

(1994) 07 KAR CK 0019
In the Karnataka High Court
Case No : Writ Petition No. 6354 of 1994

Gowramma

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 07-07-1994

Acts Referred:

Bangalore Water Supply and Sewerage Act, 1964 — Section 32 (3), 43, 45
Constitution of India, 1950 — Article 21, 226
Karnataka Municipal Corporations Act, 1976 — Section 186

Citation : (1994) ILR (Kar) 2649 : (1994) 4 KarLJ 22

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Yoganarasimha, for the Appellant; B.J. Somayaji, HCGP for R-1, Shankar Narayana Belur, for K.N. Kumar and H.J. Sundarkumar, for R-3, for the Respondent

Final Decision : Allowed

Judgement

Hari Nath Tilhari, J.—By this Petition, the petitioner has challenged the endorsement of the Chairman of the Bangalore Water Supply and Sewerage Board dated 2-9-1993 (Annexure G) and has prayed that the same may be declared illegal, null and void and be quashed or set aside. The petitioner has further prayed that a Writ of Mandamus or Order or direction in the nature of Writ of Mandamus be issued to Respondent No. 2 to issue appropriate permit or licence to the petitioner for taking new water connection in respect of the house constructed by her after getting the portion of the house in partition under partition decree dated 3-9-1988, a copy of which the petitioner has annexed as Annexure "A1". The whole purpose of the petitioner appears to be that, as on account of partition, the whole house had been partitioned among the co-owners and on her portion, she has re-constructed the building and thereafter the petitioner applied for the new water connection being provided to her for supply of sufficient water for domestic consumption and use of the house of the persons living in the house. As per the allegations made in the Writ Petition, the

petitioner had moved that application some time in January 1993 and thereafter she made representations on 3-8-1993 and 6-8-1993. A perusal of Annexure "E" no doubt, shows that originally application was moved on 11-1-1993 and thereafter prior to 3-8-1993, thrice representations were made on 25-1-1993, 28-4-1993 and 12-5-1993. Annexure "G", which is dated 2-9-1993, bears the title indicating subject "providing new water connection". In this letter, it has been stated that the request for domestic water supply connection has been rejected as according to the Chairman, it has been observed that water supply line is situated at a distance of 160ft. from the premises of the petitioner and as such, under the provisions of the Act, particularly, after reference to Section 32(3) of the Act having been made along with Regulation 5(2) of the Regulations, it has been stated that the distance is more than 33 metres and that the water supply connection cannot be sanctioned. Feeling aggrieved from this order contained in Annexure "G" the petitioner has filed this Petition under Article 226 of the Constitution of India.

2. On behalf of Respondent No. 2, counter affidavit has been filed. In the paragraph, which deals with para-13 of the Writ Petition, it has been stated on behalf of the 2nd respondent that the petitioner had made a request for separate water supply connection and that "the concerned officials of the Board have examined the property in question and observed that the water supply line is situated at a distance of about 160ft. away from the said premises. As per Section 32(3) and Regulation 5(2) of the Bangalore Water Supply and Sewerage Act, 1964, and Regulation 5(2) which has been referred to in the Act as BWSSB, the distance between water supply sub-main and the premises should be within 33 metres. It is further stated therein that in the above area in the old City and all the connections were sanctioned in the said road quite a long time back and then, a reference has been made to Annexure "G". It has been further stated that there has been no existing water supply line in front of the premises. Hence, it is not the responsibility of the Bangalore City Corporation to extend the water supply connection through BWSSB, the 2nd respondent." An attempt has also been made to state that, if water connections are sanctioned for long distances, then the pressure varies directly with the level of the reservoir and power supply. So, connection cannot be given more than at a distance of 33 metres. Dealing with paragraphs 14 to 24, it has been stated in the counter affidavit that, since tax is paid to the Bangalore City Corporation authorities, it is the responsibility of the concerned authorities to provide basic amenities basically water supply and sanitary amenities through BWSSB, Bangalore. The petitioner has to represent to the Bangalore City Corporation, the 3rd respondent herein and to deposit necessary charges to lay the water supply line where the sub-main does not exist. After receiving necessary requisition from the Bangalore City Corporation, the estimate will be forwarded to the Bangalore City Corporation for depositing the necessary amount to lay a line and to provide necessary water supply connections. In view of the above facts and circumstances, this respondent cannot violate the Rules and Regulations framed by the Government exclusively

