

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 4TH DAY OF APRIL 2023 / 14TH CHAITHRA, 1945

WP(C) NO. 4972 OF 2023

PETITIONER:

ANTONY C. L.
AGED 46 YEARS
S/O. LOUIS
CHAMMANIKKODUTH HOUSE,
METRO HEIGHTS,
PANORAMA RESIDENCY,
KUMARANASHAN ROAD,
ERNAKULAM,
KOCHI., PIN - 682020

BY ADVS.DILEEP VARGHESE
TESMY VARGHEESE

RESPONDENTS:

- 1 KERALA WATER AUTHORITY,
WATER WORKS SUB DIVISION,
VYTILLA,
KOCHI, PIN - 682020
REPRESENTED BY ASSISTANT EXECUTIVE ENGINEER
- 2 ASSISTANT EXECUTIVE ENGINEER
KERALA WATER AUTHORITY,
WATER WORKS SUB DIVISION,
VYTILLA, KOCHI, PIN - 682020
- 3 PERMANENT LOK ADALATH
ERNAKULAM,
KALOOR,
KOCHI, PIN - 682017

BY SRI. GEORGIE JOHNY, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29.03.2023, THE COURT ON 04.04.2023 DELIVERED THE
FOLLOWING:

'C.R.'

JUDGMENT

Petitioner, one among the owners in occupation of a ground plus 4 floor flat consisting of 8 independent apartments, namely, 'Metro Heights' having a total area of 908.69 M², evident from Ext.P1 occupancy certificate, has filed the writ petition seeking to quash Ext.P7 order, dated 17.01.2023 passed by the Assistant Executive Engineer, Water Works Sub Division, Kochi, directing the petitioner to submit an application for water connection, and deposit the amount for laying Contributory Street Main Extension (CSME) Pipeline in order to process the representation, dated 06.01.2023 made by the petitioner, on the basis of the direction issued by this Court in the judgment in W.P.(C.) No.40134/2022, dated 12.02.2022; and for other consequential reliefs.

2. Brief facts for disposal of the writ petition are as follows:-

Petitioner owns two flats, and other owners of the apartments are one Roopesh K.R. and Subhadhra.

According to the petitioner, three other flat owners are residing abroad. Petitioner has produced Ext.P2 property tax receipt and Ext.P3 ownership certificate to establish the possession and ownership of the flat in question. The case projected by the petitioner is that the Kerala Water Authority has not provided a service connection to the residential apartment and therefore, petitioner and the other occupants of the flat are using filtered well water to meet their day to day requirements. Therefore, according to the petitioner, for and on behalf of the residents of the apartment, petitioner filed an application dated 28.04.2022 for a new domestic connection. The case of the petitioner is that the premises where the flat is situated is having an existing water pipe connection through a $\frac{3}{4}$ pipe in the name of Subhadra. However, the connection is lying idle without being connected to the premises in question. It is the contention of the petitioner that a pipeline laid by the Kerala Water Authority for the purpose of giving general water supply connection is available in front of the residential complex and the pressure in the main line is

sufficient for providing water connection. It is further submitted that even though petitioner made earnest efforts to secure a connection, the third respondent was not taking any action and therefore, petitioner had to approach this Court by filing W.P.(C.) No.40134/2022, which was disposed of as per Ext.P5 judgment, dated 12.12.2022 directing the second respondent to consider the application submitted by the petitioner. It was thereafter that Ext.P7 impugned notice was issued to the petitioner to apply for a CSME connection. According to the petitioner, petitioner is not liable to apply for a CSME connection for expending huge amounts since, the residential apartment complex occupied by the petitioner and others would not come under the term flat as provided under the Kerala Water Supply and Sewerage Act, 1986 (for short, 'the Act, 1986'); and therefore, Section 38A of the Act, 1986 would not come into play, so as to apply for a CSME connection. It is further submitted that petitioner and other residents of the apartment in question are entitled to get the connection from the existing line and they are not liable to pay for a

CSME connection.

