(2002) 04 MAD CK 0178

In the Madras High Court

Case No : Writ Petition No. 8483 of 2001 and W.P.M.P. No. 12041 of 2001

Dr. C.R. Chakravarthy, V. Udhayakumar, N.C. Kumar and Usha Vijayakumar — APPELLANT

Vs

Chennai Metropolitan Water Supply and Sewerage Board, Chindadripet, Chennai and Chennai Metropolitan Water Supply and Sewerage Board, Chennai — RESPONDENT

Date of Decision : 26-04-2002

Acts Referred:

Chennai Metropolitan Water Supply and Sewerage Board Act, 1978 — Section 49, 59(2)

Citation : (2002) 04 MAD CK 0178

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : V. Kuberan, for Rank Associates, for the Appellant; R. Venkatakrishnan, for K.R. Tamizhmani, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Petitioners numbering four have approached this court to issue a writ of mandamus forbearing the respondents from

taking coercive action including disconnecting the water and drainage connection provided to the premises known as ""BBC Plaza"", No.178-180,

North Usman Road, T.Nagar, Chennai 600 017.

2. The case of the petitioners is briefly stated hereunder;

The premises in which the petitioners own Office and shop is known as BBC Plaza. The said building is a commercial complex and consists of a

total number of 55 units. All the units are owned by different people with proportionate undivided share in the land. Certain units are occupied by

the owners themselves and rest of them have been leased out to different persons. Of all the 55 units, many of them remain unoccupied. The

owners of the unoccupied units are not even contributing the expenses incurred in common, for maintaining the premises. However, the rest of the

occupants are maintaining the building by sharing the cost amongst themselves. While the cost of maintenance and upkeep of the building is taken

care by the occupants, it is the lawful duty of the owners only to pay the statutory levies. The statutory levies include property tax payable to the

Corporation of Chennai and the taxes and charges payable to the Chennai Metropolitan Water Supply and Sewerage Board (in short Board).

Many of the owners, whose properties have been assessed both by the authorities of the Corporation of Chennai and by the first respondent have

remitted the levies as per the demand. Some of the units have not even been assessed both by the Corporation authorities as well as by the first

respondent. Unless necessary assessments are made, it is not incumbent on the owners to remit any statutory dues. The officers of the second

respondent visited the premises on 01.03.2000 and represented to the available owners that huge arrears of water tax are to be paid by the

owners of the premises and since the same has not been paid, they informed that they are taking coercive action by disconnecting the sewerage

and water connection given to the building. They disconnected both the connections on 01.03.2001. Pursuant to the meeting organised, many of

the occupants made arrangements and remitted the dues to the second respondent. However, unassessed units cannot do the same, since they are

not provided with the information as to what is the amount that has to be paid by them. Similarly, it is not possible for the owners and the

occupants to compel the owners, who have not remitted the dues even after assessment. If the respondents resort to coercive action like

disconnection, then the entire occupants of the building will be put to hardship and untold sufferings and the building will go without drainage

connection and the rooms and toilets cannot be used. There are nearly 200 employees comprising women and men working in various units

functioning in the building, hence the present writ petition.

3. The Managing Director, Chennai Metropolitan Water Supply and Sewerage Board filed a counter affidavit, wherein it is stated that premises

No.178-180, North Usman Road, consists of 55 flats and out of which 42 flats were assessed to property tax by the Corporation of Chennai.

Accordingly, the respondent Board has assessed water and sewerage tax demand to the above 42 flats at 3.5% per half year based on the

average value as fixed by the Corporation of Chennai. All the 42 flats in the premises are occupied by shop and office and no residential flats are

occupied. As the above flats were in huge arrears of water and sewerage tax and water supply and sewerage service charges, cut off cards and

notice were issued under the Revenue Recovery Act,to the defaulters on 16.09.2000 and 28.09.2000. Even after the said notice, they did not

come forward to pay the dues. In order to collect the accumulated arrears from the flat owners, water supply and drainage line leading to the flat

premises was plugged on 01.03.2001. Subsequently, some of the flat owners have paid their arrears of water and sewerage tax and water supply

and sewerage service charges. Hence the plug was removed on 06.03.2001, from the flat premises. Since the petitioners and other flat owners

have cleared their dues towards water and sewerage tax and water supply and sewerage service charges upto March, 2001 the remaining flat

owners have not cleared their dues. The remaining flat owners in the complex have not paid the water and sewerage tax and water supply and

sewerage service charges amounting to Rs.2,53,042.83. In view of the huge arrears, cut off notices were issued on 16.09.2000, to the defaulters.

