

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2835 OF 2018

WITH

CONTEMPT PETITION NO.21 OF 2019

IN

WRIT PETITION NO.2835 OF 2018

Smt. Shanta Babarao Deshmukh

.... Petitioner

Vs.

The Municipal Corporation of Greater
Mumbai & Another

.... Respondents

Mr. N.B. Deshmukh for the Petitioner.

Ms Rupali Adhate for Respondent No.1-MCGM.

Mr. Bhavin R. Bhatia with Mr. Vatsal Chorera
for Respondent No.2.

Mr. Vishwajeet Naik, Junior Engineer, Water Works
Department P/S Ward, Mumbai, present.

CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.

DATE : SEPTEMBER 13, 2019

P.C:

1. The petitioner before this Court says that the application made in the prescribed form to the Mumbai Municipal Corporation's Water Department dated 11-7-2016 but registered on 7-9-2016 by the authorities has not been granted or considered, though the petitioner has paid the scrutiny charges. There was some additional requirement raised. However, the petitioner says that such additional requirements could not have been other than those permitted by the Act and

the Rules. The petitioner has been visited with a condition which travels much beyond the legal limits.

2. The gravamen of the petitioner's complaint, which is multi-fold, has been crystallised by us only to this aspect simply because in writ jurisdiction we cannot address other factual disputes. The petitioner must approach a Competent Forum for the same. The 2nd respondent to this writ petition is one Roopam Co-operative Housing Society Limited. The petitioner claims to be a senior citizen and a widow. It appears that the structure occupied by the petitioner is being used for rendering professional services. The petitioner has been deprived of the water connection, according to the Municipal Corporation and that is justified. The petitioner, however, complains that there is total apathy and inaction of the Municipal Corporation. Our attention has been invited to Sections 258, 271 and 272 of The Mumbai Municipal Corporation Act, 1888. The petitioner says that, if all procedural formalities have been complied with and still there is no water connection for last 25 years, then, this is a clear case of violation of the petitioner's right to life and liberty under Article 21 of the Constitution of India. The petitioner has been discriminated against by imposing unreasonable and unfair conditions which are never imposed on similarly placed applicants.

3. There is an affidavit in reply filed by one Harihar Y. Naik, who works as an Assistant Engineer (Water Works), P/South Ward, Mumbai. The affidavit admits that, on 7-9-2016 the petitioner applied for separate water connection for a garage-cum-office, situated at Roopam Building, Plot No.152, Jawahar Nagar, Goregaon (West), Mumbai-400 104. On receipt of this application, the concerned staff of the Municipal Corporation visited the site. On visual inspection, it was found that the structure is independent and located in the compound of Roopam Building, Plot No.152. On 26-9-2016, the respondent-Corporation called for the required documents and informed the petitioner to comply with the conditions. The petitioner has not complied with condition Nos.2, 23 and 24 of this communication. One of the conditions is to obtain a No Objection Certificate (“**NOC**”) from the landlord/owner. There are other conditions but which, according to the Municipal Corporation’s affidavit, require the Municipal Corporation’s intervention. The petitioner having not complied with these conditions and did not submit the necessary documents, there were reminders issued on 28-6-2017 and 16-2-2018. Once there is no compliance with the requisitions of the Municipal Corporation, then the application cannot be granted.

4. There is a rejoinder affidavit filed by the petitioner denying the contents of the affidavit in reply and contending

that once there is an obligation to supply the drinking water, then, that duty and obligation has to be discharged. The petitioner says that there are applications which have been made for drainage approval and for grant of water closet and urinals from the concerned authorities but these are refused. The same are now granted but subject to the outcome of this litigation. If there is no water pipeline connection existing in the premises already, then, the question of the water flowing and for that purpose erection of a drain is really unnecessary.

5. We have heard both sides at great length. We have perused the writ petition and the annexures thereto. We have also perused the affidavit filed in reply to the prime contention in this writ petition on behalf of the Municipal Corporation, that it is repeatedly calling upon the petitioner to submit a NOC from the society. This, we see as a condition which the petitioner has to comply with according to the Municipal Corporation. The petitioner has clearly set out as to why such a condition, even if imposed, the NOC cannot be obtained if there is a dispute with the owner/landlord and if that dispute is to be resolved by only a Competent Court, then the Municipal authorities could not have assisted the owner/landlord by imposing such a condition. That makes it impossible for the petitioner to obtain the connection.

6. We have seen that the request was for availing water connection for commercial purpose at the existing office-

cum-godown-cum-garage on the ground floor of the existing building and that request was received. An inspection was carried out and it says that the garage is being used as office and godown. The location sketch showing the structure, water main and proposed connection was also supplied. There is also a remark about the first date of assessment. There is also copy of the certified approved plans.

7. The Municipal Corporation processes it and then says that approval is requested by the Assistant Engineer from the higher authorities. The condition that it proposes to impose is that the water connection granted to the structure does not certify the authenticity of the structure and if any action is taken against the structure, the water connection will be liable to be cut-off without prior intimation. Now this condition itself denotes that the Municipal Corporation, by providing water supply, is not going to hold that the structure is authorised and legal or that it has been constructed lawfully and with the permission or approval from the landlord. That it was therefore lawfully occupied by the petitioner, will not be an assurance or certificate because the water connection is granted. Now to our mind, such a condition being imposed would have sufficiently safeguarded and protected the interest of the Municipal Corporation. There was no need to then insist on a NOC from the society before availing water connection.

8. That is how the matter has remained unattended or the connection has not been provided till date. Our attention has also been invited to the document, copy of which is at page 99 of the paper-book, which is an extract from the Municipal Corporation's Policy Document and which ensures timely disposal of applications for grant of water connection. In these circumstances, we would have expected the matter to be resolved by the Municipal Corporation at its end and not forced the lady, a widow and a senior citizen, to approach this Court.

9. After hearing both sides, we are of the firm opinion that factual disputes cannot be resolved by us in our limited jurisdiction. Merely because the petitioner has impleaded the 2nd respondent as a party-respondent does not mean that we are going to rule upon the disputes between the petitioner and the society. That is an independent matter. Merely because we ensure that the petitioner gets water connection does not mean that we have held that everything that the petitioner has done at site is lawful and that the society is precluded or prohibited from taking any action against the petitioner in accordance with law. All that we expect the Municipal Corporation to do in this matter is to issue water connection, subject to the petitioner furnishing an indemnity, indemnifying the Municipal Corporation and its officials against any claim or legal proceedings that may be

initiated by the 2nd respondent-society against the petitioner. The petitioner shall contest these proceedings and would not hold the Municipal Corporation in any way liable. The Municipal Corporation would not be liable to compensate the petitioner against any loss caused to her and equally the society will not hold the Municipal Corporation responsible merely because it has provided water connection.

10. The proceedings between the two parties, who are private entities, shall be decided by a Competent Court or Forum uninfluenced by the acceptance of the request of the petitioner and the present order. All contentions in that behalf of both sides are kept open.

11. On the petitioner furnishing the indemnity in the aforesaid terms, the water supply should be granted within ten (10) days from the date the indemnity is provided.

12. The writ petition is disposed of in the above terms with no order as to costs.

13. In view of disposal of the writ petition, Contempt Petition No.21 of 2019 preferred therein does not survive and it accordingly stands disposed of.

(G.S. PATEL, J.)

(S.C. DHARMADHIKARI, J.)