3. The submission of the Kerala Water Authority is that the apartment complex of the petitioner would come under the definition of multi-storied building defined under the Act, 1986, since the entire apartment complex is exceeding five or more units, or having a total plinth area of 500 square meters or more; and therefore the petitioner is liable to apply for a CSME connection. Being so, according to the Kerala Water Authority, Ext.P7 communication issued by the Water Authority is in order and there is no illegality or arbitrariness requiring interference in a writ proceedings. Learned Standing Counsel has also invited my attention to Regulation 6 of the Kerala Water Authority (Water Supply) Regulations, 1991 (for short, 'the Regulations, '1991') and submitted that no house connection shall be given to any applicant, if in the opinion of the Assistant Executive Engineer, the pressure in the main is not sufficient for providing the connection and further that not more than one house connection shall ordinarily be given to a premises.

4. I have heard learned counsel for the petitioner, Smt. Tesmy Vargheese and learned Standing Counsel for the Kerala Water Authority, Sri. George Johny and perused the pleadings and material on record.

5. In order to answer the issue, reference to some of the provisions of the Act, 1986 and the Regulations, 1991 is required. Section 2(xa) defines 'flat', to mean building/independent villas having ten or more dwelling units or buildings having a total plinth area of one thousand square meters or more in a premise. According to the petitioner, there are only eight dwelling units in the building in question and the total plinth area is less than one thousand square meters. Therefore, the case of the petitioner is that it would not come under the term flat as defined under the above said provision. As I have pointed out above, the Kerala Water Authority has a case that the building in question is a multi-storied building. A 'multi-storied building' is defined under Section 2(xva) to mean buildings in a premise having five or more units or having a total plinth area of five hundred square meters or more

used for non-domestic activities with or without any dwelling unit. Therefore, in my considered opinion, there is a clear distinction between a flat and a multi-storied building. Going by the definition of 'flat', it deals with dwelling units exceeding ten in number or buildings for a total plinth area of thousand square meters or more in a premise. Admittedly, the petitioner will not come under the same since the parameters provided thereunder would not apply to the petitioner. In so far as multi-storied building is concerned, going by the definition given under Section 2(xva), it would have applied if the building in question is one used for non-domestic activities with or without any dwelling unit. The case of the petitioner is that the petitioner's building is a residential apartment complex having only eight units and less than one thousand square meters. Therefore, the building in question does not come under the definition of either the flat or multi-storied building. The issue with respect to water supply to flats and multi-storied buildings is guided by Section 38A of the Act, 1986. Sub-section (1) thereto specifies that

notwithstanding anything contained in the Act, and subject to sub-section (2), the Authority may supply water through cisterns, tanks, sumps and ground level reservoirs to multi-storied buildings and flats, subject to terms and conditions, as may be provided by regulations. Sub-section (2) of Section 38A of the Act, 1986 specifies that the supply of water referred to in sub-section (1) shall not be made from a distribution main having diameter of 150 mm or less. Therefore, it is quite clear and evident that since the apartment in question is not a flat or multi-storied building they are not liable to apply for water connection under Section 38A of the Act, 1986.

6. The Kerala Water Authority (Water Supply) Regulations, 1991 deals with various aspects to regulate the water supply. Regulation 2(f) of the Regulations, 1991 defines 'domestic connection', to mean a category of water supply connection provided from the main to a premise to supply water for domestic purposes. Regulation 2(l) of the Regulations, 1991 defines 'non-domestic connection', to mean a category of water supply connection provided from

the main to a premises to supply water for purposes other than domestic purposes and shall include a casual connection. Regulation 2(m) of the Regulations, 1991 defines 'SME', to mean a Street Main Extension and includes all kinds of extension done to mains but excludes house connections. As per Regulation 5(a) of the Regulations, 1991, on receipt of the application for house connections with fee, the Assistant Executive Engineer shall arrange to inspect the feasibility of the house connection to the applicant's premises. Clause (b) to Regulation 5 of the Regulations, 1991 states that when application for house connection includes requests for extension of main for granting the supply as laid in clauses (a) and (b) of sub-section (1) of Section 38 of the Act, the Assistant Executive Engineer shall decide whether the main extension requested is necessary for effecting the house connection applied for. Clause (c) of Regulation 5 of the Regulations, 1991 makes it clear that where the street main extension is not necessary, the applicant shall remit a connection fee of,- (i) Rs. 500/- in the case of application for domestic

