
(2014) 12 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petition Nos. 21568 and 21838/2011 (LB-BMP)

Bosch Limited

APPELLANT

Vs

The Bruhat Bangalore Mahanagara Palike

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Karnataka Municipal Corporation Act, 1976 — Section 186, 187, 188, 189, 190

Citation : (2015) ILR 935

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Rajeswara P.N., Advocate for the Appellant; N.K. Ramesh, Advocate for the Respondent

Judgement

Ram Mohan Reddy, J.—These petitions are instituted by M/s. Bosch Limited, aggrieved by the action of respondents in laying sewage line contrary to Section 230 of the Karnataka Municipal Corporations Act, 1976, ("the Act" for short) inside the property of the petitioner located in several survey numbers of Parappana Agrahara, more appropriately below the approach road to Sy. Nos. 56/P and 60/1. According to the petitioner, the entire area in Parappana Agrahara fell within the jurisdiction of Bruhat Bangalore Mahanagara Palike ("BBMP" for short) and the petitioner ever since then has paid property taxes as levied and demanded. Petitioner, it is said, permitted laying of storm water drain "Raja Kaluve" in the water facility area by the respondents so as to arrest the over flow of rain water, during monsoon season. The 4th respondent, Assistant Executive Engineer, BBMP, it is asserted, addressed a letter dated 26.03.2011, Annexure-C seeking permission of the petitioner to lay pipelines to connect the pipeline from Manjunathnagar Veerappa Reddy layout carrying rain water to the storm water drain (Raja Kaluve), on the left side of the approach road. It is the allegation of petitioner that contrary to the said representation, 4th respondent allegedly excavated the earth in the centre of the approach road, without permission, without seeking approval, and laid the pipes. It is the further allegation of petitioner that one Sundaraiah, Assistant Engineer though stated that the pipes

laid did discharge rain water into the storm water drain, nevertheless did lay sewage pipe line to carry sewage of the neighbouring layout to be discharged into the storm water drain. According to the petitioner, sewage and rain water drains should be distinct and separate and sewage cannot be discharged into any water course, without treatment.

2. It is based on the allegation supra, petitioner made a representation dated 24.05.2011, Annexure-E over which neither action was taken nor was there a response, while the pipe line meant for discharge of rain water was put to use to discharge sewage, which is a health hazardous, and prohibited by statute. Hence, these petitions for the following reliefs.

"(i) ISSUE a writ in the nature of mandamus directing the respondent authorities to remove the pipelines laid in the middle of the approach road belonging to the petitioner and leading to the petitioner's water facilities plant in Sy. No. 56 part and 60/1 of Parappana Agrahara village, Begur Hobli, Bangalore South taluk, Bangalore, shown in blue colour in the sketch at Annexure-D.

(ii) ISSUE a writ in the nature of mandamus directing the respondent authorities not to connect the pipeline laid in the approach road (shown in blue colour) belonging to the petitioner for the purpose of discharge of sewage into the Storm Water Drain (shown in orange colour) running across the petitioners water facilities plant in Sy. No. 56 part and 60/1 of Parappana Agrahara village, Begur Hobli, Bangalore South Taluk, Bangalore District as shown in the sketch at Annexure-D and

(iii) ISSUE a writ in the nature of mandamus directing the respondent authorities to consider the representation of the petitioner dated 24.05.2011 Annexure-E.

(iv) PASS such other orders including the award of costs, as this Hon'ble Court deems fit, in the interest of justice and equity."

3. Writ petition though filed on 15.06.2011 and notice served on 20.06.2011, nevertheless, it was only on 05.11.2014 that the statement of objections of respondents was filed on payment of cost of Rs. 5,000/-. At paragraph 1, it is stated that the apprehension of petitioner that respondent has laid a sewerage pipeline in the road belonging to the petitioner is "ill founded and nothing but a misconception". According to the respondents, it has not carried out any work of laying sewerage pipeline in the road and no sanction was accorded by any authorities of the Corporation to lay a sewer line in the road belonging to the petitioner and that responsibility to lay sewerage pipes is of Bangalore Water Supply and Sewage Board ("BWSSB" for short) and on laying of such pipe lines, it would be maintained by BBMP. In paragraph 2, it is stated that the road claimed by the petitioner was an erstwhile revenue village known as Naganathapura village later developed as a layout by name Manjunathanagar Veerappa Reddy layout and most of the dwelling houses therein were constructed on revenue sites and the said area is in existence even before it was transferred to the territorial jurisdiction of BBMP. It is further stated that a Raja Kaluve was

