

(2010) 09 MAD CK 0161

Madras High Court

Case No: Writ Petition No. 10734 of 2003

Mrs. Madan Bai

APPELLANT

Vs

The Chairman, Senior Account
Officer, Area Officer, Area II and
The Tahsildar (Land and Estate)
of Chennai Metropolitan Water
Supply and Sewerage Board
(CMWSSB)

RESPONDENT

Date of Decision: Sept. 14, 2010

Acts Referred:

- Chennai Metropolitan Water Supply and Sewerage Board Act, 1978 - Section 81(2)
- Chennai Metropolitan Water Supply and Sewerage Service Charges (Levy and Collection) Regulations, 1998 - Regulation 4, 6
- Constitution of India, 1950 - Article 226

Hon'ble Judges: P. Jyothimani, J

Bench: Single Bench

Advocate: Nitin Mardia, for the Appellant; B. Mani, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Jyothimani, J.

The Writ Petition is filed challenging the impugned notice issued by the 4th respondent dated 28.2.2003 by which the fourth respondent has demanded the water charges as well as surcharge from the petitioner to the extent of Rs.15,150/-. It is not in dispute that pending the Writ Petition, the petitioner has paid the said amount of Rs.15,150/- to the Water Board under protest.

2. The issue raised by the petitioner in this case is that the Shop portion at Door No. 28/6, Strotten Muthia Mudali Street, Chennai 600 079 contained neither water supply

nor sewerage connection and she has applied for the said connection in the said shop portion and paid the amount of Rs. 1846.35/-towards the water and sewerage tax upto 2/2002-2003 together with surcharges of Rs. 783/-.

3. It is the case of the petitioner that in spite of the fact that the petitioner is not drawing water in respect of the shop portion which is in her occupation, the respondent Board has been demanding water charges from 1996 onwards, which according to the petitioner is not liable to be paid by her. In those circumstances, under the impugned notice, the amount of Rs. 15,150/-as a surcharge came to be demanded for the period from 1/1996-1997 to 2/2002-2003 for which the petitioner has raised her objection by way of a letter dated 13.3.2003 and it was out of threat from the respondent Board, the petitioner was compelled to pay the said amount under protest. Now the impugned notice is challenged on the ground that the petitioner is not a consumer as per Regulation 6 of the Chennai Metropolitan Water Supply and Sewerage Service Charges (Levy and Collection) Regulation, 1998 which was framed as per Section 81(2) of the Chennai Metropolitan Water Supply and Sewerage Act, 1978 and also the demand is challenged on the ground that the claim is time barred and arbitrary without prior notice and it is stated that Distress Warrant has been issued for the purpose of recovering the amount. In those circumstances, the notice came to be challenged.

4. Under similar circumstances. when notice was challenged, this Court after analyzing the provisions of Chennai Metropolitan Water Supply and Sewerage Service Charges (Levy and Collection) Regulation 1998 especially with reference to Regulation No. 6 , which defines the term" consumer" held that the shop portion similar to that of the petitioner therein is covered under "Regulation 4", which defines the commercial premises. The commercial consumers are of two types, namely the metered consumers and non-metered consumers and in respect of the non-metered consumers, there has been five types of consumers as contemplated under Regulation. One such type is non-metered commercial consumer, while the other is non-metered commercial intensive consumer. Taking note of the fact that the same shops like that of the petitioner comes under the non-metered consumer category, which comes under the commercial water intensive unit as per the Regulations, this Court has found that levying of surcharge cannot be found fault with especially when the petitioner has been paying a paltry amount of Rs. 200/-as half yearly water charges and held that no motive could be attributed against the Board. In respect of the classification and based on a Division Bench Judgment in Writ Petition No. 498 of 2001 in the judgment dated 20.4.2007, this Court has dismissed the writ Petition in W.P. No. 12712 of 2003 by order dated 16.12.2009.

5. Inasmuch as the fact that the present case is similar to that of the case above cited, which has already been decided by the Court in taking note of the fact that there is absolutely no reason which has been assigned by the petitioner in this writ petition in challenging the surcharge proceedings, in which surcharge was

demanded as per the Regulation, I am of the considered view that the petitioner is not entitled for any relief claimed in the Writ Petition, as there is nothing to interfere with the impugned notice issued by the fourth respondent. The Writ Petition fails and the same is dismissed. No costs.