CASE NO.:
Appeal (civil) 6299 of 1997

PETITIONER:
MUNICIPAL CORPN. OF GREATER BOMBAY & ORS.

Vs.

RESPONDENT:
HINDUSTAN PETROLEUM CORPN. & ANR.

DATE OF JUDGMENT: 23/08/2001

BENCH:
V.N. Khare & B. N. Agrawal

JUDGMENT:

(With C.A. No.6300/97)

J U D G M E N T

V. N. KHARE, J.

Appellant No. 1 is a Municipal Corporation (hereinafter referred to as the Corporation), established and constituted under the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as the Act).

There is a large hilly tract of land in the locality of Chembur in the city of Greater Bombay. On the said land, there is a drain, by which rain water and drainage is carried, enamates from the upper region of the hill and ultimately submerges into the sea. It appears that the said land was acquired by the State Government for setting up industries. As a result of acquisition proceeding under Land Acquisition Act, the land, drain and all easementary right to discharge water in the drain came to be vested in the State free from all encumbrances. It further appears that subsequently the State Government leased out certain portion of the acquired land to the respondents in these two appeals for setting up their industries. Consequently, the respondents have set up their industries on the said land and, admittedly, they are discharging their effluents in the aforesaid drain.

Under the Act, one of the amongst numerous other functions and duties assigned to the Corporation is to construct and maintain municipal drains and underground sewer. Since the respondents herein were discharging their effluents in the drain (nallah), the Corporation served a notice of demand on the respondents herein under Section 170 of the Act read with Rule 4.1 of the Rules for payment of sewerage charges. It appears that there was lot of correspondence between the parties in regard to liability of the respondents to pay the sewerage charges. Ultimately, the respondents filed writ petitions under Article 226 of the Constitution before the High Court of Bombay challenging the demand of sewerage charges by the Corporation. The case of the respondents herein, who were the writ petitioners before the High Court, was that the drain (nallah) neither vests in nor belongs to the Corporation and, therefore, the Corporation is not entitled to levy and realise the sewerage charges. On the other hand, the Corporation sought to justify the levy on the premise that since the Corporation has been assigned the duty to maintain the drains and underground sewer within the limits of Corporation, any drain not owned by the Corporation vests in it and, therefore, is entitled to levy sewerage charges. It was also the case of the Corporation that a municipal underground sewer passes adjoining to the

premises of the respondents herein and, therefore, under Section 231 of the Act, the Corporation is entitled to levy sewerage charges. The High Court was of the view that since the drain (nallah) does not vest in the Corporation and inasmuch as there was no notice in conformity with Section 231 of the Act, and as such the Corporation is not entitled to levy and recover any sewerage charges from the respondents. In that view of the matter, the High Court allowed the writ petitions and issued direction to the Corporation to desist from realising any sewerage charges from the respondents. It is against the said judgment of the High Court, the Corporation has preferred these appeals.

When these appeals were taken up, Mr. K.K. Singhvi, learned counsel, appearing for the Corporation, reiterated the arguments urged before the High Court. His first contention is that since the Corporation has been assigned the duty to maintain drains and sewerage within the limits of the Corporation, the drains belonging to State Government within the limits of the Corporation vest in the Corporation and, therefore, the Corporation is empowered to levy and recover the sewerage charges. Learned counsel in support of his argument relied upon the decision of this Court in the case of Fruit and Vegetable Merchants Union vs. Delhi Improvement Trust - 1957 SCR 1. The contention of Dr. Rajeev Dhawan and Mr. Rafiq Dada, learned senior counsel appearing for the respondents is that since the drain wherein the respondents herein are discharging their effluents does not vest in the Corporation, the Corporation has no power to levy or recover any sewerage charges. On the arguments of learned counsel for the parties, the question arises whether the drain (nallah) owned by the State Government where the respondents herein are discharging effluents vests in the Corporation ?

Section 3(u) defines drain, which runs as under:

drain which includes a sewer, pipe ditch, channel (tunnel) and any other device for carrying off sewage, offensive matter, polluted water, sullage, waste water, rain water or sub-soil water, and any ejectors, compressed air mains, sealed sewage mains and special machinery or apparatus for raising, collecting, expelling or removing sewage or offensive matter to the sewage outfall.