connection; and (ii) Rs. 1,000/- in the case of application for non-domestic and casual connections. Clause (d) of Regulation 5 of the Regulations, 1991 states that applicants seeking house connection with extension of street main not exceeding 30 meters shall remit a fee of Rs. 500/- over and above that prescribed in Clause(c) of Regulation 5 of the Regulation, 1991. However, if the length of such SME exceeds 30 meters the provisions contained in Appendix 'B' to the Regulations 1991 shall apply to such extensions. Appendix 'B' is the statutory guidelines for the sanction and execution of street main extension through consumer contribution which is normally called as CSME. If the apartment in question comes under a flat or multi-storied building, then Section 38A of the Act, 1986 would come into play along with Appendix 'B' of the Regulations, 1991. But here is a case, where the apartment in question would not come under a flat or multi-storied building and therefore, is entitled for a domestic connection. Section 37 of the Act, 1986 deals with supply of water for domestic purposes. It specifies that the supply of water for domestic

purposes under the Act, 1986 means supply of water for any purpose except the following, namely:-

“(a) for any commerce or trade, manufacture or business;

(b) for gardens or for purposes of irrigation.

Explanation thereto makes it clear that in respect of premises used solely for residential purposes and having attached kitchen and domestic gardens, such domestic gardens shall not be treated as gardens for the purpose of aforesaid clauses;

(c) for building purposes;

(d) for fountains, swimming batch, public bath, or tanks or for any ornamental or mechanical purposes;

(e) for animals where they are kept for sale or hire or for the sale of their produce or any preparation therefrom;

(f) for the consumption and use at restaurants, or by inmates of hotels, boarding houses, lodging-cum-boarding houses or residential clubs and for baths used by such inmates;

(g) for the consumption and use by persons resorting to theaters and cinemas;

(h) for making or watering streets;

(i) for washing vehicles where they are kept for sale or hire.”

7. Section 38 of the Act, 1986 deals with supply of water by the Authority. Sub-section (1) thereto specifies that the Authority shall on an application made to it by the

owner of any premises or by the occupier with the consent in writing of the owner thereof, grant supply of water for domestic purposes on such terms and conditions as may be provided by regulations.

8. Therefore, I am of the view that the apartment in question occupied by the petitioner and others are entitled to get a domestic/house connection; and the petitioner cannot be insisted to apply for a CSME connection for the basic reason that the apartment in question will not come under the definition of flat or multi-storied building. Even though the learned Standing Counsel for the Kerala Water Authority has a contention that the Assistant Executive Engineer is vested with powers to form an opinion that, if the pressure in the main is not sufficient, no house connection need be granted. First of all, the Assistant Executive Engineer while issuing Ext.P7 impugned communication did not have a case that there is no sufficient pressure in the main for providing water connection. Petitioner has a definite case that a main is available in front of the apartment in question and a

connection alone needs be provided. Therefore, as discussed above, by virtue of the provisions of the Act, 1986 and the Regulations, 1991, petitioner is entitled to succeed in the writ petition.

Upshot of the above discussion is that, writ petition is allowed and there will be a direction to the second respondent, i.e., the Assistant Executive Engineer, Kerala Water Authority, Water Works Sub Division, Vyttila, Kochi – 682 020, to provide a house/domestic connection to the petitioner, on the petitioner satisfying the requirements for the said purpose, if not already done, at the earliest, at any rate, within three weeks from the date of receipt of a copy of this judgment. There will be a direction to the petitioner to comply with all the requirements as per the provisions of the Act, 1986 and the Regulations, 1991, within one week from the date of receipt of a copy of this judgment, if not already done.

Sd/-

SHAJI P. CHALY
JUDGE

APPENDIX OF WP(C) 4972/2023

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF OCCUPANCY CERTIFICATE
DATED 30.03.2019
- EXHIBIT P2 TRUE COPY OF PROPERTY TAX RECEIPT DATED
22.11.2021 OF PETITIONER
- EXHIBIT P3 TRUE COPY OF THE OWNERSHIP CERTIFICATE
OF PETITIONER DATED 22.02.2022
- EXHIBIT P4 TRUE COPY OF THE APPLICATION FILED BY
THE PETITIONER BEFORE THE 3RD
RESPONDENT DATED 25.08.2022
- EXHIBIT P5 TRUE COPY OF JUDGEMENT IN WP (C)
NO.40134/2022 OF THE HON'BLE HIGH COURT
OF KERALA DATED 12.12.2022.
- EXHIBIT P6 TRUE COPY OF LETTER ISSUED BY
PETITIONER TO 2ND RESPONDENT DATED
06.01.2023
- EXHIBIT P7 TRUE COPY OF ORDER ISSUED BY THE 2ND
RESPONDENT DATED 17.01.2023