

(2004) 03 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5993 of 2003

Annapoorna Builders

APPELLANT

Vs

General Manager (Engineering), Hyderabad Metro Water
Supply and Sewerage Board, O and M Division I and Others

RESPONDENT

Date of Decision : 09-03-2004

Acts Referred:

Hyderabad Metropolitan Water Supply and Sewerage Board Act, 1989 — Section 3, 46, 46(1), 46(2), 46(3)

Citation : (2004) 2 ALD 705

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : C.B. Ram Mohan Reddy, for the Appellant; M. Venkateshwari, SC for Respondent Nos. 1 and 2, G. Jyothi Kiran, SC for MCH for Respondent No. 3 and E. Ajay Reddy, for the Respondent

Judgement

L. Narasimha Reddy, J.—The petitioner is a partnership firm engaged in the business of real estates, construction and development. It has acquired an extent of 19,968 sq.yards of land in Sy.Nos. 214/1 to 214/9 of Begumpet with Municipal Nos. 6-3-1192/1/1 to 6-3-1192/1-20. It has constructed two commercial and one residential complexes in the said land on the strength of a building permissions accorded by the Municipal Corporation of Hyderabad.

2. The General Manager, Hyderabad Metro Water Supply and Sewerage Board, the 1st respondent, served upon the petitioner, on 1-4-2003, a letter, stating that the Board proposes to lay a water supply line along the passage in the premises belonging to the petitioner up to a length of 400 feet, and that it involves road cutting at a width of 0.6 metres, and up to a depth of 1.2 metres. The petitioner was requested to accord permission to carry out the work. The petitioner objected to the same by addressing a letter on 3-4-2003 and refused to accord permission to lay the pipeline. It was stated that the work would result in disturbance of internal roads and cause obstruction to the traffic in the complex. It was also stated that the petitioner is already provided with adequate water

supply and there is no necessity to lay the pipeline in question. Since there was no proper response from Respondents 1 and 2, the petitioner challenges the letter served upon it on 1-4-2003 by the 1st respondent, and the consequent action.

3. Petitioner alleges that the proposed action of the Respondents 1 and 2 is contrary to the provisions of the Hyderabad Metropolitan Water Supply and Sewerage Act, 1989 (hereinafter referred to as "the Act"), and would cause severe hardship and loss, apart from adversely effecting its rights.

4. The water supply line proposed to be laid across the land of the petitioner is for the purpose of providing water to a residential complex constructed by Ms. Ashoka Builders in the neighbouring premises. It got itself impleaded as Respondent No. 4.

5. Respondents 1 and 2 have placed a brief note narrating the various aspects involved in the matter. As many as three alternatives for the purpose of supplying water to the 4th respondent are indicated. It is stated that a main line of water supply is passing through the Begumpet Main Road in front of the premises of the petitioner and taking into account the levels, the best alternative to provide water to the 4th respondent would be by laying a line along the passage from the complex of the petitioner. It is stated that the proposed line does not cause any hindrance and in fact, it runs by the side of a passage leading to Kundanbagh apartments. constructed by the petitioner itself. The report also indicates that a main pipeline is running through the lane on the rear side of the petitioner's complex, and that providing supply through this point would need a booster, since water cannot flow through gravity. A third alternative was also indicated, which is far more disadvantageous.

6. The 3rd respondent, Municipal Corporation of Hyderabad, filed a counter-affidavit stating inter alia that the lane through which the 1st respondent proposes to lay the line is not a public thoroughfare, but belongs to Kundanbagh apartments.

7. The 4th respondent filed counter-affidavit. It contends that it had constructed a residential complex comprising of 42 flats, and to provide water to these flats, it had applied to the 1st respondent by paying an amount of Rs. 13 lakhs. According to the 4th respondent, the place through which the pipeline is proposed to be laid is not a private property, but a lane, which is vested in the Municipal Corporation. It is stated that if the pipeline is laid as proposed, the water will flow through gravity, whereas the other alternatives proposed by the 1st respondent are not at all feasible. They also allege that M/s. Kundanbagh Apartments, for whose benefit the lane is provided, have expressed their willingness for laying of the pipeline, since they too will get the advantage of improved supply of water.

