

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.02.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.13543 of 2014 &
M.P.No. 1 of 2014

1.Administrator

Chennai Metropolitan Water Supply and
Sewerage Board
No.1, Pumping Station Road
Chintadripet, Chennai 600 002.

2.The Executive Engineer

Chennai Metropolitan Water Supply and
Sewerage Board
Area-20 (AUA) Office
No.2, T.S.K.Nagar, Mogappair
Chennai 600 037.

.. Petitioners

Vs.

B.R.Padmanaban

..Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of certiorari to call for the records pertaining to the order dated 6.12.2013, made in F.A.No.58 on the file of the State Consumer Disputes Redressal Commission, Chennai, in partly allowing the complaint in C.C.No.258 of 2011, on the file of the District Consumer Disputes Redressal Forum, Chennai (south) and quash the same.

For Petitioners : Mr.N.Ramesh

For Respondent : Mr.B.R.Padmanaban
(Party-in-person)

O R D E R

By consent, the writ petition is taken up for final disposal.

2.Heard Mr.N.Ramesh, learned Counsel appearing for the petitioner and Mr.B.R.Padmanaban, respondent appearing in person.

3.The petitioners are Chennai Metropolitan Water Supply and Sewerage Board, and the challenge in this Writ Petition is to an order passed by the State Consumer Disputes Redressal Commission, Chennai, in F.A.No.58/2013 dated 6.12.2013. By the said order, the State Commission allowed the appeal filed by the respondent, set aside the order passed by the District Consumer Disputes Redressal Forum, Chennai (South), dated 14.12.2012 and directed the petitioner Board to refund a sum of Rs.80/- which was collected as surcharge and directed to pay a sum of Rs.1,000/- each towards deficiency of service and for mental agony in all Rs.2,000/- and cost of Rs.2000/- to the respondent herein.

4.The petitioner Board has filed this Writ Petition by contending that the State Consumer Disputes Redressal Commission, Chennai, has no jurisdiction to exercise its power, since the petitioner Board has been constituted by a Special Statute viz. Tamil Nadu Water Supply and Sewerage Board Act, which provides for hierarchy of remedies and therefore the petitioner Board need not avail the alternate remedy as provided under the Consumer Protection Act and the petitioner Board is entitled to raise the question of jurisdiction before this Court and canvas the same in this Writ Petition.

5.It is seen that the respondent herein filed a complaint before the District Consumer Disputes Redressal Forum, Chennai, contending that he has been regularly paying water charges and drainage charges and there is no default and there was no arrears of tax and he received intimation on 26.4.2011, which was the last date for payment, before which the payment could not have been made because the demand was not served. Therefore, the respondent is said to have approached the Office of the Board on 03.05.2011, to pay the arrears as per the intimation slip and he was asked to pay a sum of Rs.80/- extra. In the intimation Rs.80/- was shown as penalty. Accordingly, a sum of Rs.80/- was collected from the respondent, besides the amount of Rs.128/- as per the intimation slip.

6.The respondent would state that the extra amount has been written in ink and the petitioner had not defaulted because intimation itself was given on 26.4.2011, which is the last date for payment and since that period was election time, the respondent had remitted the amount on 03.05.2011.

7.It is to be pointed out that the petitioner Board who are arrayed as opposite parties in C.C.No. 258 of 2011, did not respond to the notice issued by the District Consumer Disputes Redressal Forum, Chennai and did not appear before the Forum. However, the Forum after considering the documents filed by the complainant/respondent herein, dismissed the complaint and held that

the penalty of Rs.80/- collected by the Board was justified. Aggrieved by the same, the respondent filed an Appeal before the State Consumer Disputes Redressal Commission, raising several grounds.

8.The petitioners herein who are the opposite parties before the State Consumer Disputes Redressal Commission, contested the matter on merits stating that the difference in the collection of water charges and drainage is based on the revised assessment on the basis of house tax and since there was a delay in payment of Rs.128/-, surcharge was collected at 2% and the collection was perfectly in order and there was no deficiency or negligence on their part. The State Commission considered the matter in detail and by order dated 6.12.2013, directed refund of the amounts collected as surcharge and also directed the petitioner Board to pay compensation towards deficiency in service, mental agony and cost.

