

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 1 OF 2021

In the matter of new connection

Mohammad Iqbal Mohammad Yusuf Sarosh.....Appellant No. 1

Pravin Bagayatkar.....Appellant No. 2

V/s.

Adani Electricity Mumbai Limited (AEML)..... Respondent No. 1

Rajkumar Kapilprasad Yadav..... Respondent No. 2

Appearances :

Appellant No. 1 : }
Appellant No. 2 : } Pravin Bagayatkar

Respondent No. 1 : Mritunjay Jha, Dy.G.M (Legal) & Nodal Officer

Respondent No. 2 : None

Coram: Deepak Lad

Date of hearing: 7th April 2021

Date of Order: 27th April 2021

ORDER

This Representation is filed on 18th January 2021 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 220) against the Order dated 20th November 2020 passed by the Consumer Grievance Redressal Forum, Adani Electricity Mumbai Limited (the Forum).


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2. The Forum has issued the order in Case No. 01/2020 on 20.11.2020. The operative part of the order is as below: -

“1. The Respondent No.1 (Utility Company) is directed to supply new electricity connection to the Complainant’s flour mill located in the shop admeasuring 150 sq.ft situated at Baimabai Shaikh Ibrahim Chawl, Plot No 40-39. Bandongari, Pushpa Park, Malad (East), Mumbai 400 097 on payment of requisite charges.

2. If the said charges are already been paid then the same shall be adjusted towards the requisite charges.

3. The Complainant is directed to submit fresh Test Report to Respondent No.1 from safety point of view to enable the Respondent No. 1 for taking further action.

4. The claim for compensation by Complainant stands rejected.

5. The application dated 16/10/2020 filed by intervener Nos. 1 & 2 (Respondent Nos. 2 & 3) praying to dismiss the grievance / complaint stands rejected.”

3. Aggrieved by the order of the Forum, the Appellants No. 1 and 2 (Interveners and Respondent 2 and 3 in the Forum) have filed this representation stating in brief as under: -

- (i) The Appellant No. 1, Mohammed Iqbal Mohammed Yusuf Sarosh is having single phase electricity connection (Account No.152773801) at his premises at Plot No.40, Road No. 3, Pushpa Park, behind Ration Office, Malad (East), Mumbai, Pin. 400 097. The said premises is sold to Mr. Pravin Bagayatkar who is the Appellant No. 2 in this representation.
- (ii) The grievance was submitted to the Forum by Mohammed Iqbal Mohammed Yusuf Sarosh as Intervener No.1 dated 16.10.2020 along with Mr. Pravin Bagayatkar as the Intervener No.2 to whom the suit premises is sold.
- (iii) The Respondent No.2 (Rajkumar Kapilprasad Yadav who is Complainant to the Forum) is the trespasser being in illegal occupation of the suit premises under reference. In fact, one Mr. Ramabhilakh Shriram Yadav and second Mr.Ramdular Shriram Yadav were tenants of Appellant No.1 in respect of the suit premises and the Respondent No.2 have alleged that he has been put into the occupation by the said tenant.


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- (iv) After perusing the complaint and the rejoinder filed by the Respondent No.2 and also after perusing the documents annexed thereto particularly the Deed of Assignment dated 19.03.2018 executed by the earlier tenant Mr.Ramabhilakh Shriram Yadav and Mr.Ramdular Shriram Yadav in the favor of the Respondent No.2 is not tenable under any Law. The earlier tenant Mr.Ramabhilakh Shriram Yadav and Mr.Ramdular Shriram Yadav never approached Appellant No.1 for obtaining his permission to transfer the tenancy in the favor of third party and hence the earlier tenant Mr.Ramabhilakh Shriram Yadav and Mr.Ramdular Shriram Yadav has committed the Breach of Contract and therefore the said tenancy have automatically been terminated by the effect of law and thus the Respondent No.2 having no locus standi to remain in the occupation and is being occupied illegally as a trespasser.
- (v) The deed of Assignment submitted by the Respondent No.2 in his representation dated 21.08.2020 is not to the point and the property card mentioned by him is regarding different premises and the name on the property card of the concerned property is Mohammed Iqbal Mohammed Yusuf Sarosh.
- (vi) The Respondent No.2 seems to have made false and bogus representation by distorting the facts filed by him to the Forum.
- (vii) Under the backdrop mentioned, it is precisely clear that the Respondent No.2 is attempting to grab the suit premises belonging to the Appellant No.1 on the false ground and has not approached the Forum with clean hands as he has concealed the facts and trying to mislead the Forum.
- (viii) The Appellants No.1 and 2 don't seek any monetary relief and request you to give justice and take some legal action against Respondent No.2.
- (ix) The Respondent No.2 has approached the Forum for redressal and filed the complaint against Respondent No.1 as consumer, but the fact is he, himself is not the consumer to ask any relief to the concerned Authority.
- (x) The Appellants No. 1 and 2 humbly prays for:
- (a) Immediate stay on the suit premises.
- (b) Not to allow the prayers raised by the Respondent No.2 in these prayers as he is a trespasser and doesn't hold a legal title of the suit premises.