for implementing them in public interest. After making these allegations in the counter affidavit, it is stated therein that the Petition has got no merits and should be dismissed.

3. I have heard Sri Yoganarasimha, Counsel for the petitioner. I have also heard Sri Shankar Narayan Belur, Counsel for Respondent No. 2 and I have also heard B.J. Somayaji, learned Government Pleader who represent Respondent No. 1. On behalf of the Corporation, Respondent No. 3, appearance has been put up by Sri H.J. Sundarkumar, learned Counsel.

4. The learned Counsel for the petitioner submitted before me that the entire order contained in Annexure "G" is based on complete misconstruction of the provisions of Section 32(3) of Bangalore Water Supply and Sewerage Act, 1964 as well as Regulation 5(2). The learned Counsel for the petitioner has submitted that water is essential for life and a reading of Section 32 imposes an obligation on the Water Supply Engineer to arrange for the supply of water for domestic consumption and use by the owner or occupier of any building where an application for supply of water is being made. He submitted that, a reading of Section 32(1) along with Sub-section (2) leads him to contend that Sub-section (1) not only empowers him to make arrangement, but a duty is also cast on the authority. The learned Counsel further submitted that Sub-section (3) is really not applicable to the facts of the present case because, here in the present case, the supply is being required by the owner of a building situated on the line, which also belongs to that very same person i.e., the owner of the building and underneath land, being the same, there is no question of Sub-section (3) of Section 32 being applied one way or the other. The learned Counsel further submitted that Regulation 5(2) is also not applicable nor these two provisions provided that no water supply shall be made to the owner of a house, if the house of the owner is situated at a distance of more than 33 metres and therefore, the learned Counsel for the petitioner submitted that the order of rejection is bad as it is tantamount to refusal to perform a public duty imposed upon the public authority when the Chairman of the Board rejected the petitioner's application for providing the new water supply line or water supply connection. Refusal to supply water to the petitioner, learned Counsel submitted, is an act of deprivation of one of the basic amenities of life as per the provisions of Article 21 of the Constitution of India.

5. Opposing the petitioner, it has been contended on behalf of Respondent No. 2 that, in view of provisions of Section 32(3), the distance of the petitioner's building being more than 35 metres, the opposite party No. 2 or Respondent No. 2 was justified in rejecting the petitioner's application for providing new water connection for supply of water. The learned Counsel for opposite party No. 2 viz., Sri Shankar Narayan Belur, further submitted that the present Petition is misconceived. He submitted on the same lines as has been stated in the affidavit that the petitioner pays tax to the Bangalore City Corporation and it is their responsibility to supply water. The petitioner should have approached the

Bangalore City Corporation for the provisions being made for new supply line and she should have deposited necessary charges and then the Bangalore City Corporation might have approached this Board. He further submitted that the petitioner has not approached Respondent No. 3, which according to him is the proper authority to be approached. Hence, the Petition should be dismissed as not maintainable.

6. On behalf of Respondent No. 3, Sri H.J. Sundarkumar, learned Counsel, submitted that it has been wrongly contended on behalf of Respondent No. 2 that, it is the responsibility of the Bangalore City Corporation. He submitted that Chapter 13 of Karnataka Municipal Corporations Act, 1976, no doubt, makes provisions relating to water supply and sewerage, but in view of Section 186 of the said Act ie., Act No. 14 of 1977, that Chapter does not apply so far as the Bangalore City Corporation is concerned. He submitted that, a separate arrangement for sewerage and water supply has been made and provided under BWSSB Act, 1964. The provisions of the Corporation Act will not apply and therefore entire responsibility in this regard is that of Respondent No. 2.

