

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2461 OF 2006

Unity House Co-op Hsg. Soc. Ltd.Petitioner
V/s.
B.M.C. And Ors.Respondents

* * * * *

Mr. Shailesh Tilak Savla i/by. Mr. Bharat Joshi, Advocate
for the petitioner.

Mr. Sagar Patil, Advocate for respondents no.1 to 3.

Mr. Rajmohan Syed, Asst. Engineer. Water Works, AND
Mr. Ramesh Kamble, Administrative Officer of
Corporation present in Court.

CORAM :- B.R.GAVAI &
SANDEEP K. SHINDE, JJ.
DATE :- 16TH NOVEMBER, 2017.

P.C. :-

1. Petitioner is Co-operative Housing Society. It
seeks relief, to issue directions to the respondent
Corporation to restore water supply to its building and to

change and repair the six water meters. The petitioner also seeks a relief to quash and set aside the demand of Rs. 21,29,670/- raised by the Corporation vide letter dated 16th February, 2005.

2. The petition was admitted by the Division Bench of this Court on 25th April, 2007 and was pleased to direct the Corporation to restore the water supply as the lawyer for the respondent Corporation was unable to explain as to on what basis Rs.21,29,670/- was calculated and demanded from the petitioner.

3. The respondent, Corporation has filed its reply on 8th March, 2007 to which rejoinder has been filed by the Society on 25th April, 2007.

4. Heard Learned Counsel for the petitioner and Learned Counsel for the respondent, Corporation.

5. The petitioner, Society has challenged the impugned demand and assailed the action of disconnecting the water supply on the following grounds, namely :-

(i)the Corporation had not followed the procedure before disconnecting the water supply.

(ii)the Corporation had not issued notices before disconnecting the supply.

(iii)water supply was disconnected abruptly on 10th March, 2005 without show cause notice.

(iv)that the Society was granted permission on 11th December, 2002 for 40 mm water connection with 50 mm internal line alongwith private meter, and the Society had carried out the work of connection but it was not certified by the Corporation.

(v)that the impugned demand is illegal being contrary to the provisions of Water Bye-laws.

(vi)that the alleged demand and disconnection of water supply was at the instance of M/s. Thakkar Consultants (licensed plumber) with whom Society had differences.

(vii)that the impugned demand and disconnection was a malafide action on the part of respondent no.3 at the instance of M/s. Thakkar Consultants and hence illegal.

(viii)that the disconnection of supply could not have been resorted to without referring the matter to the Standing committee.

6. As against this, the Learned Counsel appearing for the respondent would submit that, it is the case of fraudulent extraction of water which is expressly prohibited under Section 282 of the Mumbai Municipal Corporation Act. He would submit that the sanctioned water supply was for residential premises, but was found being used for commercial premises. He would submit, on inspection on 3rd November, 2000 it was observed that the portion of premises, water supply of which was metered in accordance with Rules and charged at Rs.3/- per 10,000 litres was found occupied by various commercial offices. He would further submit that, on inspection it was found that, one 50 mm internal line was laid without meter by connecting it to the existing water meter. He would contend that, such a connection was without the permission of the department.

7. The Learned Counsel for the Corporation has taken us through the provisions of Water Bye-laws and notices issued by the Corporation to the petitioner, Society. He would further submit that, after inspecting the premises on 3rd November, 2000 the petitioner Society was called upon to comply with the various requirements. He would submit that, initially the water supply was sanctioned for residential use. However, having found that the building was used for commercial purposes, the Society was called upon to submit copies of Registration Certificate issued by the Shops and Establishment Department, Assessment bills or property tax bills paid and certificate of change of user issued by the Ex-Engineer Building Proposal (City). He would submit, subject documents were called from the petitioner, Society in September, 2001 (Ex-C to the petition) so as to assess the correct levy of water charges, either at commercial or non-commercial rates. The documents were called for to ascertain as to when there

was change of user of the premises. He would submit that, since 2001 till date, the petitioner, Society has not submitted such documents at all.

8. The Learned Counsel for the Corporation, would therefore submit that, having found there was change of user of the premises from residential to commercial and having found that there was illegal connection taken from the existing meter and also having found that the Society was not submitting the necessary documents, the Corporation sought and demanded the extracts from assessment book from its Building Department. That such details were submitted by the concerned authority of Building Department showing total rateable value of petitioner's property as Rs.1,88,790/-; out of which, non-residential value was Rs.1,70,045/- and residential value Rs.18,745/- since 1987-88. He would therefore submit that, Corporation was justified in raising the demand of Rs.21,29,670/- and was justified in action of disconnecting the water supply.

9. We have perused the pleadings and the correspondence between the Corporation and the petitioner, as well as, the affidavit-in-reply filed by the Corporation.

10. We are of the opinion that, the petition involves the various disputed questions of facts. That after perusing the letters and the notices issued by the Corporation, indisputedly, the premises of the petitioner were visited by the Corporation on 3rd November, 2000 as could be seen from the letter dated 20th January, 2001 at Exhibit-B-1. During the inspection, it was found that, the water supply was charged at Rs.3/- per 10,000 litres though premises were occupied by commercial offices. That as such, vide letter dated 20th January, 2001 it was brought to the notice of the petitioner that, it had not given a notice under Rule 4 (2) when the user of the premises was changed. By the very letter, the notice was issued to the Society under Rule 4.1 of the Water By-Laws and called upon them to get the supply separated by

fixing separate meters. The Society was put on the notice that, if portion occupied for commercial activity if not separated it would charge the petitioner at commercial rate in terms of Rule 4.4.

