
(2004) 09 CAL CK 0062
In the Calcutta High Court
Case No : Writ Petition No. 2021 of 2000

Ashwin Properties Pvt. Ltd. and Another	APPELLANT
Vs	
Calcutta Municipal Corporation and Others	RESPONDENT

Date of Decision : 03-09-2004

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 238, 238(2), 271, 275, 275(1)

Citation : (2005) 4 CHN 134

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Soumitra Pal, J.—The petitioner No. 1, being the owner of the premises No. 11, Pollock Street, Calcutta was served with a notice having No. 000013 dated 24.4.2000 under Sections 238 and 271 of the Calcutta Municipal Corporation Act, 1980 (for short "the Act") intimating as water supplied for domestic purpose was being used for purposes other than domestic, the petitioner should desist forthwith from such use of water for any purpose other than domestic purpose as it was in contravention of Section 238 of the Act, failing which water connection would be cut off or turned off u/s 275(1)(C) of the Act without any further reference. By letter dated 27.4.2000 the petitioner replied to the said letter intimating that the premises is wholly tenanted having offices therein, tenants do not use water for manufacturing purpose, no manufacturing work is done and water is not used for gardens or washing animals. It was stated water was not used for any commercial purpose as envisaged u/s 238 of the Act and contravention of the provisions of the said section was denied. Request was made to withdraw the notice dated 24.4.2000.

2. Thereafter the Corporation issued another notice on 4.5.2000 u/s 238 of the Act, having identical number, whereby the petitioner was requested to comply with the requisition contained in the notice dated 24.4.2000 within a week since it was not complied, otherwise filtered water connection to the premises might

be cut off for non-compliance of the notice. The petitioner replied to the said notice dated 4.5.2000 intimating that compliance has been made by the petitioner.

3. According to the petitioners, on 11.8.2000 the Calcutta Municipal Corporation (for short "the Corporation") cut off the water supply of the said premises, illegally and without providing any opportunity of hearing. It has been contended that the petitioners and the tenants pay fees for the supply of water and the allegation of infringement of Section 238 made by the Corporation is unsustainable. Since, the building was constructed long ago, and as the Corporation collected fees from each of the tenants for the supply of water, the question of contravention of the provisions of Sections 238 and 271 of the Act did not arise. It was stated that penal provisions u/s 275 of the Act can be only invoked under certain circumstances mentioned therein. Since the notices did not disclose any ground for violation of Section 238 of the Act, petitioners should have been given a hearing before disconnection of supply of water. Being aggrieved by the said notices and the disconnection of water supply, the petitioners moved the writ petition on 31.8.2000. Directions were issued to file the affidavit-in-opposition and the affidavit-in-reply. Affidavits have since been exchanged. Pursuant to directions, the supply of water was restored on certain terms.

4. The writ petition was moved seeking certain reliefs which are as follows:

"(a) A declaration that Section 238(2)(i) and Section 390(2) as amended are ultra vires the Constitution of India;

(b) A writ in the nature of Mandamus and/or order or orders and/or direction or directions of like nature commanding the respondents to forthwith restore supply of water to premises No. 11, Pollock Street, Calcutta - 700 001 and to withdraw, recall and cancel and/or set aside the decision to disconnect water supply to the said premises.

(c) A writ in the nature of Mandamus and/or an order or orders and/or direction or directions of like nature commanding the respondents to cancel, rescind and withdraw the notices/letters dated 24th April, 2000 and 4th May, 2000 being annexure to this petition and/or not to give any effect or further effect to the said notices/letters in manner whatsoever;

(d) A writ in the nature of Certiorari and/or an order or orders and/or direction or directions of like nature commanding the respondents to certify and transmit the records relating to the instant case to this Hon'ble Court and upon perusal of the said records to quash any order or direction for disconnection of supply of water to premises No. 11, Pollock Street, Calcutta 700 001 in order to render conscionable justices;

(e) A writ in the nature of Prohibition and/or order or orders and/or direction or directions of like nature directing the respondents and each one of them not to

give any effect or further effect to any order of disconnection of supply of water to premises No. 11, Pollock Street, Calcutta 700 001;

(f) Rule nisi in terms of prayers (a), (b), (c), (d) and (e) above; "

5. Mr. Arindam Banerjee, learned Advocate for the petitioner, at the time of hearing did not press prayer (a) of the writ petition.