7. On behalf of the State, learned Government Pleader has been present. On being called upon, if he has to say anything, he only submitted that the provisions of the BWSSB Act had to be interpreted and it is for the Court to interpret those provisions and the State, at present, is only a formal party. No relief has been claimed against Respondent No. 1. So there is no occasion for him to address on the question.

8. I have applied my mind to the contentions raised by the learned Counsel for the parties respectively and to the materials on record. Before proceeding any further with the matter, I may point it out that under the Constitutional Law and particularly under Article 21 of the Constitution of India, it has been provided that a person shall not be deprived of his life and liberty. Life does not mean bare animal life. It is an admitted fact that unpolluted water and unpolluted air or to say air free from pollution and water free from pollution are important ingredients of life and have got more importance than food. As I have mentioned, water is a necessity and if a person is deprived of facility of water, it may lead to deprivation of life. In this context, we have to read the provisions of the Act. The Legislature has enacted Bangalore Water Supply and Sewerage Act 1964 as its Preamble indicates to make provisions for supply for water, sewerage and sewage disposal in Bangalore Metropolitan area and for matters connected therewith. It is provided "whereas it is expedient to make provision for water supply, sewerage and sewage disposal in Bangalore Metropolitan area and for matters connected therewith." The Karnataka State Legislature enacted the above mentioned Act. The object of the Act has got to be kept in view and the establishment of the Board has also been done to fulfil that object to implement the provisions of the Act, so that proper supply of water may be made to the people.

9. Section 32 of the Act reads as under:-"Private water supply for domestic

consumption:-

(1) 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.

(2) It shall not be lawful for the owner of any dwelling house which may be constructed or re-constructed after the commencement of this Act to occupy it or cause or permit it to be occupied until he has obtained a certificate from the Board that there is provided within, a reasonable distance of the house supply of wholesome water as appears to the Board to be sufficient for the domestic consumption and use of the house.

(3) Where on any land there are two or more super-structures, and the owner of the land is not the owner of all the super-structures, the Board may, if it appears to it that the super-structures are without a proper supply of water for domestic consumption and use and that such supply can be furnished from the main not more than thirty-five meters distant from any part of any such super-structure by notice require the owner of the land to obtain such supply."

10. A reading of this Sub-section (1) of Section (2) per se shows that it casts a duty apart from conferring a power on the Water Supply Engineer as well as on the authorities to make arrangement for supply of water to the owners or occupiers of building in the area for which the provisions of the Act are applicable. If and when the owner or occupier of the building moves an application for supply of water for domestic use and consumption, and application being made, it becomes the duty of the Corporation and its Water Supply Engineer to make arrangement for supply of water thereafter. Sub-section (2) of Section 32 provides that unless and until the Board has certified that there is a reasonable distance of house from supply of wholesome water as appears to the Board to be sufficient for domestic consumption and usage of house, it shall not be lawful for the owner of any dwelling house or which has been constructed or re-constructed after the commencement of this Act to occupy or to cause or permit it to be occupied by any one. When Sub-section (2) creates this bar, then in those cases, it becomes the duty of the Board to provide areas for residential accommodation only within the reasonable distance from the supply lines of water and it has to make provision for the supply of water in those areas where the constructions have been made by the owners and no objections to construction having been raised by the Board. A perusal of subsection (3) per se shows that it deals with the situation or with the case where there is one owner of the land and on that land there are two or more super-structures, but the owner of the land is not the owner of super-structures. It is in those cases where the owners of super-structures are different then the owner of the land and those super-structures are without proper supply of water for domestic use and consumption and from the main, the supply of water can be furnished and the distance of any part of any such super-structure is not more than 35 metres from the main and then the Board can require the owner of the land to obtain such