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4. The Respondent No. 1 has filed its reply vide email dated 17.02.2021 stating in brief as under: -

(i) The Appellants No. 1 and 2 have filed this representation against the order dated 20.11.2020 of the Forum filed by Mr. Rajkumar Kapilprasad Yadav (Complainant in Forum) for new connection at commercial premises i.e. Shop admeasuring 150 Sq. ft. The Respondent No.1 craves leave to project certain “preliminary submission” in the following paragraphs, for canvassing the legal and correct context, necessary for proper adjudication by this Hon’ble Authority.

(ii) Preliminary Submissions: -

At the outset, the Respondent No.1 submits that the Regulation 19 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 provides that any Complainant who is aggrieved by the non-redressal of his Grievance by the Forum may make a representation before the Electricity Ombudsman. The Regulation 19.1 reads as under:

“19.1 Any Complainant, who is aggrieved by the non-redressal of his Grievance by the Forum, may, either directly or through his duly Authorised representative, make a representation for redressal of his Grievance to the Electricity Ombudsman within sixty (60) days from the date of the Order of the Forum.....”

The word “Complainant” has been defined under Regulation 2(1)(c) of the CGRF Regulations 2006. The definition is as under:

“2(1)(c). “Complainant” -Complainant any Consumer as defined in Section 2 (15) of the Act and includes prospective Consumer, who files the Complaint or Grievance or Representation against the Distribution Licensee;”


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The word “Consumer” is defined under Section 2(15) of the Electricity Act, 2003 is as under:

“ ‘consumer’ means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be.”

In view of the above provisions /definitions and facts of the Grievance, the present Appellants are not covered in the ambit of Complainant and therefore, they are not entitled to file the present Representation before this Hon’ble Authority and therefore it is humbly submitted that the present Representation deserves to be rejected.

- (iii) That, the following submissions are imperative for the proper adjudication of the captioned Representation, and the same may be read in conjunction with the foregoing preliminary submissions, wherever the context so requires.
- (iv) The Respondent No.2. (Complainant in the Forum) applied for new electric connection on 24.04.2019 for Flour Mill situated at Sai Flour Mill, Baimabai Shaikh Ibrahim Chawl, Plot no 40-39, Bandongari Pushpa Park, Malad East, Behind Classic Hotel, Mumbai 400097. Accordingly, site verification was conducted by the Respondent on 26.04.2019. It was observed that to provide electric connection for flour mill there is a requirement of laying of new 3 Phase cable from LT Pillar on main road. Further, there is a requirement of Way leave to lay cable. Relying upon the documents submitted by the Respondent No.2 and based upon the observations at site on 26.04.2019 estimate for New 3 phase service was raised by the Respondent No.1, and the same was paid by Respondent No.2 on 13.05.2019.


