(2002) 09 MP CK 0049

In the Madhya Pradesh High Court

Case No : Writ Petition No. 251 of 2002

Ashok Lalwani and Another APPELLANT

Vs

Municipal Corporation RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:
Madhya Pradesh Municipal Corporation Act, 1956 — Section 222

Citation : AIR 2003 MP 169 : (2002) ILR (MP) 650 : (2003) 1 MPLJ 196

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Manoj Dubey, for the Appellant; Sameer Beohar, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

Petitioners'' grievance is of refusal to give water connection in the premises of the petitioners by the Municipal Corporation, Jabalpur, on the ground that property tax has not been deposited and dispute about it is pending consideration.

Petitioner No. 1 is an Advocate. Petitioners are the joint owners of the house constructed on a portion of land which is part of the old bungalow numbered by the respondent Corporation as 1605, Civil Lines, Jabalpur. Petitioners constructed the house as per the plan sanctioned on 5-2-1997. The house was constructed before 5-2-2000. Petitioners submit that under Chapter XVI of the Municipal Corporation Act, 1956 (hereinafter referred to as ''the Act'') it is the duty of the Corporation to provide for supply of water,. The Corporation is empowered to supply water from its water works on an application being made to it u/s 221 of the Act. Section 225 of the Act provides for circumstances under which water supply to the premises can be cut-off. Petitioners submit that Chapter XVI of the Act provides for no other condition for seeking water supply except for application and payment of necessary charges. Respondent is not providing the water connection in spite of the readiness of the petitioner to pay all prescribed charges and expenses.

Respondent Corporation in the return contends that petitioners were required to pay property tax in respect of the land purchased by them. Upon their failure to pay the property tax, a notice u/s 145 (1) and (2) read with Section 146 of the Act was issued on 20-12-1996 proposing assessment of the property Lax in respect of the said land. The petitioners raised objection as regards the assessment of properly tax proposed by the respondent. The matter regarding assessment of property tax is pending consideration before the competent authority. In the meantime the petitioners approached the respondent for supply of water connection. A copy of the application was given to them on requisite fee. Petitioners did not submit the duly filled in application along with all the requisites. It is submitted that for providing a new water supply connection it is necessary that the applicant should have paid all Municipal Taxes. The application is required to be accompanied by a receipt regarding payment of property tax of the latest year or previous year as per specimen copy (Rule 1) of the said application. Municipal Corporation, Jabalpur has issued orders from time to time to the effect that new water connection shall be provided only after all dues are cleared. Two such orders are collectively filed as Rule 2 to the return. Petitioners have not cleared property tax in regard to their land and buildings Which they are liable to pay from the year 1995-96 onwards. They have not submitted returns under the self assessment scheme till this date. On account of on payment of the Municipal taxes the respondent has not provided water connection till this date. As soon as petitioners clear all their dues water connection shall be provided without any further delay.

Shri Manoj Dubey, learned counsel for the petitioners, submits that action of the Corporation in not providing the water connection is illegal and unauthorized under the provisions of the Act under Chapter XVI. For recovery of the property tax separate procedure is prescribed and dispute is still pending as mentioned in the return. Thus, the action of the Corporation in depriving the petitioners of the essential supply of water is illegal, arbitrary and unauthorized.

Shri Sammer Behoar, learned counsel for the respondent Corporation, submits that though in the Act there is no, provision to the effect that if property tax is not paid owner of the house can be deprived of water connection. However, he placed reliance on application form Rule 1 and the orders Rule 2 dated. 25-9-1997 and 21-10-1997 of the Commissioner, Municipal Corporation.