supply because, the land belongs to the owners and not to the owner of the super-structure. This provision empowers the Board to require and compel the owner of the land to obtain such supply so as to facilitate the supply of water to the owners of super-structures. Thus, I am of the opinion that there is some force in the contentions of the learned Counsel for the petitioner that provisions of Sub-section (3) do not apply to the present case as there is no question of directing any owner of the land to obtain supply line for supply of water to the building belonging to the petitioner in the present case. Here, in the present case, the owner of the building and of the land in respect of which the new supply line is sought is one and the same. The question of distance of 35 metres or more from the main line on that land belonging to the owner, who is not the owner of super-structure or taking of the plea by the Board that the distance is more than 35 metres between the super-structure and the land on which the main line situate so he cannot be compelled, does not apply to the present case. Thus, in my view, the opposite party No. 2 has erred in law and illegally refused to consider and to grant the petitioner's request for supply of new pipe line in her house, which has been re-constructed after partition. It appears that opposite party No. 2 did not apply his mind and did not consider the case of the petitioner for supply of water in the context of Sections 42 to 45 of the Act.

11. Section 43 to 45 read as under:-

"43. Supply of water:- The Water Supply Engineer may permit the owner, lessee or occupier of any premises to connect the premises by means of supply pipes for conveying to the premises a supply of water for his domestic purposes from the Board water works subject to the requirements specified in Section 44 and the conditions, if any, laid down in the rules made in this behalf.

44. Laying of supply pipes, etc:-

(1) An owner, lessee or occupier of any premises, who desires to have a supply of water for his domestic purposes from the Board water works, shall comply with the following requirements, namely:-

(a) he shall give to the Board fourteen days' notice of his intention to lay the necessary supply pipe; and

(b) he shall lay the supply pipe at his own expense, having first obtained, as respects any land not forming part of a street the consent of the owners or occupiers thereof;

Provided that where any part of the supply pipe is to be laid in a street, he shall not himself break open the street or lay that part of the pipe.

(2) Upon the receipt of such a notice as is referred to in subsection (1), the Board shall if in its opinion there is no objection lay the necessary communication pipe and any part of the supply pipe which is to be laid in a street and shall connect the communication pipe with the supply pipe.

(3) The expenses, reasonably incurred by the Board in executing the work which it is required or authorised by this section to execute, shall be repaid to it by the person by whom the notice was given and may be recovered from such person as an arrear of water rate under this Act:

Provided that the Board considers it necessary to lay a main in lieu of a supply pipe, the additional cost incurred in laying the main instead of a supply pipe shall be borne by him.

(4) Notwithstanding anything contained in the foregoing provisions of this section, the Board may, within a reasonable time after the service of the notice upon him, require the person giving the notice either to pay to it in advance, the cost of the work as estimated by the Board or to give security for payment thereof to its satisfaction.

(5) If any payment made to the Board under Sub-section (4) exceeds the expenses which it would be entitled to recover from the person giving the notice, the excess shall be repaid by it and if and so far as those expenses are not covered by the payment, the Board may recover the balance from such person as an arrear of water rate under this Act.

45. Power to require separate service pipes:-

(1) The Board may require the provision of a separate service pipe for each of the premises supplied or to be supplied by it with water.

(2) If, in the case of any premises already supplied with water but not having a separate service pipe, the Board gives notice to the owner of the premises requiring the provision of such a pipe, the owner shall, within three months, lay so much of the required pipe as will constitute a supply pipe and is not required to be laid in a street, and the Board shall, within fourteen days after the owner has done so, lay so much of the required pipe as will constitute a communication pipe or a supply pipe to be laid in a street and make all necessary communications.

(3) If an owner upon whom a notice has been served under Sub-section (2) fails to comply therewith the Board may itself execute the work which the owner was required to execute and recover the expenses reasonably incurred by it in executing the work as an arrear of water rate under this Act."