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- (v) To provide electric supply to the Respondent No. 2, there was requirement of excavation works for laying of cable on Municipal Corporation of Greater Mumbai (MCGM) road as well as on the private land. The Respondent No.1 paid the requisite ROW charges with the MCGM. However, the MCGM did not grant permission to excavate during monsoon period, therefore, under the intimation to the Complainant the Service department kept the execution work on hold till monsoon ends.
- (vi) That on 16.10.2019 the Respondent No.1 received excavation permission from MCGM. Accordingly, on 17.10.2019, the Respondent No.1 deputed its personnel to carry out the excavation works on MCGM road as well as on private land of cable route. At the time of carrying out the excavation works; the Appellant No.2 claimed to be the owner of the private land and took strong objections for excavation and created obstructions at site, further he did not allow the personnel of Respondent No..1 to carry out the excavation works.
- (vii) Subsequently, the Respondent No.2 filed grievance on 30.01.2020 before Internal Grievance Redressal Cell (IGRC). The IGRC vide its order dated 17.07.2020 directed that proper ownership documents needs to be submitted to release the supply at the concerned premises which should be amply for doing business and not for ownership.
- (viii) Thereafter, Respondent No.2 approached the Forum on 28.09.2020. The Forum perused documents on records and heard detail submissions made by the parties and inter alia observed as under: -

“ I Para no. 22.

At the outset, this Forum would like to mention that this Forum cannot decide the title or ownership of the properties in dispute. This Forum would like to mention here that this Forum has to decide whether Complainant make out the case to seek electric new connection. As there are voluminous documents produced by the parties on the


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record, the Forum has to look into it and as stated above this Forum cannot decide the title or the ownership of property in dispute.

II Para No. 45.

After giving our anxious thoughts to the documents on record and to the arguments advanced by the respective parties, we are of the opinion that the Complainant appears to be in possession of the flour mill and the business and also the premises on which the flour mill is standing. For the sake of repetition, this Forum has no jurisdiction to deal the issue regarding the ownership of the property. We have to see whether Complainant is entitled or not, to get electric supply. The question of the tenancy, trespassing as alleged by Respondent Nos 2 & 3 is out of the scope of this Forum. This Forum does not have the jurisdiction to decide the said issues.”

Further, the Forum directed the Respondent to supply new electricity connection to the Respondent No. 2 /Complainant’s flour mill located in the shop admeasuring 150 Sq.ft. situated at Baimabai Shaikh Ibrahim Chawl, Plot No.40-39, Bandongari, Pushpa Park, Malad (East), Mumbai 400097, on payment of requisite charges.

- (ix) As per the direction of the Forum, the Respondent No. 1 again applied on 24.12.2020 to MCGM for their permission for laying cable which was permitted. The Respondent No. 1 deputed their personnel to carry out the works of excavation, however at the time of excavation on private land the Respondent No. 1 again faced obstructions from the adjacent landowners and residents. Thereafter, a legal Notice dated 26.12.2020 from Advocate Ms. Madhuri R. Raibagkar on behalf of her client Western India Construction inter alia objecting for laying cable on- through their land was served upon the Respondent No.1. However, there was objection at site for laying cable in the private land. The Respondent No.1 again arranged the work on site on 01.02.2021 with proper Police Protection on site. However, there was strong objection at site for laying the cable on the private land. Further, one M/s. Samarth Erectors & Developers took objection. It was apprised to them about the implementation of the order


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of the Forum and requested to provide access to lay cable on and through his land. Accordingly, it was agreed and as per N.O.C dated 05.02.2021, Respondent No.1 scheduled service job on 08.02.2021 and accordingly the meter got installed.

- (x) The differences / disputes, if any, between the Appellants and the Respondent No. 2 related to occupation of the premises is civil in nature and therefore it humbly submitted that same may be decided by the Competent Court based upon the testimony of their submissions. Further, the electric supply is a basic amenity and name on the electric bill does not create any right to the title of ownership of the premises.
- (xi) In view of the above-mentioned facts and circumstances, the Respondent prays that the Representation of the Appellants be dismissed.

5. Notice was issued to Respondent No. 1 as well as to the Respondent No.2 along with telephonic message, but the Respondent No. 2 did not submit his statement of defense.

6. The Appellant No. 2 send an email on 08.02.2021 taking objection against the action of Respondent No.1 in digging at the disputed site for laying of 3 phase cable to provide electricity supply to his so-called trespasser, the Respondent No.2, when the present representation was yet to be heard.

7. The hearing was held on 07.04.2021 on e-platform through video conferencing due to the Covid-19 epidemic with the consent of the parties.

