
(1988) 09 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 385 of 1988

R.L. Saklani

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-09-1988

Acts Referred:

Cantonments Act, 1924 — Section 2, 217, 218, 219, 220

Citation : (1988) 17 ILR HP 511

Hon'ble Judges : P.D. Desai, C.J.; R.S. Thakur, J

Bench : Division Bench

Advocate : A.K. Goel, for the Appellant; P.A. Sharma, Central Government Standing Counsel and S.S. Kanwar, for the Respondent

Final Decision : Allowed

Judgement

P.D. Desai, C.J.—The Petitioner seeks a writ, order or direction against the second Respondent (Cantonment Board, Kasauli) commanding it to connect the demised premises in his possession situate in the building owned by the third Respondent with the source of public water supply by providing an independent connection at his own cost without insisting upon the issue of a "No Objection Certificate" by the third Respondent.

2. The case of the Petitioner is that he is a tenant in Set No. 3, Annie Villa, Kasauli Cantonment, District Solan. He was facing a problem regarding water supply to the premises in his occupation on account of a dispute between himself and the third Respondent. He, therefore, made an application to the second Respondent for the grant of an independent water connection and followed up the said request by a letter dated September 7, 1987. He received a reply dated September 25, 1987, Annexure-PA, from the Cantonment Executive officer, stating that "no separate water connection will be sanctioned to you being a tenant" and that "the owner should make a request to the Board for water connection".

3. On November 3, 1987, the Petitioner addressed a letter, Annexure-PB, to the Cantonment Executive Officer reiterating the difficulties experienced by him in the matter of getting water supply on account of a device having been fixed by the third Respondent by means of which the supply was controlled and stating that he was given to understand that until and unless the consent of the owner was obtained and furnished it would not be possible to provide him with an independent water connection. He pointed out that insistence upon the production of a consent letter from the third Respondent was contrary to law and that certain new water connections were given during the previous year as per the record and that, therefore, having regard to his genuine problem, his case should be reconsidered and the request for an independent water connection should be accepted.

4. The application of the Petitioner for an independent water connection was considered by the second Respondent in its special meeting held on November 19, 1987. It was decided in the said meeting that the Petitioner should be asked first to obtain a "No Objection Certificate" from the third Respondent and then to apply for the grant of new water connection (See: in this connection, Annexure-RB collectively). A letter dated November 30, 1987, Annexure-PC, was thereupon addressed by the Cantonment Executive Officer to the Petitioner in which it was reiterated that "no separate water connection will be sanctioned to you being a tenant" and that he should get "no objection from the owner and submit the same to this office to consider your case for new water connection".

5. The matter was next considered in the meeting of the second Respondent held on December 16, 1987. The Note circulated along with the Agenda, besides mentioning that the Petitioner was asked to produce a "No Objection Certificate" from the third Respondent, stated that the third Respondent had addressed an independent communication requesting that the water connection should not be given to any person without her written consent. It was further mentioned that the second Respondent had not sanctioned separate water connection to any tenant and that a number of requests received in that behalf had been turned down and that if an independent water connection was sanctioned in favour of the Petitioner, it would set-up a precedent which may give rise to legal complications at a later stage. The resolution, which was passed by the second Respondent after a consideration of the subject, was in the following terms:

Considered and resolved that Smt. Shyam Piari Bhalla, owner of the house be asked to remove the control valve fixed by her illegally on the water line and restore the water-supply to Shri R.L. Saklani, tenant of Set No. 3, Annie Villa, Kasauli, within 12 hours. If she fails to do so, the CEO should take action against her under the provision of Cantonments Act, 1924 and also disconnect the water connection given to her building.

The contents of the said resolution, Annexure-RB (collectively), were communicated to the third Respondent vide letter dated December 16, 1987, Annexure-RB (collectively). Upon receipt of the said communication, the third

Respondent wrote back on December 17, 1987 vide Annexure-RA, informing that she had removed the control valve as desired.

6. It appears that the Petitioner went on writing further letters to the second Respondent reiterating his request. He was ultimately informed vide letter of February 1, 1988 Annexure-PG, sent by the Cantonment Executive Officer, that further correspondence might not be carried on till he received any response from the office of the second Respondent.

7. The present writ petition was instituted on July 19, 1988. The petition is resisted by the Respondents. On behalf of the first and second Respondents, an affidavit-in-reply dated August 16, 1988 has been filed by the Cantonment Executive Officer. The third Respondent has filed her own affidavit-in-reply, dated September 6, 1988.

