

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.5862 OF 2016

Mr. Anil Gokuldas Kambli

...Petitioner

Versus

Thane Municipal Corporation of
the City of Thane and Ors.

...Respondents

....

Mr.Sandeep Mishra, Advocate for the Petitioner.

Mr.Ajit Ram Pitale, Advocate for Respondent No.1.

Mr. Subhash B. Sonawane, Clerk of respondent No.1 is present.

Mr.M.Y. Kale, Legal Advisor of respondent No.1 is present.

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CORAM : R. G. KETKAR, J.

DATE : 24th MARCH, 2017

P.C.

1. Heard Mr.Sandeep Mishra, learned Counsel for the petitioner and Mr.Ajit Pitale, learned Counsel for respondent No.1, at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 30.04.2015 passed by the learned 4th Joint Civil Judge, Senior Division, Thane below exhibit-96 in Regular Civil Suit No.527 of 2013 as also the judgment and order dated 27.07.2015 passed by the learned District Judge-12, Thane in Miscellaneous Civil

Appeal No.103 of 2015. By these orders, the Courts below dismissed the application exhibit-96 made by the plaintiff for directing the defendants by way of mandatory injunction to connect or restore water connection of room No.8 on the first floor in building known as 'Janu Bhoir Chawl @ Pushpa Niwas', now known as 'Swami Samarth Bhuvan' on the plot of land bearing survey No.105, 106, 107, 108, 111 and 116, Tikka No.3 situate at Village Balkum, Taluka and District Thane (for short 'suit room').

3. By order dated 5.12.2016, notice for final disposal was issued to respondents No.2 and 3. Respondent No.1 was directed to produce relevant file for perusal of the Court as also to ensure that responsible officer of respondent No.1 remains present on the next date of hearing. Respondent No.1 was directed to produce documents on the basis of which water connection was disconnected and in particular the (a) show cause notice issued by the Corporation to defendant No.1 and (b) report of the concerned department as referred in paragraph-3 of the reply. Office remark dated 6.2.2017 shows that respondents No.2 and 3 are served. However none appears on their behalf.

4. Rule. Mr.Pitale waives service on behalf of respondent No.1. In view of the order dated 5.12.2016 as also having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

5. Mr.Pitale states that Mr. M.Y. Kale, Legal Advisor and Mr. Subhash B. Sonawane, Clerk of respondent No.1 are present in the Court. Upon taking instructions from them, he states that within 10 days from today, respondent No.1 will intimate the arrears of water bills as also charges for restoration of the water supply to the petitioner. Mr. Mishra assures that within one week from receipt of the intimation from respondent No.1, the petitioner will pay the arrears of water bills as also charges for restoration of water supply. Mr. Pitale states that upon payment of arrears of water bills and charges for restoration of water supply, respondent No.1 will restore the water supply within one week thereafter. He submitted that liberty may be reserved to the first respondent to adopt due process of law before disconnecting the water supply. Statements made by learned Counsel for the parties, on instructions, are recorded.

6. In view thereof, Petition is disposed of in the following terms :

(i) Impugned orders are set aside and are substituted as under :

- a) Respondent No.1 shall intimate the arrears of water bills and charges for restoration of water supply within ten days from today;
- b) The petitioner shall pay those charges within one week from receipt of the intimation from respondent No.1-Corporation;
- c) Respondent No.1-Corporation shall restore the water supply within one week from receipt of the charges from the petitioner;
- d) Respondent No.1 is at liberty to follow due process of law before disconnecting the water supply;

(ii) Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)