12. A reading of Section 43 per se shows that an owner of a premises or lessee or occupier of the premises can be allowed to connect the premises by supply pipes for conveying the supply of water to the premises for domestic purposes from the Board water works subject to the requirements of Section 44 and the conditions laid down in the Rules. Section 44 of the Act provides that, if a person desires to have water for domestic purposes from the Board water works, he has to comply with the requirements mentioned therein. Section 45 empowers the Board to require the owner of the premises to have his separate supply line i.e., to have its separate service pipe for supply of water. A perusal of these

provisions leads me to hold that there are many ways and means provided under the Act for supply of water. The owner may be put to certain terms and conditions for being provided by separate service pipe etc. It appears to me that opposite party No. 2 as well as its Officers and authorities have only rejected the application of the petitioner by taking shelter under a wrong premises of law as Section 32(3) of the Act is not applicable to the present case, by taking the view that as the distance of the petitioner's accommodation or the building is more than 33 or 35 metres, so no supply can be made. This appears to be a completely erroneous view of law. The authorities such as BWSSB is a public welfare institution. It is expected that the Officers functioning therein particularly the Chairman of the Board should keep in view that water is an essential requirement and amenity. As already stated, one requires atleast unpolluted air and unpolluted water. In my opinion, it is not just and proper on the part of the authorities to reject the application for supply of necessities particularly the authorities who have been empowered to grant permission or to make supply of those necessities such as water.

13. As mentioned earlier, the Counsel for Respondent No. 2 made his submission on the fines of allegations made in the counter affidavit that, it is the ability and responsibility of the Bangalore City Corporation to supply water and they should have approached only Respondent No. 3 and as they have not approached the Bangalore City Corporation, the Petition is not maintainable.

14. In my opinion, this submission of the learned Counsel for Respondent No. 2 is without substance and as per the provisions of the Karnataka Municipal Corporations Act, 1976 and in particular the provisions of Section 186 of Karnataka Municipal Corporations Act, provides that, the provisions of Chapter 13 of the Act which deal with the water supply and sewerage arrangements, shall not apply to any City or Corporation for which separate water supply and sewerage arrangements are made by or under any law for the time being in force. I may quote Section 186 of the Karnataka Municipal Corporations Act, 1976 as under: -

"186. Application of Chapter:-

(1) This Chapter shall 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."

15. As regards Bangalore or the Corporation area of the Bangalore City or to say the area over which and in respect of which the provisions have been made by the Legislature by the name of Bangalore Water Supply and Sewerage Act, 1964, the provisions of Act No. 14 of 1977 will not apply. The Corporation has made Rules that have been made applicable. So, Act 36 of 1964 being applicable in respect of the matters relating to water supply and sewerage relating Bangalore Metropolitan area as the provisions have already been made for supply of water by Act No. 36 of 1964 in respect of the Bangalore Metropolitan area and they are

in force. The matter is to be governed by that Act and the authority competent to deal with all such matters is the Board constituted under this Act No. 36 of 1964. As such, there is no substance in the contentions of the Counsel for Respondent No. 2 and in my opinion, it is for the Respondent No. 2 to deal and dispose of the petitioner's application for supply of water.

16. Thus, having considered, I hereby issue an order in the nature of a Writ of Certiorari and quash the order dated 2nd September 1993 passed by the Chairman of the Bangalore Water Supply and Sewerage Board. The Board is directed by a Writ of Mandamus to consider the petitioner's application for supply of new water pipe line or water pipe connection in the light of provisions of Sections 43 to 45 and if there is any deficiency in the application or in the matter of supply of particulars or the requirements under the provisions of law, the Board may call upon the petitioner to make good the deficiency. It is also directed that, while disposing of this application, if the petitioner or the petitioner's Counsel desire to be heard, they may be heard. The matter may be considered within a period of 8 weeks from the date of communication of the copy of this Order by the petitioner. Thus, Petition allowed with costs.