The question for consideration is whether the Municipal Corporation has acted within parameter of law in depriving the water connection to the petitioner. Water supply is dealt with in the Act in chapter XVI of the Act. Section 221 of the Act requires supply of water. The Commissioner may supply water for any purpose on receiving a written application specifying the purpose for which such supply is required and the quantity likely to be consumed. The supply of water shall be made upon such terms and conditions as to payment and quantity and for such period, as the Corporation may prescribe by bye-laws in this behalf. The Corporation may, on such terms as it may think fit, undertake to supply water to any area outside the city from the waterworks maintained by the Corporation and do other acts ancillary thereto. As per Section 222 of the Act where an application u/s 221 has been received all necessary communication pipes and fittings shall be supplied by the Commissioner and the work of laying and applying such communication and fitting shall be executed by municipal agency under the Commissioner''s orders; but the cost of making any such connection and of all communication pipes and fittings so supplied and of all work so executed, shall be paid by the owner or the person making such application. The Commissioner shall provide a meter and charge rent for the same. Section 225 deals with cutting off water supply to premises. If any person whose premises are supplied with water neglects to pay any sum payable u/s 221 when due, or to give notice as provided in Section 223 or wilfully or negligently misuses or causes waste of water the Commissioner may cut off the supply of water to the premises. It is clear from the reading of Sections 221, 222 and 225 that it is obligation upon the commissioner to supply water on receiving an application. The terms and conditions as to the payment and quantity is binding on the applicant that is in relation to supply of water and the requisite expenses of laying and applying such communication and fitting have to be born by the owner or the person making such application. It is not necessary that only owner can make such application as per Section 222. It is contemplated that it can be given to owner or the person making such application. In other words the statute does not prescribe that a person must have paid property tax to the Corporation in order to enjoy supply of water or to obtain facility of water. There are no rules or bye laws in that regard is conceded by learned counsel appearing for the Corporation. He has fairly stated that there is no provision in the Rules/bye laws enabling the Corporation to make deposit of property tax, a condition precedent in order to obtain water connection. No resolution has been placed on record to indicate that payment of property tax is a condition precedent before grant of water connection.

Thus, in my opinion, the water connection which is an essential supply cannot be withheld on any extraneous consideration which is not prescribed under the Act. The action of the Corporation is, thus, bad in law.

Water is essential for life and has integral connection with the right to life enshrined under Article 21 of the Constitution of India and no action taking away this right arbitrarily can withstand the test of constitutional protection granted under Article 14 of the Constitution of India. Corporation has acted in derogation under Articles 14 & 21 in depriving the supply of water to the petitioner on the flimsy ground of non deposit of property tax which action is not authorized under the Act, Rules or bye laws or resolution. As per stand of Corporation there are no Rules or bye laws in that regard framed by the Corporation.

Learned counsel for the Corporation has relied on the formate of the application

Rule 1 which clearly indicates that in the main application applicant has to specify the purpose for which he wants water connection and has to undertake that connection is not going to cause harm to anyone. He shall pay water rent in accordance with rules and has to deposit the estimated amount in laying the connection. A person has to annex the sale deed of the house and receipt of the house evincing the Municipal number. The receipt of house tax of earlier point of time can be submitted as mentioned in bottom Note No. 3. The receipt of previous or the current year can be filed. It is for ascertaining the Municipal number of house and its location and in whose name the property is which fact is not in dispute in the instant case. The petitioners are admittedly owners of the house in question where they want water connection. However, it cannot be read from the format of the application that person cannot obtain the connection in case property tax has not been deposited and dispute as to the property tax is pending and has not been decided. The format of the application cannot be read as imposing of pre condition that in order to have the water supply, person must deposit the property tax. For that no provision in Act /Rule /Bye law or resolution has been shown by the Corporation. For recovery of the property tax separate procedure is prescribed which Municipal Corporation can resort.

The orders dated 15-9-1997 and 21-10-1997 collectively filed as Rule 2 has also been relied upon by the learned counsel for the Corporation. The order dated 25-9-1997 indicates that without obtaining completion certificate water connection, electricity connection and NOC should not be issued. This order nowhere says that payment of property tax is a condition precedent in order to obtain water connection. Order dated 21-10-1997 indicates that completion report should be insisted. In case house has been constructed prior to 1990, in such cases the receipt of payment of property tax should be seen, in order to satisfy whether house is constructed from earlier point of time and in slums water connection should be given in case the structure was existing before 1985. This order dated 21-10-1997 clarifies the application format. The purpose of receipt is to satisfy about completion of the house and in order to satisfy that house has been completed on which date.

Even otherwise, in the instant case dispute as to property tax is pending with effect from the date of purchase and has not been finalised. Thus, petitioners have the justification of not annexing the receipt of the payment of the house tax. In any view of the matter as the dispute of the petitioners with respect to the properly tax is pending and has not been decided by the Corporation and there is no specific provision made by the Corporation under any of the resolution/bye law making it a condition precedent that property tax must have been deposited by a person in order to obtain water connection, that is also not a statutory prescribed condition. There is no bye law or resolution shown by the" Corporation and the orders collectively filed as Rule 2 by the respondent, does not support the case of the respondent Corporation. In my opinion, respondent has acted arbitrarily in depriving the water connection to the petitioners.

Writ petition is allowed. Respondent Corporation is directed to receive the application of the petitioners and to provide water connection on the requisite deposit being made for the purpose by the petitioners. In the facts & circumstances of the case, no order as to costs.