Section 220 provides as under:
Municipal drains to be under the control of the Commissioner. All drains (vesting in or) belonging to the Corporation which in this Act are referred to as municipal drains shall be under the control of the Commissioner.

Section 220A runs as under:

Vesting of water courses. - any natural water course heretofore belonging to (Government) by which rain water or drainage of any kind is carried, may, on application to [the (State) Government] made by the Commissioner with the previous approval of [the Standing Committee], be vested in the Corporation: provided that (a) it shall be in the discretion of [the (State) Government] in each case to determine whether a particular water course so applied for shall be so vested, and (b) a resolution of [the (State) Government] declaring that a water course so applied for may be made over to the Corporation shall, from the date thereof, operate to vest such water course in the Corporation.

It is no doubt true, that Section 220 provides that any drain which vests in the Corporation is a municipal drain and shall be under the control of the Corporation. In this context, the question arises what meaning is required to assign to the word vest occurring in Section 220 of the Act ? In Richardson vs. Robertson (1862) 6 L.T. 75 at p.78, it was observed by Lord Cranworth as under:

.the word vest is a word, at least of ambiguous import. Prima facie vesting in possession is the more natural meaning. The expressions investiture - Clothing and whatever else be the explanation as to the origin of the word, point prima facie rather to the enjoyment than to the obtaining of a right. But I am willing to accede to the argument that was pressed at the bar, that by long usage vesting originally means the having obtained an absolute and indefeasible right, as contra-distinguished from the not having so obtained it. But it cannot be disputed that the word vesting may mean, and often does mean, that which is its primary etymological signification, namely, vesting in possession.

Hinde vs. Charlton (1866-67) C.P. Cases 104 at 116, Wiles, J. while interpreting the word vest occurring in a local Act, held thus:

..vest did not convey a freehold title but only a right in the nature of an easement. there is a whole series of authorities in which words, which in terms vested the freehold in persons appointed to perform some public duties, such as canal companies and boards of health, have been field satisfied by giving to such persons the control over the soil which was necessary to the carrying out the objects of the Act without giving them the freehold.

In Coverdale vs. Charlton (187-79) 4Q.B.D. 104, the Court of Appeal while considering the provisions of Public Health Act, made the observations as under:

What then is the meaning of the word vest in this section ? The legislature might have used the expression transferred or conveyed, but they have used the word vest. The meaning I should like to put upon it is, that the street vests in the local board qua street; not that any soil or any right to the soil or surface vests, but that it vests qua street.

In re Brown (a lunatic) (1895) 2 Ch. 666, it was held that the word vest in Section 134 of the Lunacy Act, 1890 (53 & 54 Vict. C.5), included the right to obtain and deal with; without being actual owner of the lunatics personal estate.

In the case of Finchley Electric Light Company vs. Finchley Urban District Council (1903) 1 Ch. 437, Romer, L.J., while interpreting Section 149 of the Public Health Act (supra), observed as follows:

Now, that section has received by this time an authoritative interpretation by a long series of cases. It was not by that section intended to vest in the urban authority what I may call the full rights

in fee over the street, as if that street was owned by an ordinary owner in fee having the fullest rights both as to the soil below and as to the air above. It is settled that the section in question was only intended to vest in the urban authority so much of the actual soil of the street as might be necessary for the control, protection, and maintenance of the street as a highway for public use.

This Court in Fruit & Vegetable Merchants Union vs. Delhi Improvement Trust (supra), while interpreting Sections 45 to 49 and 54 and 54A of the Improvement Trust Act, held after referring the decision cited above as thus: it would thus appear that the word vest has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation.

Section 16 of the Land Acquisition Act provides that when the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. Here, the vesting in the context of the provision of the Act shows that the right, interests and title of the land holder is extinguished and the right, interests and title vest absolutely in the Government free from all encumbrances.