6. Reiterating the statements made in the writ petition, it was submitted that water in the said premises is not used for manufacturing purposes and the term I.C.I. mentioned in the notice dated 24.4.2000 is alien to the Act and the rules framed thereunder. Submission was made that when notices were served entailing certain penal actions and when objections were filed challenging the action proposed, Sections 558 and 559 of the Act mandate that the concerned authority should consider the objection, hear the petitioner and pending determination, action should have been stayed. In support of his contentions reliance was placed on the judgement of the Apex Court in Gujarat Electricity Board v. Girdharlal Motilal and Anr., reported in AIR 1969 SC 267. In the absence of hearing and written order the entire action of the Corporation is illegal. Moreover, the petitioner cannot be brought under the scope of Section 271 of the Act as the building since its inception is a business building as contemplated u/s 238 of the Act. Thus Section 275(1)(C) of the Act is inapplicable in the instant case. Even assuming that the supply was domestic and the occupiers were using for non-domestic purpose then in such case conversion is not bad as the Corporation accepted fees and permitted the use of water. Thus, the entire action of the Corporation authorities is bad in law and the notices dated 24.4.2000 and 4.5.2000 should be set aside and quashed.

7. Mr. Roy Chowdhury, appearing on behalf of the Corporation, submitted that Sections 558 and 559 of the Act have no manner of application since the non-obstante clause appearing in Section 275 of the Act gives overriding power to the Corporation to issue notices in certain contingencies as in the instant case. It was submitted that Part IX - F containing Sections 558 and 559 of the Act deals with enforcement of orders to execute works etc. and not notices. Section 554 in Part IX - E of the Act dealing with the notices mandates that every notice shall specify a time. The notice dated 4.5.2000 in continuation of the notice dated 24.4.2000 directed compliance by the petitioner within a week. Mr. Roy Chowdhury submitted that the words filtered water for I.C.I. purpose mean water was used for Industrial and Commercial purpose, that is, it was used for non-domestic purpose. Mr. Roy Chowdhury relied on the judgment of the Supreme Court in Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun Narain Inter College and Others, , State of Haryana and Others Vs. Karnal Distillery Co. Ltd. and Another, and Dr. Vijay Kumar Kathuria Vs. State of Haryana and Others, , in support of his contentions.

8. Mr. Banerjee, in reply, submitted that before exercising power u/s 275 of the Act, the Municipal Commissioner has to come to a finding regarding the

existence of one or more conditions contained in clauses (a) to (j) of Sub-section (1) of the said section. The words "may turn off appearing in section 275 of the Act is a power given to the Municipal Commissioner coupled with a duty. Before resorting to the power conferred u/s 275, the Municipal Commissioner should resort to the provisions contained in Sections 554, 558 and 559 of the Act. Reliance was placed on the judgment of the Supreme Court in R.S. Raghunath Vs. State of Karnataka and another, , in support of his contentions.

9. Heard the learned Advocates for the parties.

10. The petitioner by notice dated 24.4.2000 was intimated by the Corporation to desist from using the water for non-domestic purpose failing which the supply of water would be turned off under the provision of Section 275(1)(C) of the Act since "...the water supplied for domestic purpose in the premises No. 11, Pollock St., Ward No. 45 is being used and/or allowed to be used for purposes other than domestic in the premises viz. used filtered water for ICI purpose only...." Thereafter, the notice dated 4.5.2000 was issued. In my view, the notice dated 4.5.2000 issued u/s 238 of the Act was in continuation of the notice dated 24.4.2000 since it contained the identical number and reference was made to the earlier notice dated 24.4.2000. The notice dated 4.5.2000 was in consonance with the provisions contained in Section 554 of the Act since the petitioner was requested to comply with the directions in the earlier notice within a week from the date of the letter otherwise it was intimated action shall be taken under the provisions of the Act,- "filter water connection of the premises may be cut off for non-compliance of notice." The petitioners had replied to the notices. Being dissatisfied with the replies, the supply of water to the premises was disconnected on 11.8.2000 u/s 275(1)(C) of the Act.

