

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

WPO/860/2025

MRS URMILA SINGH AND ANR.
VS
CESC LIMITED AND ORS.

For the petitioners : Mr. Anirudha Chatterjee, Senior Advocate.
Ms. Smriti Rekha Das, Advocate.
Mr. Parikhhit Lakotia, Advocate.

For CESC Ltd. : Mr. Subir Sanyal, Senior Advocate.
Dr. Madhusudan Saha Ray, Advocate.
Mr. Debanjan Mukherjee, Advocate.

For the private respondent nos.4 to 7: Ms. Manju Agarwal, Senior Advocate.
Ms. Amrita Pandey, Advocate.

Heard : 22.06.2026

Judgment : 14.07.2026

Ravi Krishan Kapur, J.

1. The petitioners seek a new domestic electricity connection to the premises situated on the rooftop of no. 7C, Kiran Shankar Roy Road, Kolkata-700001 (commonly known as Hastings Chambers).
2. The petitioners claim to be the legal representatives of one Lal Bahadur Singh who it is alleged was the original tenant of a portion at the rooftop and verandah of Hastings Chambers and had been inducted by the promoter of the building Shyam Sundar Nangalia. After the death of Lal Bahadur Singh in 2007, the

petitioners who are the wife and son of Late Lal Bahadur Singh have continued to reside at the above premises claiming to be tenants and have been allegedly depositing rent with the Rent Controller.

3. In or about 2017, the petitioners had applied for a new domestic connection which was refused by the respondent no. 1, CESC Limited. The rejection was communicated to the petitioners by a letter dated 1 June 2017 on the ground that since there was already an electricity connection from an existing meter being enjoyed by the petitioners it would tantamount to a case of splitting of load only to avail lower domestic charges. This would also be contrary to the extant Regulations.
4. Subsequently, upon the electricity connection to the premises of the petitioners being disconnected, CESC Limited had offered the petitioners a connection after compliance with all formalities. Pursuant to such offer, the petitioners had duly deposited the stipulated fees. Nevertheless, the representatives of CESC Limited had been obstructed by the occupants of Hastings Chambers from providing any electricity connection to the petitioners. Hence, this writ petition.
5. On behalf of the petitioners it is contended that they are in actual settled possession of a portion of the rooftop of Hastings Chambers and are entitled to electricity as a matter of right. It is now well settled that electricity follows possession. In support of such contention, reliance is placed on the Full Bench decision in *Abhimanyu Mazumdar v. The Superintending Engineer & Anr.* AIR 2011 Cal 64 and *Dilip vs. Satish* 2022 SCC OnLine SC 810.
6. On behalf of the private respondents, it is submitted that the writ petition is liable to be dismissed as an abuse of process. The petitioners have approached

this Court with unclean hands. The writ petition is also not maintainable on the ground of non-joinder of parties. The petitioners have deliberately impleaded only some of the occupants of Hastings Chambers in their individual capacity without impleading Hastings Chambers Owners Association which is managing and maintaining the entire premises. The petitioners have also failed to implead the developer of the building, Shyam Sundar Nangalia.

7. On merits, it is contended by the private respondents that Late Lal Bahadur Singh had been appointed as a caretaker to supervise the construction work when the building was being constructed. The entire case of Lal Bahadur Singh being inducted as a tenant is false and concocted. The building is a commercial building and is occupied primarily by Advocates and Chartered Accountants. Lal Bahadur Singh was permitted while performing his duties as caretaker to reside on the roof of the building which then had a temporary asbestos shed. The sanction building plan does not permit any residential use of the building and has been unlawfully and illegally converted into a residential accommodation. The petitioners are encroachers of the common roof and have unlawfully occupied the same. The petitioners have also erected a private gate and unauthorizedly enclosed the second staircase blocking one of the two fire exits. Such obstruction has been condemned by the Fire Department and the Special Commissioner of Police. In fact, subsequent to the Stephen Court tragedy in 2010, a joint inspection had been conducted on 27 March 2010 by the concerned statutory authorities including CESC Limited when it was found that the petitioners had caused unauthorized construction on the rooftop which was the primary reason as to why the building had not received a license from

the Fire Department. In such circumstances, the petition is liable to be dismissed both on the ground of maintainability and on merits. In support of such contentions, the private respondents rely on decisions in *Dhanyalakshmi Rice Mills etc vs The Commissioner Of Civil Supplies And Another* (1976) 4 SCC 723, *Swapan Kumar Dey vs. The Chairman, West Bengal Scheduled Castes and Scheduled Tribes Development & Finance Corporation & Ors.* 2011 SCC OnLine Cal 1485, *Poona Ram vs. Moti Ram* (2009) 11 SCC 309, *Shanti Devi Agarwal vs. WBSEDCL* (2016) SCC OnLine Cal 5445, *Maria Margadia Sequeria Fernandes & Ors vs Erasmo Jack De Sequeria (D) Tr.Lrs.& Ors* (2012) 5 SCC 370) and *Behram Tejani v. Azeem Jagani* (2017) 2 SCC 759.