8. The Appellant No. 2 also argued on behalf of Appellant No. 1 stating that the Respondent No. 1 has made contempt of court and gave electricity connection to Respondent No. 2 despite the representation being filed against the Forum's order and before it being heard. The Respondent No. 2 is also an illegal occupier of the premises by way of tenancy rights being transferred from one tenant to another without the knowledge of the actual owner. The earlier tenant Mr. Ramabhilakh Shriram Yadav and Mr. Ramdular Shriram Yadav never approached Appellant No.1 for obtaining his permission to transfer the tenancy in the favor of third party


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and hence the earlier tenant Mr. Ramabhilakh Shriram Yadav and Mr. Ramdular Shriram Yadav has committed the Breach of Contract and therefore the said tenancy have automatically been terminated by the effect of law and thus the Respondent No.2 has no locus standi to remain in the occupation and is being occupied illegally as a trespasser. The said premises / property is in the name of Appellant No. 1. The Appellant No. 2 argued that the Respondent No. 2 has given all bogus papers including his permit card for flour mill which is of the year 2018. The said flour mill is at the premises of Appellant No. 1. The tenancy rights changes when the flour mill changes. The flour mill is not in existence, is demolished by BMC.

9. The Respondent No. 1 reiterated its arguments in line with its submission. In the first place, the filing of the present representation by the Appellants before the concerned Authority is not maintainable and is liable to be rejected. It is only on the application of the Respondent No. 1 that the Appellants in the instant case were made parties before the Forum. The Forum also disposed of the case stating the title / ownership of the premises is not in its jurisdiction which is a civil matter to be placed before the appropriate authority. Giving electricity supply to the occupier of the premises does not establish the right of the occupier to the title / ownership. Hence, prays to reject the representation being non maintainable.

Analysis and Ruling

10. Heard the parties and perused the documents on record. It is observed that the present representation is filed by those parties who were primarily the Interveners and allowed as the Respondent No. 2 and 3(Obstructionists) before the Forum. These Interveners / Respondent 2 and 3(Obstructionists) at the Forum are now the Appellants in the instant representation.

11. These two Obstructionists / Appellants claim themselves as the landowners / owners of the said premises. However, the Respondent No. 2 (Rajkumar Yadav) in the instant Representation is the illegal occupier of the suit premises as alleged by the Appellants who objected for release of connection to the Respondent No. 2 (Rajkumar Yadav).

12. According to the submission of the Respondent No.2 (Rajkumar Kapilprasad Yadav) on record, the chain of transfer of Title of the said shop of having area of 150 square feet is as below: -


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- (a) Mohamed Iqbal Shaikh was the original owner who has sold this property by registered Deed of Assignment/Power of Attorney
- (b) to Manbasadevi Ramnath Singh & Jairajdevi Parasnath Singh dated 27.09.1985
- (c) to Ramdatta J. Mishra dated 05.04.1989
- (d) to Haridas Bikanoo Yadav dated 31.08.1989
- (e) to Sobnath Budhiram Yadav & Others dated 26.09.1990
- (f) to Rajkumar Pritamchand Jaiswarr dated 05.01.1995
- (g) to Rambilakh Shriram Yadav & Ramdular Shriram Yadav dated 05.07.1995
- (h) and lastly to the Respondent No.2 (Rajkumar Kapilprasad Yadav) dated 19.03.2018.

The said shop is acquired and in possession of the Respondent No.2 from 19.03.2018. The Respondent No. 2 applied permission for running of Flour Mill and MCGM Authority has issued the permission for the same.

13. The dispute raised by the Appellants in the instant representation is that the transfer of Title of the suit premises from Sr. No. (g) Rambilakh Shriram Yadav & Ramdular Shriram Yadav dated 05.07.1995 to Sr. No. (h) Respondent No.2 (Rajkumar Kapilprasad Yadav) dated 19.03.2018 is illegal and hence not entitled for release of electricity connection.