8. Sri C.B. Ram Mohan Reddy, learned Counsel for the petitioner submits that the place, through which the pipeline is proposed to be laid, exclusively belongs to

the petitioner and the 1st respondent has no power or right to lay the line without the consent of the petitioner. He submits that several offices and business undertakings of very high profile are located in the complex and that digging of the area would result in damage of the property as well as inconvenience to the inmates. According to him, the 1st respondent has already provided a water supply connection to the 4th respondent and there is no necessity to undertake any work across the land of the petitioner. He submits that providing a second connection to the petitioner is prohibited under Rule 9 of the Rules framed under the Act.

9. Smt. Venkateswari, learned Standing Counsel for Respondents 1 and 2 submits that on receiving an application from the 4th respondent to provide water supply through a pipeline of 150 mm diameter, the 1st respondent has examined the same and found it feasible to supply the water by laying a line by the side of the lane leading to Kundanbagh Apartments. She submits that the Respondents 1 and 2 are vested with adequate powers under the Act particularly Section 46, to lay lines across private properties also even in the absence of consent by the owners thereof. She submits that the lane cannot be said to be the exclusive property of the petitioner and that M/s. Kundanbagh Apartments Association had given their consent for laying the line by the side of the lane leading to their flats. It is also her case that a connection was provided to the 4th respondent from a different place, in view of the interim orders granted by this Court preventing laying the line as proposed, and that it is not at all feasible. According to her, in case it becomes possible for Respondents 1 and 2, to provide the supply as proposed through the impugned letter, the connection, which is in existence, would be snapped, and in such a case, it cannot be said that the petitioner is provided with two water supply connections.

10. Smt. Jyothi Kiran, learned Standing Counsel for the 3rd respondent submits that according to their records, the lane was earmarked for the use and benefit of M/s. Kundanbagh Apartments and it cannot be treated as property exclusively vested in the petitioner.

11. Sri E. Ajay Reddy, learned Counsel for the 4th respondent submits that the lane in question is no longer the exclusive property of the petitioner and the objection raised by it cannot be sustained. Placing reliance upon Section 46 of the Act, he submits that even if it is to be assumed that the petitioner has any right over the land, the 1st respondent has adequate powers to proceed with the work subject to compliance with the conditions stipulated under that Section. He also submits that the 4th respondent is not receiving any water from the connection, which was provided from a different point, on account of the orders passed by this Court. He contends that when Kundanbagh Apartments have given consent, there cannot be any objection from the petitioner. According to him, the work can be undertaken in such a way, as not to cause any damage or inconvenience to the petitioner or the inmates of the complexes constructed by it.

12. The 4th respondent constructed a residential complex adjoining the

residential and commercial complexes constructed by the petitioner. It applied to the 1st respondent to provide a water supply connection through 150 mm diameter pipeline. A main water supply line is passing in front of the complex of the petitioner. The 1st respondent has proposed to provide water supply to the 4th respondent across the complex constructed by the petitioner through a lane. For this purpose, it addressed a letter to the petitioner requesting its consent. The petitioner declined to give consent and has challenged the action of the respondents in proposing to lay the line.

13. The petitioner contends that the lane through which the pipeline sought to be laid exclusively belongs to it. Respondents, on the other hand, contend that a lane was provided for in the land, which was submitted by the petitioner itself while constructing a residential complex, by name, Kundanbagh Apartments, and in that view of the matter, the lane vests in the Municipal Corporation, or at least in the Kundanbagh Apartments. They contend that once Kundanbagh Apartments have accorded their consent for the proposal, the petitioner cannot have any plausible objection.

14. The case has undergone several stages. In view of the contention advanced on behalf of the petitioner that the 4th respondent can be supplied water from the lines existing on the rear side of the complex, this Court directed the 1st respondent to consider the feasibility. The report was submitted depicting the physical features existing in the area and indicating the various proposals. The report discloses that at the ground level of complex belonging to Respondent No. 4 is at plus 531 metres. Three points were identified for providing supply to the 4th respondent. The point in front of the complex of the petitioner is at the ground level of 527 metres, and the two on the rear side of the complex are at 523.5 and 520 metres respectively. On the basis of these levels, it is stated that supply through the point in front of the complex of the petitioner, which is proposed in the impugned letter, can be made through gravity, and this in turn would improve the supply of water to Kundanbagh Apartments also. So far as the other two alternatives are concerned, it is stated, water does not flow to the complex of the 4th respondent with gravity and they need fixation of booster pumps.