8. On behalf of CESC Limited, a Report has been filed where CESC Ltd. has opined that considering the existing service positioning of the building a 60 single phase meter could be accommodated to provide electricity to the premises of the petitioners.
9. Article 226 of the Constitution of India confers extraordinary powers on the High Courts to issue prerogative writs for enforcement of fundamental rights or for any other purpose. The power is wide and expansive. The jurisdiction which is exercised by the High Court under Article 226 is extraordinary, equitable and discretionary. Judicial review is the heart and soul of the constitutional framework. Over and above a Court of law, the Writ Court is also a Court of Equity. It is therefore important that when a party approaches the High Court under Article 226 it does so with clean hands. It is also a well settled maxim of equity that he who seeks equity must do equity.

10. The legal right which the petitioners seek to enforce is the right to obtain electricity. In *Abhimanyu Mazumdar v. The Superintending Engineer & Anr. (Supra)* it has been held that a person in settled possession of a premises is free to apply for supply of electricity without the consent of the owner and is entitled to obtain and enjoy the same unless evicted by due process of law. This has also been recognized and affirmed by the Hon'ble Supreme Court in *Dilip (Dead) through Lrs. vs. Satish and Ors. (Supra) @ Para 9*.
11. The Inspection Report dated 27 March, 2010 records as to how the petitioners were in possession of the common areas of the building and had created enclosures and blockages on the terrace. In *Abhimanyu Majumdar (Supra)*, the Court was concerned with open encroachment of State Revenue land in rural Andaman and Nicobar Islands where the encroachers had constructed modest dwelling huts. In the instant case, the petitioner's occupation and initial entry is questionable and remains to be finally adjudicated upon. There is also the larger pending question of unauthorized roof top construction. The question of subsequent regularization is *sub-judice* in a proceeding initiated under the Kolkata Municipal Corporation Act 1980 being BTA 56 of 2021. Secondly, there was no question of blocking the statutory fire escape or refusal of fire safety clearance which had arisen for consideration in *Abhimanyu Majumdar (Supra)*. On the contrary, the Inspection Report relied on by the private respondents also records construction of a private gate under the second staircase obstructing access to the roof and completely blocking the passage from the second staircase to the terrace. It is for this reason, that the Fire Department has refused to renew the building fire license due to such persistent blockage.

12. The crux of the matter is whether a person who claims to have a possessory right over a property is obliged to show that he is in settled or established possession. Settled possession means possession of the property which existed for a sufficiently long period of time and had been acquiesced to by the true owner. Late Lal Bahadur Singh was a caretaker/watchman of the premises during the time of construction of the building and could never have acquired any interest in the property irrespective of his long possession. It is well settled that a caretaker or an agent holds the property on behalf of the principal. He acquires no right nor interest whatsoever irrespective of his long stay or occupation. Undoubtedly, this question would ultimately be decided in the pending civil suit. It is also true that a person in settled possession is entitled to electricity so long as they are not dispossessed in accordance with law. Nevertheless, occupation of a premises by a person as an agent or a servant acting at the instance of the owner cannot be equated with settled lawful possession.
13. Shyam Sundar Nangalia was a partner of Hastings Property, the original lessee and did not have any locus in his individual capacity to create any tenancy. [Poona Ram vs. Moti Ram (*Supra*) @ Para 15] There is not an iota of legal right in the premises which the petitioners have been able to demonstrate to suggest that their initial induction whether by themselves or through Late Lal Bahadur Singh was valid and lawful. There is simply no *animus possidendi* i.e. the intention to hold by oneself as owner. There are no documents nor any other records which have been relied on by the petitioners to substantiate their case of lawful entry. In such circumstances, even *prima facie* the petitioners have been

unable to demonstrate a modicum of legal entitlement to be in lawful settled possession but one where the petitioners are in unauthorized, illegal and unlawful possession and now seek to claim basic amenities as a matter of legal right. [*Maria Margadia Sequeria Fernandes & Ors vs Erasmo Jack De Sequeria (D) Tr.Lrs.& Ors (Supra)*, *Behram Tejani v. Azeem Jagani, (Supra)*].

14. Hastings Chambers is a purely commercial and high risk building. The sanctioned plan does not permit any residential use. The petitioners have converted the roof top to a full residential setup (with three bedrooms, living room, kitchen and puja room). The Report prepared in 2010 by the various statutory authorities including the Commissioner of Police, Fire Department, CESC Limited had categorically found that “*one of the staircases of the building had been encroached by a construction of the room for residential purposes due to which the staircase could not reach the terrace level. In a fire situation, the occupiers will be trapped inside the building. The encroachment is to be removed within thirty days such that stair access to the terrace can be secured.*”, Significantly, the second staircase is a statutory fire escape route and is now deliberately blocked by the petitioners.
15. It is true that electricity is an essential amenity integral to basic living. Nevertheless, there is no absolute right which a citizen can claim of being provided with electricity regardless of competing constitutional rights and the collective right of safety to other citizens. The facts and photographs reveal that the petitioners have unlawfully occupied an enclosure of the common staircase and landing and installed a private gate which amounts to aggressive trespass rather than lawful and peaceful settled possession. There is nothing to show

that the petitioners had ever enjoyed any lawful supply of electricity. There has been no sub-meter installed in their favour. On the contrary, there are allegations of the petitioners having illegally and unauthorisedly drawn electricity from the common meter of the building.