Even after issue of cut-off cards, they did not come forward to pay dues. In any multi storied flat complex building ownership of individual flats

may be by different person and by several persons but for the purpose of supply of water and drainage facility the complex is the single unit as

water is provided through a common sump. Any single flat owner can claim the right of supply, only if he has a separate individual connection of his

own and is not in default. Disconnection of water, drainage is not unlawful, since the Board is empowered to disconnect the water and sewerage

line leading the premises who are in default of service charges and water and sewerage tax as provided u/s 49(i) and 59(2) of Chennai

Metropolitan Water Supply and Sewerage Act, 1978.

4. In the light of the above pleadings, I have heard the learned counsel for petitioners as well as respondents.

5. The only point for consideration in this writ petition is, whether the petitioners

are entitled the relief as claimed, particularly in view of Sections 49

(i) and 59 (2) of the Chennai Metropolitan Water Supply and Sewerage Act, 1978?

6. In the light of the narration of case of both parties in the earlier part of my order, it is unnecessary to refer the same once again. We are

concerned with premises No.178-180, North Usman Road, T. Nagar, Chennai 17, which consists of 55 flats and out of which 42 flats are

assessed to property tax by the Corporation of Chennai. It is the case of the respondents that, since the 42 flats which are assessed to property tax

by the Chennai Corporation wherein huge arrears of water supply and sewerage service charges, cut off cards and notices were issued. Learned

counsel appearing for the petitioners does not dispute the liability of the owners of the flat for payment of water supply and sewerage service

charges. According to him, since some of the flats are yet to be assessed to property tax by the Corporation of Chennai, for non payment of the

entire dues, the respondents are not justified in disconnecting the water and drainage connections provided to their premises.

7. Even at the outset, it is relevant to refer that in the counter affidavit of the first respondent it is stated that 42 flats out of 55 were assessed to

property tax by the Corporation of Chennai and it is also their case that they are demanding tax and charges only from the 42 flats. In other words,

it is the stand of the first respondent that only after a building / flat assessed to property tax by the Corporation of Chennai, they are taking steps to

collect water supply and sewerage service charges. Accordingly, the apprehension of the learned counsel for petitioner that in the absence of

assessment by the Corporation of Chennai, the first respondent cannot be permitted to collect those dues has no substance.

8. Section 49 of Chennai Metropolitan Water Supply and Sewerage Act, 1978 (in short ""the Act"") relates to power of the first respondent to cut

off water supply. Among the other clauses, 49 (1) (i) is relevant.

49. Power to cut off water supply.-

(1) (a) to (h) ....

(i)if the owner or occupier fails to pay within due time any money due to the Board under this Act, or any regulation or other instruments, made

thereunder.

Section 59 gives control over house-sewers, privies and chess pools.

(1) ....

(2) Where the owner or occupier has failed to pay any tax, rate or charge for sewerage or to pay any sums due under sub-section (5) of Section

47, or u/s 56 or 57, the authorised authority may, after giving written notice of fifteen days to such owner or occupier disconnect any sewer so as

not to permit such sewer to empty into the Board''s sewer.

These provisions enable the first respondent to demand water, drainage tax, water and sewerage charges. The only condition is that the building /

flat is to be assessed by the Corporation of Chennai. The collection of these tax and charges under the above mentioned provisions have been

upheld by this Court in W.P.No.8689 of 1982 dated 21.08.1990. In the said decision, J.Kanakaraj, J., rejected similar contention raised by the

petitioner and upheld the stand taken by CMWSSB.

9. It is also useful to refer the decision of K.P. Sivasubramaniam,J., rendered in W.P.No.5682 of 2000 dated 19.06.2000, while rejecting similar

contention, the learned Judge has observed,

6. However, the respondents are not duty bound to restore the supply to the flat complex if the other flat owners are in default. Any flat complex

is jointly owned by several persons, but for water supply the complex is a single unit. A single flat owner can claim the right of supply only if he has

a separate connection of his own and is not in default. Any other interpretation would render the public bodies bankrupt. It is for the Association of

the flat owners to see that there is no default in payment of the dues to the Board. It is only after all the dues repaid, the respondent Board would

be obliged to restore the connection.

10. Following the said decision, P.K. Mishra,J., in W.P.No.1279 of 1996 dated 05.12.2001, rejected the similar claim made by the petitioner

therein. I have already referred to the statutory provisions and in the light of the same, if flat / complex is jointly owned by several persons and

water and sewerage connection is provided as a single unit, it is for the flat owners to form an association and see that there is no default in

payment of the dues to the Board. Single flat owner can claim the right of supply, if it is a separate connection of his own and is not in default. No doubt, the above right of CMWSS Board is subject to the condition that the building / flat is assessed to property tax by the Corporation of

Chennai.

11. In the light of what is stated above and in view of the statutory provisions and the factual details that the occupiers of the flat in question are in

arrears of water supply and sewerage tax, I do not find any merit in their claim, consequently, the writ petition fails and the same is dismissed. No

costs. Consequently, connected WPMPs., are also dismissed.