11. We have perused another letter/notice dated 11th September, 2001 at page-37 Exhibit-C. It records that, it was observed that, the entire property was used for commercial activities and as such the petitioner was requested to submit zerox copy of,

(i)Registration Certificate issued by the Shops and Establishment Department.

(ii)the assessment bills/property tax bills paid.

(iii)certificate of change of user issued by the Ex-Engineer, Building Proposal (City).

. It appears, the aforesaid documents were called for, to ascertain from which date the user of the premises was changed. It may be stated that, since the petitioner did not respond, another request/reminder was sent on 4th December, 2001 which is at Exhibit-C-1.

12. We have also perused the letter dated 4th March, 2002 at page-45; whereby the Society was informed that the Competent Authority had accorded sanction to charge the water consumption under codes number as described in prayer clause (a) at the rate of Rs.22/- per 1,000 litres plus 60% sewerage charges.

13. We have also perused the letter dated 11th January, 2005 at Exhibit-I to the petition vide which the Society was informed that it had laid 50 mm internal water line without meter by connecting the same to the existing meter. The Society was informed that the internal line was laid without permission.

14. Thus upon reading the letters/notices particularly 11th January, 2005, as well as, 20th January, 2001, in our view, the Corporation has sufficiently made out a case of illegal extraction of water and the misuse of water by the petitioner, Society.

15. It is further clear from the letters at Exhibit-C dated 11th January, 2001, 3rd December, 2001 that the

petitioner did not co-operate with the Corporation but withheld the vital information which was otherwise required to assess the correct water charges as admittedly the water was used for commercial premises.

16. That for want of necessary particulars from the petitioner as referred to, hereinabove for assessing the correct dues and for ascertaining the date on which the user of the premises was changed, the details were called from the subject assessment book maintained by other Department of the Corporation. A letter at Exhibit-M at page-70 reveals that the total rateable value of the property was Rs.1,88,790/-, out of which non-residential value was Rs.1,70,045/- and residential value at Rs.18,745/- since the year 1987-88. These facts, are brought on record by the petitioner in the form of notings at page-70. The rateable value has been neither denied nor challenged by the petitioner. Thus, it is to be concluded that, the major portion of the property, atleast to the extent of 90%, is non-residential. It further appears

that, this fact was well within the knowledge of the petitioner and therefore, though the Corporation had called upon the petitioner to submit the assessment bill of property taxes vide letter dated 11th September, 2001 the same were not submitted to avoid the levy of water charges at higher rate. Even in the petition, there is no averment about the rateable value of the subject property and therefore this fact remain uncontroverted and as such stands admitted.

17. That upon reading the various documents/correspondence/show cause notices, the petitioner's case that, no sufficient opportunity was afforded, cannot be accepted. The correspondence also indicates that the petitioners have not approached this Court with clean hands. There is no denial by the petitioner of a fact that, unauthorised water line was laid and was connected to the existing water meter. Thus, on one hand, the petitioner demands to quash and set aside the alleged demand on the ground that, subject demand

lacks foundation and was in contravention of the provisions of Acts, Rules and the Water By-Laws.

18. That after going through the entire record, we are convinced that, the subject petition involves, several disputed questions of facts, which we cannot address while exercising the jurisdiction under Article 226 of the Constitution of India. Besides, the rateable value of the property indeed establishes a fact that, the petitioner Society had misled the Corporation atleast since 2001, that the premises were used as “residential”. That in substance, the petitioner had not approached this Court with clean hands.

19. The petitioner, has alleged malafides against respondent no.2, as also against M/s. Thakkar Consultants, a licensed plumber, at whose instance, the alleged demand was raised and the water was disconnected. M/s. Thakkar Consultants is not a party respondent and therefore we cannot appreciate the ground of malafides alleged against M/s. Thakkar

Consultants and as against respondent no.3.

20. In our view, the material on record in the form of notices would show that, Corporation has made out case of illegal extraction of water by the petitioner and as for the reasons stated hereinabove, the petition deserves no consideration.

21. At this stage, when we asked the lawyer for the respondent as to whether the petitioner is paying the regular water charges, inasmuch as, there was no stay to the levy and collection of future water charges. To our surprise, it was informed that the petitioner has not paid anything but water is supplied throughout and as on today, arrears of water charges are about one crore and few lacs. We record our displeasure for the reason that, the respondent, Corporation has not taken any steps either to raise the bills and if raised to recover the same, though since, 2007 the Corporation is supplying the water to the petitioner for commercial and/or residential use without any charges. There is no justification for such

omission on the part of the officers of the Corporation. Infact, there was no order to restrain the Corporation to levy and recover the water charges for future use. We are unable to understand as to why the officers of the Corporation in the D-Ward, Nana Chowk have failed to raise the bills and recover the water charges for nearly 13 years.

22. In the circumstances, we direct the Commissioner of respondent no.1 to hold the necessary enquiry against the officers concerned for their omission in discharge of their duties by affording supply of water free of charge to the petitioner, Society nearly for 13 years. The Commissioner shall hold proper enquiry in accordance with law and take it to the logical end and fix the responsibility against the erring officers.

23. That for the aforestated reasons, the petition fails. It is dismissed, and the Rule is discharged with no order as to costs.

24. The Learned Counsel for the respondent,

Rane

* 15/15 * WP-2461-2006 (SR. 978)
Thursday, 16.11.2017

Corporation is directed to communicate this order
alongwith the copy of this order to the Commissioner of
respondent no.1 forthwith.

(SANDEEP K. SHINDE, J)

(B.R. GAVAI, J)