We are, therefore, of the view that the word vest means vesting in title, vesting in possession or vesting in a limited sense, as indicated in the context in which it is used in a particular provision of the Act.

It appears that when the Act was originally enacted, all the drains which belonged the Corporation were municipal drains under the control of the municipal commissioner. By amending Act 5/1905, the words [vesting in or ] were inserted in Section 220 of the Act. Simultaneously, by the said amending Act, Section 220A was added in the Act which provides the method of vesting of the Government drains in the Corporation. The legislative history of the Act shows that the expressions vesting in or belonging occurring in Section 220 of the Act are not synonyms. In fact said expressions convey two different meanings. What is vested in the Corporation necessarily may not be owned by the Corporation. Further vesting of Government water channel or drain in the Corporation as contemplated under Section 220A of the Act also have different effects and consequences. The word made-over occurring in proviso to Section 220A is very significant. The meaning of the word made-over is to transfer the title in or possession of the property. Thus the water channel or drain belonging to the State Government after complying the procedure provided under Section 220A either can vest in the Corporation for the management or the same can vest in the Corporation after the State Government transfers its right or possession in the water channel or drain to the Corporation. In any case unless the procedure provided under Section 220A is complied with the water channel or drain belonging to the State Government would never vest in the Corporation.

For the aforesaid reasons we hold that merely because the Corporation is entrusted with the duty to maintain water channel and drain and, therefore, the water channel and drain belonging to the Government vest in it is not correct. Vesting in the Corporation of water channel and drain belonging to the State Government can only take place in the manner provided under Section 220A of the Act. We accordingly reject the arguments of learned counsel for the appellants.

Now, the question arises whether the State Government had transferred the said drains to the Corporation as contemplated under Section 220A of the

Act. Admittedly, the land along with the nallah was acquired b by the State Government under the Land Acquisition Act. Under Section 16 of the Act, the right, interests and title of the land holder in the land including the easementary right, if any, to discharge the water in the drain, stood extinguished and such right came to be vested in the State Government.

After vesting, the State Government, admittedly, has neither vested in nor transferred its right in the drain to the Corporation, as contemplated under Section 220A of the Act. Unless such vesting in or transfer takes place, as provided under Section 220A, the drain belonging to the State Government would not vest in the Corporation under Section 220 of the Act. We are, therefore, of the view that the drain which admittedly belongs to the State Government in which the respondents are discharging their effluents does not vest in the Corporation and, in that view of the matter, the appellant Corporation is not entitled to levy or realise any sewerage charges from the respondents. It goes without saying that as and when the State Government vests or transfers the said drains in favour of the Corporation as contemplated under Section 220A of the Act, the appellant would be entitle to levy and realise the sewerage charges from the respondents.

It was next contended by learned counsel for the appellant that since an underground sewer passes within the radius of 100 feet from the land of the respondents, and as such the Corporation is entitle to levy and recover sewerage charges under Section 231 of the Act. The High Court has taken the view that no notice as required under Section 231 of the Act has been given by the Corporation to the respondents and, therefore, the question that the Corporation is entitled to levy and recover the dues towards the sewerage charges under Section 231 does not arise. We have gone through the records and find that during the course of correspondence with the respondents in C.A. No.6299/97, the Corporation sought to justify the levy under Section 231 of the Act. Such a justification for levy during the course of correspondence cannot be a substitute of the notice as contemplated under Section 231 of the Act. In absence of such a notice, it was not open to the Corporation to demand any sewerage charges from the respondents in C.A. No. 6299/97. Admittedly, no notice at all under Section 231 of the Act was given to the respondents in C.A. No. 6300/97 and, therefore, the question of recovery of sewerage charges does not arise. We, therefore, reject the argument of the learned counsel. However, it would be open to the appellants to proceed under Section 231 of the Act against the respondents, in accordance with law.

For the aforesaid reasons, we do not find any merit in these appeals and the same are accordingly dismissed with costs, which we assess at Rs.2,000/- and the same shall equally be received by both the respondents.

..J.
(V. N. Khare)

..J.
(B. N. Agrawal)

August 23, 2001.