
(2016) 03 KL CK 0180

In the High Court Of Kerala

Case No : W.A. Nos. 205 and 221 of 2016

The Assistant Executive Engineer, Kerala Water Authority

APPELLANT

Vs

Siju Mathew

RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

Kerala Water Supply and Sewerages Act, 1986 — Section 2(xa)

Citation : (2017) 1 KLT 740

Hon'ble Judges : Mr. Ashok Bhushan, CJ. and Mr. A.M. Shaffique, J.

Bench : Division Bench

Advocate : Sri. George Mathew, SC, Kerala Water Authority, for the Appellants; Sri. P.G. Suresh, Sri. G. Sudheer (Thuravoor), Sri. Rajan Vishnuraj, Sri. V. Harish, Advocates and Sri. P.I. Davis, Sr. Government Pleader, for the Respondents No. 1

Final Decision : Disposed Off

Judgement

Mr. A.M. Shaffique, J.—These appeals are filed against the common judgment dated 13/11/2015 in WP(C) No.32496 of 2015 and 32504 of 2015 which concern common issues and hence decided together.

2. These appeals are filed by the Officers of KWA.

3. W.P.C. No. 32496/2015 is filed by Sri. Siju Mathew, who is one of the co-owners of a building for which occupancy certificate has been granted by the Corporation of Cochin on 19/06/2014. The petitioner in WP(C) No.32504/2015 is the other co-owner with reference to the very same building. The total area of the building is 1072.32 sq.meters. The petitioners submitted separate applications for water connection. Since no action was taken in the matter, they have approached this Court seeking direction to the Kerala Water Authority (KWA) to provide water connection to their portion of the building by considering their application.

4. Counter affidavit has been filed on behalf of the appellant inter alia stating that the application of the petitioners was considered and it was informed to

them stating that since it is a building having an area of more than 1000 sq.metres, connection is required to be taken from the Common Street Main Extension (CSME). Though intimation was given to the petitioners, they did not reply and without disclosing the said fact, the writ petitions were filed.

5. Learned Single Judge, observed that though the total plinth area of the building is 1072.32 sq.meters, petitioners requested for water connection only in respect of 2nd and 3rd floors having a plinth area of 520 sq.metres and therefore appellant was called upon to obtain an affidavit from the petitioners regarding the proposed consumption and based on the said undertaking, and on filing a fresh application, direction was issued to give water connection to the petitioners. It was further observed that if the water authority finds that there is misuse of water connection, the authority will be entitled to disconnect the entire water supply.

6. While impugning the aforesaid common judgment, it is contended by the learned counsel appearing for the appellants that in so far as the building is having an area having more than 1000 sq.meters, it is a "flat" as defined under Section 2(xa) of the Kerala Water Supply and Sewerage Act 1986 (hereinafter referred to as "the Act") and therefore application for water connection has to be submitted as per Regulation 7(g) of the Kerala Water Authority (Water Supply) Regulations, 1991 (hereinafter referred to as "the Regulation").

7. It is evident from the occupancy certificate issued in favour of the petitioners that the total area of the building is 1072.32 sq.metres. Learned counsel for petitioners submits that other areas are either car parking or dormitories. As far as the Act and the Regulations made thereunder are concerned, there is no distinction with reference to the area to be occupied. What is relevant for the Act and the Regulations made thereunder is the total area of the building. If the building is having more than 1000 sq.metres of the approved plan, definitely it would come within the definition of "flat" and the necessary consequences will follow. On the guise that the petitioners will be using only a small portion of the building, the authorities cannot dilute the statutory provisions under the Regulation. If such a mode is permitted, every user of multi storied complexes will claim such dilution of statutory regulations, which is not contemplated under the provisions of the Statute. Therefore, we are of the view that the learned Single Judge was not justified in issuing directions, which are against the Act and the Regulations. Therefore, the Writ Appeals are liable to be allowed.

8. In the result, these writ appeals are allowed. The judgment of the learned Single Judge is set aside and the writ petitions are dismissed. Petitioners are directed to approach the KWA and seek for water connection in terms with Regulation 7(g) of the Regulations. Any such application submitted shall be considered and disposed of as early as possible and within a period of one month from the date of receipt of such applications.