15. Learned Counsel for the petitioner, during the course of the arguments, stated that his client is prepared to meet the expenditure for providing booster pumps, whereas the learned Counsel for the respondents have narrated the difficulties involved in supplying the water through booster pumps, in view of the various factors, such as, timings of water supply, interruption of power supply etc.

16. From the pleadings of the parties, it is evident that the alternative proposed through the impugned letter is better than the other two. However, if the same is to result in any disadvantage of the petitioner, and the law does not provide for such a course of action, the respondents cannot defeat the rights of the petitioner. On the other hand, if the Act provides for contingency, even where, place in question exclusively belongs to a private owner, and he refuses to give

consent, the rights of the parties have to be worked out in terms of the provisions of the Act. In examining these, the controversy as to the rights of the petitioner, on the one hand, and those of M/s. Kundanbagh Apartments and the Municipal Corporation of Hyderabad, on the other, over the lane in question, can be kept aside for a while. It has to be presumed as though the petitioner is the exclusive owner of the lane.

17. The Act provides for the manner and method of supply of water to the residents of the city. In most of the cases, the pipelines are laid by the side of the roads and bye-lanes. However, there are circumstances, which require laying of pipelines across private properties also, if the same becomes inevitable on account of factors, such as, reduction of distance, maintenance of gravity etc. In such cases, the consent of the owners becomes inevitable. Where, however, the owner of the property flatly refuses to accord consent, situations may arise which render the 1st respondent helpless, and in some cases, water supply to some areas may become inevitable. It is for this reason, that the State Legislature has incorporated Section 46 of the Act prescribing the procedure where the pipes are to run through the land belonging to private individuals. It is beneficial to extract the entire section.

Section 46: Power of owner of premises to place pipes through land belonging to other persons :--(1) If it appears to the Board that" the only technically feasible alternative means of water supply to any premises is by placing or carrying any pipe over, under, along or across the immovable property of another person, it may, by order in writing, authorise the owner of the premises to place or carry such pipe, over, under, along or across such immovable property:

Provided that before making any such order the Board shall give to the owner of the immovable property a reasonable opportunity of showing cause within such time as may be prescribed by regulations as to why the order should not be made;

Provided further that the owner of the premises shall not acquire any right other than a right of user in the property over, under, along or across which any such pipe is placed or carried.

(2) Upon making of an order under Sub-section (1), the owner of the premises may, after giving reasonable notice of his intention so to do, enter, upon the immovable property with the assistants and the workmen at any time between sunrise and sunset for the purpose of placing a pipe over, under, along or across such immovable property or for the purpose of repairing the same.

(3) In placing or carrying a pipe under this section, as little damage as possible shall be done to the immovable property and the owner of the premises shall--

(a) cause the pipe to be placed or carried with the least practicable delay;

(b) fill in, reinstate and make good at his own cost and with the least practicable delay, any land opened, broken up or removed for the purpose of placing or

carrying such pipe; and

(c) pay compensation to the owner of the immovable property and to any other person who sustains damage by reason of the placing or carrying of such pipe.

(4) If the owner of the immovable property over, under, along or across which a pipe has been placed or carried under this section while such immovable property was not built upon, desires to erect any building on such property, the Board shall, by notice in writing, require the owner of the premises to close, remove or divert the pipe in such manner as shall be approved by him and to fill in, reinstate and make good the immovable property as if the pipe has not been placed or carried over, under, along or across the same :

Provided that so such requisition shall be made unless in the opinion of the Board it is necessary or expedient for the construction of the proposed building or the safe enjoyment thereof that the pipe should be closed, removed or diverted."

18. In this section, the expression "owner of the premises" refers to the person, for whose benefit the pipeline is to be laid, and the expression "owner of the immovable property" connotes the owner of the property, across which the pipeline is proposed to be laid. A reading of the above section discloses that the 1st respondent is vested with the power to undertake works over, under, along or across the immovable property belonging to 3rd parties, if necessary. Certain safeguards are provided before such works are undertaken.