8. Section 220 of the Cantonments Act, 1924 (hereinafter referred to as "the Act") reads as follows:

220. Supply of water.--The Executive Officer may, permit the owner, lessee or occupier of any building or land to connect the building or land with a source of public water supply by means of communication pipes of such size and description as it may prescribe for the purpose of obtaining water for domestic use.

2. The occupier of every building so connected with water-supply shall be entitled to have for domestic use, in return, for the water tax, if any, such quantity of water as the Board may determine.

3. All water supplied in excess of the quantity to which such supply is limited under Sub-section (2) and, in a cantonment in which a water tax is not imposed, all water supplied under this section, shall be paid for at such rate as the Board may fix.

4. xx xx xx xx.

This is the only relevant statutory provision to which the attention of the Court has been drawn by the parties. In order to gather its true meaning, it would be proper to ascertain the context and the setting in which this provision occurs in the Act.

9. Chapter XIII of the Act comprises, inter alia, Sections 217 - 226, which are grouped together under the heading "Water-supply". It is the statutory function and duty of every Cantonment Board (hereinafter referred to as "the Board") to provide or arrange for a sufficient supply of pure water for domestic use where such supply does not already exist. As far as possible, the Board has to make adequate provision that such supply shall be continuous throughout the year and that the water shall be at all time pure and fit for human consumption (see: Section 217). The Board may, with the previous sanction of the Central Government, by public notice, declare any lake, stream, spring, well, tank,

reservoir or other source, whether within or without the limits of the Cantonment (other than a source of water-supply under the control of the Military Engineer Services or the Public Works Department), from which water is or may be made available for use of the public in the cantonment, to be a source of public water-supply and every such source shall be under the control of the Board (See: Section 218). The Executive Officer of the Board, by notice in writing, may require the owner or any person having the control of any source of public water-supply, which is used for drinking purposes, inter alia, to keep the same in good order and to clear it, from time to time, of silt, refuse and decaying vegetation or to protect the same from contamination (see: Section 219). If it appears to the Executive Officer that any building or land in the cantonment is without a proper supply of pure water, he may, by notice in writing, required the owner, lessee or occupier of the building or land, to obtain from a source of public water-supply, such quantity of water as is adequate to the requirements of the person usually occupying or employed upon the building or land, and to provide communication pipes of the prescribed size and description, and to take all necessary steps for the said purposes (see: Section 221). Notwithstanding any obligation imposed on the Board under the Act, it is not liable to any forfeiture, penalty or damages for failure to supply water or for curtailing the quantity thereof, if the failure or curtailment, as the case may be, arises from accident or from drought or other unavoidable cause, except in the specified cases (see: Section 223). The conditions subject to which the supply of water by a Bard to any building or land shall be, and shall be deemed to have been, granted are laid down in Section 224 and thereunder the Executive Officer is empowered, inter alia, to enter into any premises supplied with water by the Board and to cut off the connection in certain eventualities.

10. Another fasciculus of Sections, consisting of Sections 227, 234-B, is found incorporated in the same Chapter under the title "Water drainage and other connections". Section 227 confers the power on the Board to carry, inter alia, any pipe for the purpose of carrying out establishing or maintaining, amongst Ors. any system of water-supply through, across, under or over any road or street, or any place laid out or intended as a road or street, or after giving reasonable notice in writing to the owner or occupier, into, through, across, under or over any land or building, or up the side of any building, situated within the cantonment and, at all times, to do all acts and things which may be necessary or expedient for repairing or maintaining any such pipe, etc., in an effective state for the purpose for which the same may be used or is intended to be used. The two proviso attached to the said Section enact that no nuisance shall be caused in excess of what is reasonably necessary for the proper execution of the work and that compensation shall be payable to the owner or occupier for any damage sustained by him which is directly occasioned by the carrying out of any such operation. Section 228 provides that in case of any pipe etc. being laid or carried above the surface of any land or through, over, up the side of any building, the same shall be so laid or carried as to interfere as little as possible with the rights

of the owner or occupier to the due enjoyment of such land or building, and that compensation shall be payable by the Board in respect of any substantial interference with the right to any such enjoyment. According to Section 229, no person shall, for any purpose whatsoever, at any time, make or cause to be made any connection or communication with any pipe etc. constructed or maintained by, or vested in, the Board without the prior permission of the Board. Section 230 empowers the Executive Officer of the Board, inter alia, to establish meters or other appliances for the purpose of measuring the quantity of any water or testing the quality thereof supplied to any premises by the Board. u/s 231, the power of inspection, inter alia, is conferred on the Executive Officer of the Board. Section 232 provides that the Board may fix the charges to be made for the establishment by them or through their agency of communications from, and connections with, mains, or pipes, for the supply of water etc. or for meters or there appliances for measuring the quantity or testing the quality thereof and may levy such charges accordingly.