Relevant portion of Section 275 is extracted hereunder :

"275. Power of Municipal Commissioner to cut off or turn off supply of water to premises.-(1) Notwithstanding anything contained in this Act, the Municipal Commissioner may cut off the connection between any water works of the Corporation and any premises to which water is supplied from such works, or may turn off such supply, in any of the following cases, namely:

(a)...

(b)...

(c) if the occupier of the premises contravenes Section 238."

(Emphasis supplied)

11. Thus, Section 275 empowers the Municipal Commissioner to turn off supply of water to premises if the occupier contravenes the provisions of Section 238 of the Act.

12. It is appropriate to set out relevant portion of Section 238 which is as under:

"238. Supply of water for domestic purposes not to include any supply for certain specified purposes. -(1) The use of wholesome water shall be for domestic purposes only.

(2) The supply of water for domestic purposes under this Act shall not be deemed to include any supply -

(i) to any institutional building, assembly building, business building, mercantile building, industrial building, storage building or hazardous building, referred to in Sub-clause (C), Sub-clause (d), Sub-clause (e), Sub-clause (f), Sub-clause (g), Sub-clause (h), or Sub-clause (i), as the case may be, of Clause (2) of Section 390, or to any part of any such building, other than that used as a residential building or educational building within the meaning of Sub-clause (a) or Sub-clause (b), as the case may be, of Clause (2) of Section 390.

(Emphasis supplied)

13. In this context it is appropriate to refer to Section 271 of the Act, which is as under :

"271. Water supplied for domestic purposes not to be used for non-domestic purposes.- No person shall, without the written permission of the Municipal Commissioner, use or allow to be used water, supplied for domestic purposes, for any other purposes."

14. Thus u/s 238 of the Act water supplied for domestic purpose cannot be used in a business building and u/s 271 of the Act water supplied for domestic purpose cannot be used for non-domestic purposes without the written sanction of the Commissioner.

15. Anybody contravening Section 238 of the Act is liable for disconnection of supply of water u/s 275(1)(C) of the Act.

16. In the instant case, the building houses offices and, therefore, the building comes under the purview of Section 390(2)(e) of the Act. The question is whether Section 275 of the Act empowers the Municipal Commissioner to turn off supply of water without resorting to the principles of *audi alteram partem*. The answer is in the affirmative. The non-obstante clause - "Notwithstanding anything contained in this Act" in Section 275 of the Act gives overriding power to the Municipal Commissioner to turn off supply of water on the premises if there is a contravention of Section 238 of the Act. Explicit statutory provision the non-obstante clause - in Section 275 of the Act prevails over the other provisions of the Act. Intention is explicit - there is no scope for ambiguity. Any other interpretation shall lead to a result not intended to subserve the purpose and object of the Act. The ratio of the judgment of the Supreme Court in *R.S. Raghunath (supra)* is inapplicable as the Supreme Court was interpreting the Special Rule and the General Rule, but in the instant case the non-obstante clause in Section 275 of the Act excludes the applicability of other provisions in the Act itself and give power to the Municipal Commissioner to disconnect supply

of water for domestic purpose used for non-domestic purpose.

17. Therefore, in the instant case the Corporation authorities were justified in issuing the notices dated 24.4.2000 and 4.5.2000 to the petitioner. Thus, the writ petition fails. The interim order passed on 31.8.2000 is vacated.

18.1 make it clear that I have not gone into the other issues relating to the bills and the existence of the ferrules as the same were not the subject-matters of the writ petition.

19. No order as to costs.

20. Urgent xerox certified copy of this judgment and order be given to the appearing parties, if applied for, on priority basis.

Leter:

3.9.04.

21. Mr. Banerjee, the learned Advocate appearing for the petitioner, prays for stay of the judgment and the order till 23rd November, 2004. The prayer is allowed.

22. Let there be a stay of operation of this judgment and order till 23rd November, 2004.

23. All parties are to act on a signed copy of the operative part of this judgement and order on the usual undertaking.