16. It is an indisputable position that due to such obstruction, the fire license to Hastings Chambers has not been issued till date. The petitioners have taken no remedial steps despite the above finding and now seek to improve their comfort of living. In this connection, section 43 of the Electricity Act 2003 mandates that a distribution licensee must supply electricity to any premises upon an application being made by an owner or occupier of the premises. Nevertheless, there is a corresponding obligation on a distribution licensee under section 53 of the Act which obliges such distribution licensee to supply electricity subject to protecting the public and eliminating risk of injury to any person and property. This is not only a question of possession alone but one where legality of the construction is under a cloud and *sub judice*. There is also the glaring factor of a fire hazard being caused due to the actions of the petitioners which cannot be ignored. In such circumstances, the grant of electricity cannot be considered in a vacuum. The non-grant of a No Objection Certificate by the Fire Department poses a real time risk to the entire building and would naturally endanger the safety and security of the remaining occupants of the building. In view of the above, regardless of whether the possession of the petitioners is legal or not, a distribution licensee cannot be compelled to lend its hand to perpetuate an illegality. [*Shanti Devi Agarwal vs. WBSEDCL(Supra)*].

17. There is no doubt that Article 21 of the Constitution recognizes electricity as a part of the right to life and the right to shelter. Nevertheless, in a system which is governed by the Rule of Law, the welfare of the people is a constitutional imperative and the Supreme law. On the one hand, the petitioners continuing illegal encroachment and unlawful residential use of the commercial rooftop in a high risk building and the withdrawal of the Fire Safety Certification for an entire building has to be weighed against the request for an electricity connection by the petitioners. In such circumstances, directing a new domestic connection at the rooftop would be inequitable, unjust and unfair to all the remaining occupants and the public at large. This would also be against public interest and would send a wrong signal that encroachers who have the potential to create fire hazards can approach the Writ Court to perpetuate their unlawful wrongdoings. In such circumstances, in balancing the equities, the Court must be mindful of the underlying public interest. In the absence of the petitioners taking remedial steps to cure the defects pointed out by the Fire Department i.e. removing the blockage and access to the roof there is no question of exercising any discretion in favour of the petitioners. Public policy cannot countenance the Court's extraordinary jurisdiction being used to entrench a fire hazardous residential enclave on the rooftop of a commercial high rise.

18. An incidental issue raised in this proceeding is the conduct of CESC Ltd. CESC Ltd is an authority within the meaning of Article 12 of the Constitution and is under an obligation to act in public interest. Revenue generation cannot be the sole and primary aim of CESC Ltd. The petitioners had applied for an electricity connection in 2017 which was rejected on the ground of splitting of load. During

the course of hearing, a categorical submission was made on behalf CESC Ltd. that no complaint of theft or pilferage of electricity had been made by the added respondents. This is factually incorrect and the private respondent occupants had adduced letters to demonstrate that such complaints had been made by CESC Ltd by the members of the Association against the petitioners. Notwithstanding such complaints, CESC Ltd. has conveniently chosen to be blind as to how the petitioners could have ever enjoyed any lawful electricity connection. The contention of the petitioners ever enjoying electricity through a sub-meter in *ex facie* false and has not even been investigated by CESC Ltd. CESC Ltd. was also a party to the Inspection which has been conducted in 2010 and is deemed to have been fully aware of the fire risk posed by the petitioners. In addition, notwithstanding Hastings Chambers being categorized as a high risk building, CESC Ltd. had granted permission for a domestic electricity connection in a building exclusively meant for commercial purposes.

19. On the aspect of maintainability, it is true that in exercising jurisdiction under Article 226, no Court should hear and dispose of a writ petition without persons who would be affected by its judgment. The records of this proceeding reveals that the question of maintainability was only raised by the private respondents on 25 March 2026 long after the parties had completed their pleadings and filed affidavits. Prior thereto, no question of maintainability of the writ petition had been raised by any of the respondents. It is true that Hastings Chambers Owners Association is a necessary and proper party to this litigation and ought to have been impleaded as a respondent, nevertheless, some of the occupants have been impleaded and have contested the proceeding. The matter has been

extensively heard on all points both maintainability and on merits. The records of these proceedings reveal that the question of maintainability was not raised at the earliest possible opportunity and long after completion of pleadings. In such circumstances, it would be technical to dismiss the writ petition on the ground of maintainability when at least some of the occupants have been impleaded and genuinely defended the proceedings. Similarly, the question of Shyamsundar Nangalia the alleged landlord of the premises not being impleaded is not fatal to the primary issue raised in this petition. For the above reasons, the objections on the ground of maintainability are rejected.

20. In such circumstances, there is no merit in the writ petition and the same is dismissed. WPO 860 of 2025 stands disposed of.

(Ravi Krishan Kapur, J.)