11. At this stage it would be pertinent to refer also to the definition of the words "occupier" and "owner" given in Clauses (xxiii) and (xxvi) of Section 2 of the Act. "Occupier" includes an owner in occupation of or otherwise using his own land or building. "Owner" includes any person who is receiving or is entitled to receive the rent of any building or land, whether on his own account or on behalf of himself and Ors. , or an agent or trustee, or who would so receive the rent or be entitled to receive it if the building or land were let to a tenant. The words "lessee" and "tenant" have not been defined and they must, therefore, be understood as carrying the same meaning which is assigned to them in the ordinary legal parlance.

12. The foregoing survey of the relevant provisions of the Act indicates that a statutory function and duty is cast on the Board to provide or arrange for the provision of a sufficient supply of pure water for domestic use, where such supply does not already exist, and to ensure that, as far as possible, such supply is continuous throughout the year. The Executive Officer, in the discharge of such functions and duties, may permit the owner, lessee or occupier of any building or land to connect the building or land with a source of public water supply by means of communication pipes for the purpose of obtaining water for domestic use. Similarly, the Executive Officer is empowered to require the owner, lessee or occupier of any land or building in the cantonment, by notice in writing, to obtain from a source of public water supply, such quantity of water as is adequate to the requirements of the person unusually occupying or employed upon the building or land and to provide communication pipes and to take all necessary steps for the said purpose, if it appears to him that such building or land is without a proper supply of pure water. The Board is empowered, after giving reasonable notice in writing to the owner or occupier, to carry any pipe for the purpose of carrying out, establishing or maintaining, any system of water supply into, through, across, under or over any land or building or up the side of any building situate within the cantonment and, at all times, to do all acts and things,

which will be necessary or expedient for repairing or maintaining any such pipe, in an effective state for the purpose for which the same may be used or is intended to be used.

13. Although the power conferred by these statutory provisions is enabling or discretionary in nature, it is coupled with a duty to exercise the same, when the conditions for the exercise of such power are shown to exist. In *Om Parkash Sood and Anr. v. State of H.P. and Anr.* ILR 1984 H.P. 443, This Court has observed that where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the Court will require it to be so exercised. After reviewing the case law on the subject, it was there held as follows:

These judicial pronouncements of high authority show that even where enabling or discretionary power is conferred on a public authority, the words which are permissive in character may be construed as involving a duty to exercise the power, if some legal right or entitlement is conferred or enjoyed and, for the purpose of effectuating such right or entitlement, the exercise of such power is essential. If there is failure on the part of the donee to exercise such power accordingly, the Court will require it to be exercised.

14. Now, in the present case, the Petitioner is a tenant occupying a two room set in a building in which the remaining accommodation is shared by the third Respondent and six other tenants in occupation of different sets. The third Respondent as well as the tenants draw water from a single common tap provided by the second Respondent in the building. The relations between the third Respondent and the Petitioner appear to be strained on account of the litigation between the parties. It is not in dispute that the third Respondent had fixed a device-control valve-by means of which she used to regulate the supply of water to the premises in occupation of the Petitioner. The letter, Annexure R B, dated December 16, 1987, addressed by the Cantonment Executive Officer to her reflects the hardship which the tenants were facing on account of the water problem. She removed the control valve only when she was ordered by the said Officer to do so within twelve hours and when faced with the threat of disconnection of water supply and penal action. It would thus appear that proper and adequate supply of water for domestic use was not regularly available in the building in question and that, more particularly, the Petitioner was experiencing difficulty on that account.