19. First proviso to Sub-section (1) mandates that the owner of the immovable property shall be issued a notice directing him to show-cause as to why the action contemplated under Sub-section (1) shall not be resorted to. This, obviously, presupposes the absence of a consent from the owner of such immovable property. Once such a show-cause notice is issued, the 1st respondent is empowered to pass orders for the purpose of carrying out the works as proposed, of course, after taking into account the objections that may have been raised by the owner of the immovable property. The second proviso makes it clear that no one shall acquire any right in respect of such property, except the right of user, restricted to the pipeline. Sub-section (2) provides for safeguards for the owner of the immovable property, and exhorts avoidance of any inconvenience, either at the time of carrying on the work or undertaking repairs. Sub-section (3) also provides for other similar safeguards. In particular, Section 3(c) provides for payment of compensation to the extent of the damage sustained by the owner of the immovable property, on account of carrying on the work.

20. The impugned letter can be treated as a step to ascertain the view point of the petitioner. Had the petitioner accorded its consent, there would not have arisen any occasion for the Respondents 1 and 2 to take any further steps. Since the petitioner declined its consent, the only course open to the Respondents 1 and 2, is to follow the procedure prescribed u/s 46 of the Act, namely, to issue a show-cause notice and pass orders for the purpose of undertaking the work,

after taking into account the objections that may be raised by the petitioner. If at all any order is passed under Sub-section (1) of the Act, the necessary safeguards and other measures indicated in Sub-sections (2) and (3), have to be complied with.

21. Though the learned Counsel for the petitioner had made an effort to impress upon the Court that it is not at all necessary for the respondents to lay the pipeline across the property of the petitioner; and other two alternatives are equally efficacious, this Court does not intend to record any findings in this regard, for more reason than one. It is not possible for the High Court to express opinions on matters, which involve technical evaluation. In the matter of laying pipelines and considering their feasibility and effectiveness, the 1st respondent has to be given the necessary latitude, to take appropriate decisions. The petitioner does not attribute any motives or mala fides to Respondents 1 and 2. Neither petitioner nor, for that matter, the Court can substitute their viewpoints, for those of the Respondents 1 and 2, where evaluations of technical feasibility and effectiveness are involved. The only measure that this Court can ensure is that the procedure prescribed u/s 46 of the Act, be strictly adhered to, in case, it becomes inevitable to lay the pipeline across the premises of the petitioner. It should be ensured that the petitioner is not subjected to any undue hardship.

22. Learned Counsel for the petitioner contends that the 4th respondent had already been provided with water supply and provision of second connection is prohibited under Rule 9 of the Hyderabad Metropolitan Sewerage Rules, 1990 (for short "the Rules"). The said Rule reads as under:

"Rule 9 : Premises not to be permitted with more than one connection :--No premises shall ordinarily be permitted with more than one sewerage house connection. The Chief Engineer may however in special circumstances to be recorded in writing sanction more than one sewerage house connection, if in his opinion, the requirement of the applicant justifies the sanction of more than one such connection."

23. A perusal of the same discloses that the prohibition contained therein is not absolute. Further, the learned Standing Counsel for Respondents 1 and 2, and learned Counsel for Respondent No. 4, have categorically stated that the 4th respondent was provided with a connection from a different point, in view of the interim orders granted by this Court, and that, if it becomes possible for them to provide connection, as proposed through impugned letter, the existing connection would be removed. Under those circumstances, it cannot be said that provision of a connection from an advantageous position to the 4th respondent would attract the prohibition contained in Rule 9 of the Rules.

24. For the foregoing reasons, the writ petition is disposed of, with the following directions:

(a) In case, the Respondents 1 and 2, are of the view that the water supply can be effectively made to the 4th respondent only through the complex belonging to

the petitioner, a show-cause notice under proviso to Section 46(1) of the Hyderabad Metropolitan Water Supply and Sewerage Act, 1989, shall be issued to the petitioner and appropriate orders be passed after taking into account the objection that may be raised by the petitioner.

(b) If an order is passed, authorising the laying of the pipeline across the premises of the petitioner, the work shall be undertaken on any day, preceding a holiday, between 7:00 p.m., and 6:00 a.m., and that the effected area shall be restored to its original condition; as regards surface and levels and all the material, clay etc., be removed without any traces.

(c) In the event of a line being provided to the 4th respondent across the land of the petitioner, the exiting connection shall be removed. No order as to costs.