

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.255 OF 2015**

The Dukes Retreat Ltd. Petitioner
Pvt. Ltd. Company

Vs.

The Lonavala Municipal Council Respondents
Lonavala & Anr.

Mr. Anil Sakhare, Senior Counsel alongwith Mr. Joel Carlos and
Mr. Yatin Malvankar, Advocate for the Petitioner.

Mr. R.S. Apte, Senior Counsel alongwith Ms. Tejashree Joshi, Mr.
Ketan A. Dhavle i/by Mr. Aniruddha A. Garge for respondent
no.1

Mr. A.S. Shitole, APP for the State.

Coram : Smt. R.P. SondurBaldota, J.

Date : 29th February, 2016

P.C.

1 The writ petition challenges concurrent findings of
the courts below as regards theft of water by the petitioner and
the consequent water bill raised by respondent no.1.

2 On 31st October, 2003, respondent no.1 issued water
bill in the sum of Rs.1,86,15,000/- under Section 150 of the

Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965. The petitioner challenged the bill by filing Municipal Appeal No.5 of 2003 in the Court of Judicial Magistrate First Class Vadgaon Maval, Dist. Pune on 27th November, 2003. By the order dtd. 19th June, 2007, the appeal was decided partly in favour of the petitioner and respondent no.1 was directed to charge the water bill at government rate. Accordingly, respondent no.1 issued a fresh bill in the sum of Rs.81,49,385/-. Not being satisfied with the order, the petitioner challenged the same by preferring revision application on 25th July, 2007 being Criminal Revision Application No.665 of 2007 before the District Court, Pune. By the order dtd. 17th November, 2014, the revision application was dismissed, after which on 19th January, 2015, the petitioner filed the present petition.

3 So far the petitioner has deposited a sum of Rs.25,00,000/- pursuant to the order dtd. 24th August, 2004 passed by the Court of Metropolitan Magistrate. After the fresh bill was issued to the petitioner, on 18th July, 2007, there has been no payment or deposit made whatsoever by the petitioner.

4 The evidence led before the learned Magistrate was on behalf of respondent no.1 alone. The petitioner had initially filed affidavit of examination-in-chief of it's then Manager, only

to withdraw the same, subsequently. Thus, there was no evidence of rebuttal by the petitioner.

5 The challenge to the impugned orders in the present petition is on three grounds. Firstly, that the evidence brought by respondent no.1 before the learned Magistrate of the extent of water consumption was not sufficient. Secondly that respondent no.1 cannot seek to recover water charges with retrospective effect from the year 1986 i.e. from the year in which the petitioner acquired the premises. Thirdly, the test applied by the learned Judge of preponderance of probability for deciding the revision application was not correct. As regards the retrospective recovery, there can be no substance in the submission against the since the charges being recovered are for the water stolen and not for water supplied.

6 The facts of the case stated in brief are that the petitioner runs a Three Star hotel with built up area of 35,000 sq. ft. The construction consists of kitchen admeasuring 2700 sq. ft., bar and restaurant 2700 sq. ft., a laundry, cafeteria and nearly 15,000 sq. ft. area for the guests/clients by way of rooms/suits. The petitioner has made provision of swimming pool and maintains a huge garden on its property. The hotel was not getting adequate water supply despite grant of two

additional connections to it. The valve of the Municipal water was located within the compound of the properties of the petitioner. The supply of municipal water to the petitioner's hotel, Tiger Valley and Rajmachi Point was controlled by respondent no.1 by operating that valve. The water supply to the petitioner was between 6.00 am. to 10.00 am. and 3.00 pm. to 6.00 pm. The supply to Tiger Valley and Rajmachi Point was between 11.00 pm. till early morning. Complaints had been received about short water supply to the Tiger Valley and Rajmachi Point. Therefore on 14th October, 2002, the Chief Executive Officer of respondent no.1 conducted raid on the petitioners supply during the time which was not stipulated for the petitioner. He found that the valve for supply to the petitioner was open and the security supervisors of the petitioner, one Indarkumar Mishra and one Nitin Shrivastav were present. Thus, the petitioner had been unauthorisedly opening the valve and stealing water.

7 As already mentioned above, no evidence was led by the petitioner as regards it's supply and consumption of water. Withdrawal by it of the affidavit in examination-in-chief of it's witness leads to an adverse inference that if the witness were to be subjected to cross-examination, his evidence would not have supported the petitioner. In the circumstances, the findings of

the courts below need acceptance. Mr. Sakhare, the learned Senior Counsel appearing for the petitioner has not been able to establish any perversity in appreciation of the evidence. There is no dispute that there was raid conducted by the officers of respondent no.1 on account of a complaint received by respondent no.1. In the raid, it was found that valves for water supply, which were until the year 2004 located in the property of the petitioner were open unauthorisedly at the instance of the petitioner by its employees. This led to unauthorised water supply by the petitioner to itself and there was shortage of water supply to other areas where water was to be supplied by respondent no.1. The courts below have next considered the fact that the consumption of water by the petitioner is for commercial purposes, the petitioner runs a three star hotel with built-up area of 35,000 sq. ft. located in the land, admeasuring 40,000 sq. ft.. The petitioner has huge garden, a swimming pool This would undoubtedly consume substantial water for its operation.

8 As regards the complaint of improper application of mind by the learned Sessions Judge by observing that test of preponderance of probability was to be applied for appreciating the evidence, there is no merit in it. At paragraph 9 of his order, the Sessions Court was considering the argument on behalf of

the petitioner that the petitioner has been acquitted in the criminal proceedings for theft of water. The learned Judge observed that the degree of proof required in criminal proceedings is much higher and the degree of proof required in civil proceedings is of preponderance of probabilities.

9 In my opinion, there is no infirmity whatsoever in the orders impugned. The concurrent findings of fact of the courts below are neither shown to be perverse nor incorrect. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)