constructed by the respondent BBMP across the property belonging to petitioner to carry storm water from Channakeshavanagara near NH 7 to flow into Parappana Agrahara tank. In order to facilitate the flow of storm water from the layout into the Raja Kaluve, the then Assistant Executive Engineer sought petitioner's permission to lay the pipe line. As no response was received from petitioner, it is asserted that "no further action was initiated in this regard". Digging of the trench to lay sewage pipes is denied and further violations of that nature are said to be dealt with under Section 228 of the Act. It is further stated that no permission was sought nor BBMP extended such permission to anybody to construct a sewage line through the property of the petitioner. It is asserted that no sanction or estimate was made to construct a sewer nor officials of the Corporation facilitated laying of the alleged pipes to connect to the storm water drain and "if any such incidents are brought to the notice of the respondents, the same will be dealt with and action will be taken to remove the connections forthwith". In paragraph 3, respondents state that, "if the petitioners still have any grievance on the issue, they can represent to the first respondent which will be addressed and resolved in accordance with law."

4. On 13.11.2014, the following order was passed:

"It is very a unfortunate case, like any other case against BBMP, where the engineer appointed and paid salary to discharge duties under the Karnataka Municipal Corporations Act, 1976 feigns ignorance of the status of a storm water drain in Bangalore which it is alleged a hole is punched for letting out sewage water. These petitions have been languishing in this Court since 2011 and it is only after a permission was extended the statement of objection is filed on payment of cost of Rs. 5,000.00, acknowledged by the learned Counsel for petitioner. In the counter statement it is stated that if and when it is brought to the notice of the BBMP, action will be taken to remove the unauthorized connections. Allegation in the petitions is that sewage water is flowing into the storm water drain and therefore, no further petition is necessary to be filed informing the BBMP of its statutory duties.

It appears that the engineer is not discharging statutory duties but states that he will take action only if a representation is made and he is shown where the hole is punched in the drain. This is obnoxious. BBMP spends huge sums of money towards maintenance of storm water drains. Therefore, BBMP to place before Court details of monies spent for maintenance of storm water drain in question from 2011 onwards and what inspections were carried out, and when.

The inaction on the part of the engineer of the BBMP has led to the petitioner's allegation of public nuisance. Regard being had to the recent opinion of the Apex Court in Civil Appeal No. 10024/2014 in the case of Dr. Balwant Singh v. Commissioner of Police and others disposed of on 07.11.2014, the matter calls for further orders if no action is initiated by the BBMP."

5. Since there was non compliance with the said order, on 03.12.2014, the

Commissioner, BBMP was issued with a show cause notice as to why action in accordance with law should not be initiated. Pursuant thereto, the Commissioner has filed an affidavit dated 04.12.2014 stating that the Executive Engineer (SWD), the 3rd respondent has made available the statement of expenditure spent for construction of storm water drain and that no specific budget allocation is made for maintenance of the said drain and no money is spent by BBMP in that regard while reiterating that it is the BWSSB which has to lay sewage line and that alleged sewage line has not been laid by BBMP. At paragraph 3 of the affidavit it is stated that the 3rd respondent, Executive Engineer, (SWD) has removed and blocked the unauthorized sewage line "opened by the residents of the area" leading to the storm water drain and has also removed unauthorized PVC pipe lines drawn by the residents from their bath rooms into the storm water drain while enclosing positive photographs of the same. It is stated that on 02.12.2014, the 3rd respondent came to the Court to give instructions to the counsel but was informed that he was late by 30 minutes by which time case was heard as it was the first matter in the list and therefore, the deponent regrets and tenders apology for the inconvenience. It is lastly stated on oath that "the Commissioner has directed respondents 2, 3 and 4 and all concerned to be vigilant and not to give room for such lapses in future".

6. The memo dated 04.12.2014 filed by the counsel for respondents, states that there are three enclosures, (1) statement of expenditure; (2) BBMP property register extract; and (3) photographs showing the status of the storm water drain.

