

(1985) 09 KAR CK 0009
In the Karnataka High Court
Case No : Writ Petition No. 7700 of 1983

Byrappa

APPELLANT

Vs

B.W.S.S.B.

RESPONDENT

Date of Decision : 24-09-1985

Acts Referred:

Bangalore Water Supply and Sewerage Act, 1964 — Section 2 (13), 32
Constitution of India, 1950 — Article 226

Citation : (1986) ILR (Kar) 1697

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

Bench : Single Bench

Advocate : Sreedhar, for the Appellant; Kalasa Shamanna, for the Respondent

Judgement

K.A. Swami, J.—In this Petition under Article 226 of the Constitution, the petitioner has sought for a Writ in the nature of mandamus directing the respondents to remove or cause the removal of the tap fixed at the place denoted in Annexure-A at their costs forthwith.

2. The case of the petitioner is that the properties bearing Nos. 13 and 14 situated in First-Cross, Sampigehalli Extension, normally known as Karagappa Garden, Mission Road, Bangalore, belong to him and he is the absolute owner of the same; that the respondents without his permission have put up the water tap at point-A marked in the sketch produced as Annexure-A; that unless the area covered by the tap is acquired or consented to by the petitioner, the respondents are not in law entitled to put up the water tap.

3. The respondents have entered appearance and filed the statement of objections. It is the specific case of the respondents that the area where the tap is fixed is a slum area and there are several huts and other structures wherein number of people are residing; that during the month of January, 1983, these dwellers sent a representation to the respondents, who visited the spot along with the Corporation authorities, to the effect that they are not having any water connection, therefore, a public tap may be fixed in the said area. The Corporation

came forward to finance the installation of the tap and requested the Board authorities to send an estimate. Accordingly, an estimate was sent by the Board which was approved by the Corporation and thereafter, the Board has installed the tap in question.

4. Sri Kalasa Shamanna, Learned Counsel for the respondents, submits that the plots in question are in the occupation of the slum dwellers and the petitioner is not in possession of the same and every occupant, whether he is an authorised or unauthorised, is entitled to have the water connection, therefore, the respondents are justified in installing water tap in question. It is further submitted that if the slum dwellers are evicted and the plots in question are taken possession of by the petitioner, the respondents are prepared to remove the tap in question. In support of these submissions, Learned Counsel has placed reliance on Section 32 of the Bangalore Water Supply and Sewerage Act, 1964 (for short, the "Act") and the definition of the word "Occupier," found in Section 2(13) of the Act. Section 32 of the Act, states that the Water Supply Engineer may, on application by the owner or occupier of any building, arrange, in accordance with the regulations, to supply water thereto for domestic consumption and use. The expression "occupier" is defined in Section 2(13) of the Act. It is an inclusive definition. It includes any person, who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable ; and an owner in occupation of, or otherwise using his building ; a rent free tenant of any land or building ; a licensee in occupation of any land or building ; and any person who is liable to pay to the owner damages for the use and occupation of any land or building. From the last portion of the definition of the expression "occupier," it is clear that even if an occupant is an unauthorised occupant, still he is entitled to seek water connection from the first respondent, as among others an unauthorised occupant is also liable to pay damages for the use and occupation of the land or the building. Thus, the expression "occupier"" is very widely defined. The object behind such a wide definition is to enable every occupant to secure water supply because water is so essential to every living being that without that nobody can survive. As such, it is an undoubted responsibility and duty of the State to ensure supply of water to every one concerned. It is to enable the State to discharge this obligation, the expression "occupier" is very widely worded. In the instant case, as stated by the respondents, the slum dwellers who are occupying the plots in question, have represented to the first respondent for installing the water tap since they do not have water supply. Pursuant to that, the Corporation authorities have come forward to bear the expenses of installing water tap and the respondents have accordingly installed the water tap. Therefore, it appears to me that it is not possible to hold that the act of the respondents is either arbitrary or illegal. Therefore, it is not possible to grant the reliefs sought for by the petitioner.

5. However, it is necessary to make it clear that as and when the petitioner comes in possession of the plots in question on evicting the dwellers and

requests the respondents to remove the water tap, the respondents shall remove the same.

6. Accordingly, this Writ Petition is disposed of, in the following terms :

(i) The petitioner is not entitled to the reliefs sought for by him because the respondents are justified in installing the water tap on the request of the occupants of the plots in question.

(ii) If the petitioner secures possession of the plots in question on evicting the slum dwellers and requests the respondents to remove the tap, the respondents shall remove the same.