15. Against the aforesaid background, it is strange to find that the application made by the Petitioner for an independent water connection did not receive due consideration at the hands of the second Respondent. The latest decision directing the third Respondent vide Annexure-RB (coolly) to remove the control valve, which was fixed on the pipeline through which the Petitioner was obtaining the water supply, does not amount to such consideration. The earlier decisions,

communicated vide Annexures-PA and PC, to the effect that no separate water connection could be sanctioned to the Petitioner since he was a tenant and that the owner should make a request in that behalf and that, in any case, the Petitioner should first obtain a "No Objection Certificate" from the third Respondent and submit the same in order to enable his case for an independent water connection being considered, are against the apparent tenor of the provisions of Section 220 of the Act which permit even a lessee to obtain an independent water connection. There is no statutory requirement of his obtaining a "No Objection Certificate" from the owner for availing such facility or convenience. The statutory provisions noticed above not only enable the second Respondent to give an independent water connection to a lessee but also empower the Cantonment Executive Officer to require the owner, lessee or occupier of a building, which is without a proper and adequate supply of pure water, to obtain from a source of public water supply, such quantity of water as is adequate to the requirements of the person usually occupying or employed upon the building. The second Respondent is also empowered, after giving reasonable notice in writing to the owner, to carry any pipeline into, through, across, under or over any land or building or up the side of any building situate within the limits of the cantonment area and, at all times, to do all acts and things, which may be necessary or expedient, for repairing or maintaining any such pipeline. There was no warrant or justification, therefore, in insisting upon the production of a "No Objection Certificate" of the third Respondent before giving an independent water connection to the Petitioner and her mere request that no such connection should be given without her written consent could not have validly deterred the second Respondent from considering the Petitioner's application on merits and granting the same. The apprehension, if any, that the sanction of an independent water connection may set-up a precedent and that the tenants of other buildings may also make a similar request is not well-founded, since the case of the Petitioner requires to be decided on its own merits and against the background of the good and valid reasons shown by him in support of his request. In the affidavit-in-reply filed by the Cantonment Executive Officer, it has been averred that it was not possible for the second Respondent to give independent water connections to the several tenants occupying different buildings in the cantonment area, as there was a shortage of water, proceeds upon an assumption, for which there is no justification, that every tenant in each building in the cantonment area would come forward with such a request. Besides, it overlooks the basic fact that each application requires to be decided on its own facts. The plea regarding the shortage of water is vague. No particulars are furnished in that regard. Apart from raising such a vague plea, no attempt has been made to justify the same. Be it stated that apart from the vice of vagueness, the plea is wholly inconsistent with the earlier stand of the second Respondent which indicated its readiness and willingness to sanction an independent water connection provided a "No Objection Certificate" was obtained. If really there was any shortage of water, it is difficult to appreciate why the second Respondent was earlier willing to sanction an independent water

connection to the Petitioner If he produced such certificate.

16. The third Respondent has filed an affidavit-in-reply opposing the grant of relief to the Petitioner. The opposition is based on several grounds none of which appears to be relevant. She has complained of several proceedings which the Petitioner is alleged to have taken out against her and also about his being in arrears of rent. She has also stated that not only the Petitioner but six other tenants of the building also get water supply from a common water connection provided by the second Respondent and that if an independent water connection is granted to the Petitioner, the building would not stand the "wear and tear" which would be involved in the laying of the pipeline. It is difficult to appreciate the objection based on the ground of the several proceedings, if any, pending between the parties. It cannot be regarded as relevant for the present purposes. It is also not possible to accept the version that by laying a single pipeline for the supply of water, the building would be damaged or suffer any "wear and tear". The attempt on the part of the third Respondent to oppose the grant of a just relief to the Petitioner is a classic example of the usual recalcitrant attitude of the landlords towards the tenants, especially those who have been sitting tenants for a long period, and who are more often than not treated as unwelcome intruders.

17. The question then is as to the relief to be granted to the Petitioner. The facts of the case and the relevant legal provisions have been set-out earlier. There is no justifiable reason why the second Respondent should not be directed to sanction an independent water connection in favour of the Petitioner. The facts and circumstances of the case viewed against the relevant statutory provisions, fully justify the grant of such relief.

18. For the foregoing reasons, the writ petition succeeds and it is allowed. The second Respondent is directed to sanction an independent water connection to the Petitioner within a period of two weeks from the date of the delivery of a certified copy of this judgment without any insistence upon the production of a "No Objection Certificate" issued by the third Respondent. The third Respondent is directed not to cause any hinderance or obstruction in the grant of such independent water connection or in the laying of a pipeline pursuant to the grant of such connection. The Petitioner will bear the entire costs of such independent water connection and will also be liable to pay the taxes, cusses, charges etc., if any, leviable from time to time in respect of such independent water connection.

19. Rule made absolute accordingly with no order as to costs.