7. Heard the learned Counsel for parties, perused the pleadings. Undoubtedly, petitioner being the owner of large extents of immovable property, having regard to the public interest, permitted BBMP to form a storm water drain across its properties so as to allow draining of storm water into the Parappana Agrahara tank. On such permission, respondents constructed the storm water drain expending Rs. 197.20 lakhs which work was undertaken on 01.02.2010 and completed on 31.07.2010 and the bill was settled for Rs. 182 lakhs. Respondents having thus laid the Raja Kaluve for draining the rain water into the tank, is statutorily obligated to ensure its maintenance.

8. It is true that Section 186 of the Act states that the provisions of Sections 187 to 244 do not apply to any city for which separate water supply and sewerage arrangements are made by or under any law for the time being in force. The aforesaid provisions are found in chapter XIII dealing with water supply and sewerage. It is not known whether Manjunatha Nagara Veerappa Reddy layout, is excluded from the operation of Sections 187 to 244 of the Act, except for a statement that it is the BWSSB which is to lay the said lines. There is nothing on record to establish such an obligation on the part of BWSSB.

9. Apparently, Manjunathnagar Veerappa Reddy layout though is within the territorial jurisdiction of BBMP, nevertheless, sewerage lines are not provided by BWSSB nor did the residents who have put up dwelling units seek providing of

sewerage line or soakage pit. The Commissioner of respondent BBMP has failed to ascertain whether the said layout is provided with water and sewerage lines, and if not, whether the residents have made soakage pits. The engineers in the hierarchy meant to assist the Commissioner too did not notice the absence of a sewerage line hence contributed to dereliction of duties. The statement of objections surprisingly, does not indicate the total number of dwelling houses erected in Manjunathnagar Veerappa Reddy layout as on the date when the area in the layout fell within the territorial jurisdiction of BBMP. Respondents are the custodians of records relating to the immovable properties more appropriately sites and buildings in Manjunathnagar Veerappa Reddy layout, since taxes are recovered from owners/occupiers as recorded in its assessment registers. Though material is available with the respondents, nevertheless is suppressed for reasons not known. If this information was provided then it would come to light whether buildings in Manjunathnagar Veerappa Reddy layout were constructed pre or post falling within the jurisdiction of BBMP and which do not have sewerage drainage facility or soakage pit.

10. It is needless to state that no new premises can be erected without drains. Having regard to human habitation, the requirement of sanitation is essential, hence it is unlawful to erect or to re-erect any premises or occupy any such premises unless a drain is constructed of such size, materials and description at such level and with such fall as shall appear necessary for the effectual drainage of such premises. The drain so constructed should empty into a sewer. If drainage facility in the layout is not provided then it is not known as to how the Commissioner permitted the construction of buildings, without ensuring the making of soakage pits and in any event if BWSSB did not provide for such drainage facilities, the residents of the layout could not have drained their sewerage into the storm water drains maintained by BBMP.

11. Respondents have failed to place relevant material constituting substantial legal evidence of existence of drain from group or block of premises though the layout is known as Manjunathnagar Veerappa Reddy layout and it is not known what steps were taken by the Commissioner, BBMP in the matter of drainage of sewage water from the dwelling houses/buildings in Manjunathnagar Veerappa Reddy layout.

12. It is sheer commonsense that sewage and rain water drains are to be distinct and separate and all sewers should empty into and all sewage be disposed of at such place or places as are suitable. Yet again, construction of buildings and private streets is not permissible on sewers, regard being had to the BBMP building bye laws 2003.

13. The fact that the pipes are laid below the centre of the road leading to petitioner's property is not disputed. If that is so, then the letter dated 26.03.2011, Annexure-C of the 4th respondent is a clear indication that the Corporation did want to lay a pipe along side the said private street and sought permission of the petitioner. Therefore, it is too farfetched to contend that

respondents did not lay the pipes in the centre of the road leading to petitioner's properties or did not have knowledge of such laying of pipes leading to and punching of a hole in the storm water drain for draining sewerage. Petitioner though informed the respondents about the illegality, did not take action as a responsible statutory Authority is required to do under the "Act". It is not that the pipes from Manjunathnagar Veerappa Reddy layout up to the storm water drain passing through petitioner's property was laid within a day or hour or within a minute and must have taken considerable time, hence, within the knowledge of the respondents and therefore, cannot feign ignorance of such work carried out within its territorial jurisdiction. The negligence in discharge of duties by the respondents is palpable. Merely stating in the statement of objections that an estimate, a budget or expenditure was not made for the said work of laying pipes by the respondents is not a panacea to the complaint lodged by the petitioner.