14. The dispute therefore primarily appears to be of civil nature to the extent of declaring the transfer as mentioned at Para 13 above is illegal. That being the case, the learned Forum has taken an appropriate call and adjudicated the case judiciously. It has appropriately recorded its observation in Paras 22, 45,46 & 47 of its order dated 20.11.2020 which is reproduced below:

Paras 22 *“At the outset, this Forum would like to mention that this Forum cannot decide the title or ownership of the properties in dispute. This Forum would like to mention here that this Forum has to decide whether Complainant make out the case to seek electric new connection. As there are voluminous documents produced by the parties on the record, the Forum has to look into it and as stated above this Forum cannot decide the title or the ownership of property in dispute.”*


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Para 45 “After giving our anxious thoughts to the documents on record and also to the arguments advanced by the respective parties, we are of the opinion that the Complainant appears to be in possession of the flour mill and the business and also the premises on which the flour mill is standing. For the sake of repetition, this Forum has no jurisdiction to deal the issue regarding the ownership of the property. We have to see whether Complainant is entitled or not, to get electric supply. The question of the tenancy, trespassing as alleged by Respondent Nos 2 & 3 is out of the scope of this Forum. This Forum does not have the jurisdiction to decide the said issues.”

Para 46 “On behalf of the Complainant, reliance is placed on the judgment of Himachal Pradesh High Court, Madanlal V/s. State of Himachal Pradesh and Others CWP No.2454 of 2018 (Date of Decision 22/10/2018). In this case, the petitioner constructed the residential house on Government land. Ejectment proceedings were initiated. The petitioner had also applied for electricity and water connection which was rejected. It appears that the title dispute was remanded to the Assistant Collector, Nahan. Before the Hon’ble High Court of Himachal Pradesh, the questioned arised whether the petitioner was entitled for getting electricity and water connection as an interim measure. The Hon’ble High Court observed that water and electricity are the basic necessities of human beings and can well be termed as essentials of the Human Rights. The Hon’ble High Court observed that in the title dispute, owing to the prescription to the right to appeal under the statute remains pending for considerable long period, we see no reason to deny the petitioner’s family the basic amenities of water and electricity subject to their payment of requisite charges. It goes without saying that in the event of petitioner having failed to prove his rights to retain the possession, both facilities will also go along with the residential house. So, relying on above authority, it is submitted on behalf of the Complainant that the Complainant is a lawful purchaser of the flour mill and the business, goodwill and he is in possession of the premises beneath the flour mill. **Till today, no suit is filed by the Respondent Nos 2 & 3 about the alleged trespassing and also about the tenancy issue as alleged by them.** In view of Section 43 of Electricity Act 2003, the owner or occupier of any premises is entitled to get supply of electricity to such premises. The word ‘Occupier’ is defined in Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations 2005 as it means the person in occupation of the premises where energy is used or processed to be used.”

(Emphasis added)

Para 47 “So we are of the opinion that Complainant has established his case to get electric connection for his flour mill business at Baimabai Shaikh Ibrahim


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Chawl, Plot 40-39, Bandongri, Pushpa Park, Malad (East), Mumbai 400097, being occupier of the said flour mill, its business and the premises beneath the flour mill.”

15. I concur with the findings of the Learned Forum as the representation is solely based on deciding the title and ownership of the property which does not come under the purview of the undersigned. Hence, the undersigned is not an appropriate authority for adjudication of such disputes which is the main issue in the case. The case, therefore, needs to be thoroughly investigated and adjudicated by the appropriate authority. The Appellants in the instant representation are free to get their disputes resolved at the appropriate Forum.

16. The Respondent No. 1, the Distribution Licensee, in its submission and during the hearing, stated that the Appellants 1 and 2 in the instant representation were Intervenors / Obstructionists/ Respondents at the Forum. In view of Regulation 17.2 of the CGRF Regulations 2006, the Appellant / Petitioner who filed the grievance at the Forum is only entitled to file the representation in the event of him not satisfied with the order of the Forum. The said Regulation is quoted below: -

“17. Proceedings before the Electricity Ombudsman

17.2 Any consumer, who is aggrieved by the non-redressal of his Grievance by the Forum, may make a representation for redressal of his Grievance to the Electricity Ombudsman within sixty (60) days from the date of the order of the Forum. Provided that the Electricity Ombudsman may entertain a representation after the expiry of the said period of sixty (60) days if he is satisfied that there was sufficient cause for not filing it within the said period.”

17. In view of Regulation 17.2, the instant representation is not maintainable before the undersigned and therefore disposed of accordingly.

Sd/-
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Electricity Ombudsman (Mumbai)


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