (3) does not stand

attracted to the case on hand as it has not been alleged that the licensee or its authorised person was refused to enter into the premises.

12. To the mind of this Court, only information to the occupier of the intention of the licensee to enter into the premises for carrying out the functions under subsection (1) of Section 163 is sufficient and prior service of notice upon the co-owner cannot be insisted upon.
13. The electricity supply lines, meters, fittings and other apparatus for the supply of electricity belongs to the licensee. The licensee also has the technical expertise to decide as to whether a particular portion of a premises is suitable for the meter board position. The licensee is, therefore, the best person to decide as to the suitability of the location of the meter board position and also whether alteration of the meter board position is necessary. Consent of the owner or any co-owner of the premises is not necessary for altering the meter board position when the licensee forms an opinion that it would be hazardous if the meters are retained in their original position. This Court, therefore, holds that there is no requirement of prior service of notice upon the co-owner or taking his/her consent before altering the meter board position by the licensee. The issue is accordingly answered in the negative and against the appellant.
14. In the case on hand, the shifting of the meter board position was done pursuant to an application of the private respondent(s). The status of the person applying for shifting/altering the meter board position qua the premises where such supply has been installed is not material and it is only the opinion of the licensee as to the suitability or otherwise of the meter board position which is relevant.
15. The learned Single Judge noted the submission of the learned advocate of the licensee that the location of the meter board in its previous position was inside a eatery and there were adjacent gas burners. Such factual position could not be controverted by the appellant before this Court.

16. The learned Single Judge rightly held that the shifting of the meters cannot be vitiated merely because of the fact that the consent of one of the co-owners was not taken. The learned Single Judge was also right in holding that it is the incumbent duty of the CESC Ltd. to ensure that safety and security from electrical hazards are maintained.
17. The tenancy agreement dated 01.01.2022 filed by the learned advocate for the 6th and 7th respondent was taken on record. It is evident therefrom that the respondent tenant was given liberty to take new electric meter in respect of the shop room. The husband of the appellant herein is one of the executants of such agreement. This Court, therefore, holds that the private respondent was entitled to supply of electricity through a meter for the shop room.
18. Mr. Chaturvedi would contend that a civil suit is pending and an order of status quo is still subsisting. Neither the pendency of the civil suit nor the order of status quo passed therein have any bearing on the issue involved in this writ petition and the learned Single Judge rightly observed that the rights and disputes between the private parties including the writ petitioner and the private respondents as well as the allegation of encroachment shall be decided in the civil suit.
19. For all the reasons as aforesaid, this Court is not inclined to interfere with the impugned order. The instant appeal accordingly fails and the same stands dismissed. The application stands disposed of. There shall be, however, no order as to costs.
20. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, C.J.)

(Hiranmay Bhattacharyya, J.)