14. It is only after filing of these petitions and direction issued on 13.11.2014, it is alleged residents of Manjunathnagar Veerappa Reddy layout laid pipes and punched a whole into the storm water drain so as to drain sewerage. Therefore, the question is, what were the officials of the respondent Corporation doing when such an act was perpetuated? Respondents have evaded answering that question. Though in the statement of objections it is stated that action will be taken if complaints are made, nevertheless, no action was taken on the petitioner's complaint. If respondents are obliged to ensure inspection and maintenance of Raja Kaluve, why then a complaint from a citizen? It must be noticed that only when a direction was issued to ascertain, on inspection, as to whether or not the sewerage was drained into the Raja Kaluve, it is said that the officers of the respondent on inspection, found the sewer line and blocked it, and in addition certain other pipes leading from bath rooms of buildings constructed adjacent to the Raja Kaluve. This only shows the lackadaisical attitude on the part of the respondents in discharge of their statutory duties. The draining of sewerage into the Raja Kaluve has occasioned pollution of the water tank at Parappana Agrahara, an environmental disaster. This calls for convergence of the civic authorities, the Pollution Control Board and the BWSSB to contain the environmental pollution, forthwith.

15. Viewed in the aforesaid light, the complaint of the petitioner addressed to the respondents indicates a clear violation of rule of law by persons who interfered with the rights of the petitioner in independently and peacefully enjoying its properties. Petitioner's grievance over the nuisance committed by respondents as well as residents of Manjunathnagar Veerappa Reddy layout to the full knowledge of respondents has resulted in the institution of these petitions.

16. Nuisance in any form as recognized in the law of Torts-whether private, public or common which results in affecting anyone's personnel or/and property rights gives him a cause of action/right to seek remedial measures in Court of law against those who caused such nuisance to him and further gives him a right

to obtain necessary reliefs both in the form of preventing committing of nuisance and appropriate damage/compensation for the loss, if sustained by him, due to causing of such nuisance, as observed by the Apex Court in Dr. Balwant Singh's case.

17. Petitioner has not made specific pleadings over damages caused to it, hence petitioner is reserved liberty to sue the respondents for damages in an appropriate legal proceeding.

18. The observations of the Apex Court in Friends Colony Development Committee Vs. State of Orissa and Others, , in the circumstances is apposite:--

"22. In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalization of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of its being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable inter- meddling with the private ownership of the property may not be justified.

23. The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimized from the point of view of the control of community development, the prevention of over-crowding of land, the furnishing of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services."

19. In the circumstances, respondents 2, 3 and 4 primarily responsible for the nuisance caused due to failure to discharge duties are answerable and

accountable. The Principal Secretary, Urban Development Department, State of Karnataka is directed to ensure appropriate remedial measures not to discharge sewerage into the Raja Kaluve leading to Prappanna Agrahara tank and proper action in accordance with law over the failure on the part of respondents 2, 3 and 4 to take action over the complaint of petitioner as well as failure to inspect the rain water drain i.e., Raja Kaluve, periodically, and if found guilty impose commensurate punishment. First respondent is directed to ensure that all Raja Kaluves in the city of Bangalore are maintained in good condition, inspected periodically and if any sewerage is drained into it, to take steps to block the sewerage since these Raja Kuluves are meant to drain the rain water into the water bodies, which if not done, would pollute the environment.

20. Petitions are accordingly allowed with a direction to the respondents to remove the pipes embedded inside the ground commencing from wherever and terminating in the Raja Kaluve through the petitioner's property forthwith and recover the expenses from persons who have caused the same after enquiry. Cost quantified at Rs. 50,000/- payable by respondent No. 1 to the petitioner and recoverable from the salaries of the officers responsible.