9.It is to be noted that the petitioner Board did not respond to the summons received from the District Consumer Disputes Redressal Forum. If the petitioner Board had appeared before the said Forum, it was well open to them to raise the question of jurisdiction at the first instance, but that has not done so and they remained exparte. Even when the respondent filed Appeal before the State Consumer Disputes Redressal Commission, on receipt of notice, the petitioner Board did not file any counter affidavit raising the question of jurisdiction or argued the point before the State Commission. In fact, there is no record to show that the petitioner raised the jurisdiction issue before the Court below, when the question is not a prime question of law but a mixed question of fact and law. In such circumstances, this Court is of the view that the petitioner Board having failed to raise such question at the first instance, cannot now by-pass the appeal remedy available under the Consumer Protection Act. Accordingly, this Writ Petition is held to be not maintainable, as there is efficacious and effective alternative remedy available under the Consumer Protection Act.

10.In the result, the Writ Petition is dismissed. However, it is open to the petitioner Board to exhaust the remedy available under the Consumer Protection Act. It is made clear that this Court has not gone into the merits of the contentions raised by the petitioner Board as regards the reasons for collecting the surcharge. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (AD I)

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Sub Asst. Registrar

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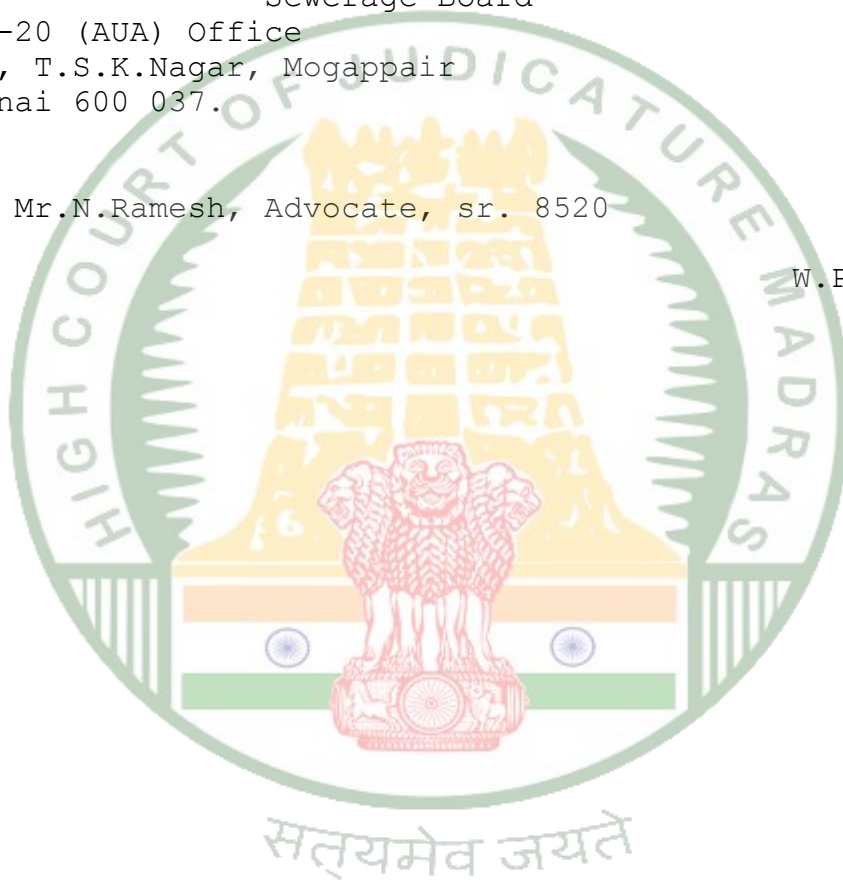
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1 cc to Mr.N.Ramesh, Advocate, sr. 8520

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