

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 156 OF 2022
In the matter of release of new connection

Digitech Electronic Systems Pvt. Ltd..... Appellant

V/s.

Brihanmumbai Electric Supply & Transport Undertaking..... Respondent No.1
'D' Ward (BEST Undertaking)

Ashok Mehta..... Respondent No. 2

Vinod Bhagat..... Respondent No. 3

Appearances:

Appellant : Minesh Shah, Director, Digitech Electronic Systems Pvt. Ltd.

Respondent 1: 1. S. N. Inchanalkar, Divisional Engineer, BEST Undertaking
2. P. P. Kulkarni, Superintendent

Respondent 2: 1. Radhika Mehta, Representative of Ashok Mehta
2. Sourabh Malhotra

Respondent 3: Nitin Mamania, Representative of Vinod Bhagat


Coram: Vandana Krishna [(I.A.S. (Retd.))]

Date of hearing: 18th November 2022

Date of Order : 5th January 2023

ORDER

This Representation was filed on 21st October 2022 as per the direction by Order dated 18th October 2022 passed by the Hon'ble High Court, Bombay in Writ Petition (W.P.) No.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




2. The Hon'ble High Court, Bombay has observed in the said order as below: -

"2. The impugned order itself says that Petitioner has remedy before the Ombudsman. In the light of that, the Petitioner may approach the Electricity Ombudsman. The Respondent Nos.1, 2 and 3 are represented by their respective Advocate. The learned Counsel for the Petitioner submits that Petitioner would file complaint on 20th October 2022. On the said date Respondent Nos. 1,2 and 3 shall also remain present before the Electricity Ombudsman if they so desire. The Electricity Ombudsman shall endeavour to decide the proceedings filed by the Petitioner as expeditiously as possible."

3. As directed by the Hon'ble High Court, Bombay, the Appellant has filed the present Representation on 21.10.2022. The physical hearing was held on 18.11.2022. Its submission and arguments are stated as under: -


- (i) The Appellant had purchased the said premise i.e., Shop No. 3, ground floor, Parekh Building, Mama Parmanand Marg, Opera House, Charni Road, Mumbai 400 004 vide a Registered Agreement for Sale dated 16th July 2021 from one Mr. Sahil Tarunkumar Shah and Mr. Akash Tarunkumar Shah for a consideration of Rs.4,44,00,000/- (Rupees Four Crores and Forty-Four Lakhs only) for commercial purpose.
- (ii) At the time of the purchase of the said premise, the Appellant was informed about the past transactions of the said premise which are as below:
 - a) Ashok Mehta was the original Landlord of the building i.e., Parekh building wherein the said premise is situated.
 - b) In the year 1983, the said premise was acquired by Vinod Bhagat from Ashok Mehta on tenancy basis.
 - c) However, as the said building was in a dilapidated condition and required heavy repairs and reconstruction work, in the year 1987, one M/s. Nahalchand Laloochand Pvt. Ltd., one of the tenants of Ashok Mehta in the said Parekh Building, approached Ashok Mehta with a proposal to redevelop


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



the said building and thereafter, upon payment of Rs.34,00,000/- (Rupees Thirty Four Lakhs only) by the said Nahalchand Laloochand Pvt. Ltd. to Ashok Mehta, the tenants of the said Parekh Building including Respondent No. 3 (Vinod Bhagat) shall become absolute owners of their respective premises situated in the said Parekh Building. [Note: These facts are being disputed as false by Respondent No.2 (Ashok Mehta), as discussed later.]


- d) Accordingly, in the year 1991, the work of redevelopment was completed and the tenants of the building including Respondent No.3 (Vinod Bhagat) became the owner of their respective premises situated in the said building.
- e) Thereafter, on 1st December 1992, Respondent No.3 (Vinod Bhagat) and one Vatsa Corporation Ltd. (formerly known as Vatsa Finance Ltd.), executed a Leave and License Agreement whereunder, the possession of the said premise was handed over to the said Vatsa Corporation Ltd. on temporary basis for a period of 9 years and 11 months and monthly license fees of Rs.45,000/-.
- f) However, on 4th July 1994, vide an agreement of the said date executed before the Special Metropolitan Magistrate, Bombay, Respondent No. 3 (Vinod Bhagat) sold its right, title, and interest on the said premise to the said Vatsa Corporation Ltd. for a consideration i.e., 2,20,000 equity shares of the said Vatsa Corporation Ltd. having face value of Rs. 10/- each aggregating to Rs. 22,00,000/- (Rupees Twenty-Two Lakhs only). Accordingly, Vatsa Corporation became the absolute owner of the said premise.
- g) Thereafter, on 30th December 2020, vide a Registered Deed of Sale and Transfer, the said Vatsa Corporation Ltd. sold its right, title, and interest on the said property to the said Mr. Sahil Tarunkumar Shah and Mr. Akash Tarunkumar Shah who in turn as aforesaid sold the same to the Appellant on 16th July 2021.
- (iii) During the hearing, the Respondents pointed out that there are two Income Tax attachment orders, dated 1998 and 2012 against the said property, forbidding its sale. The Appellant was silent on this issue. The Appellant on the basis of the


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



aforesaid representations made by the said Mr. Sahil Tarunkumar Shah and Mr. Akash Tarunkumar Shah, agreed to purchase the said premise for a consideration of Rs.4,44,00,000/- (Rupees Four Crores and Forty-Four Lakhs Only).


- (iv) Pursuant to the aforesaid purchase of the said premise, the Appellant vide an application bearing No.492469 dated 23rd November 2021 along with all the relevant documents, requested the distribution licensee, the Respondent No. 1 to provide electricity connection in the said premise.
- (v) However, Respondent No.2 (Ashok Mehta) and Respondent No. 3 (Vinod Bhagat), raised objections with respect to the said application for a new electricity connection. The application and the objections were sent to the Legal Department of the Respondent No.1 seeking legal opinion on the said application.
- (vi) On 8th February 2022, the representative of the Respondent No.1, orally, requested the Appellant to once again furnish all the documents. The Appellant, on 9th February 2022, resubmitted the documents requested by the Respondent No. 1.
- (vii) On 15th February 2022, after considering the objections of the Respondent No. 2 & 3, the Respondent No. 1 approved the Application for new meterconnection of electricity. On 16th February 2022, the Appellant paid the requisite fees and Security Deposit as directed by the Respondent No.1.
- (viii) The Legal Department of the Respondent No.1, pursuant to the objection of Respondent No.2 (Ashok Mehta) claiming to be the Landlord of the said Parekh building and Respondent No.3 (Vinod Bhagat) claiming to be the Tenant of the said premise, inter alia, opined that as per Section 29 of the Maharashtra Rent Control Act, 1999, landlord cannot cut off or withhold essential supply or service and directed the concerned officers of BEST Undertaking to process his application. However, it is not clear if the issue of the two Income Tax attachments was considered by the Legal Department while giving its opinion.
- (ix) Thereafter, on the same day i.e., on 16th February 2022, the representatives of Respondent No.1 visited the said Parekh Building to install the new electric meter for supply of electricity. However, as the Respondent No.2 did not cooperate with the representatives of the Respondent No.1 and as the keys of the meter room were


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




not handed over by the Respondent No.2, the representatives of the Respondent No.1 were constrained to leave the said Parekh building without installing the said meter.

- (x) Therefore, on 17th February 2022, the Appellant requested the Respondent No.1 to seek Police protection for the purpose of installation of the new electric meter with respect to the said premise.
- (xi) Accordingly, on 18th February 2022, the Respondent No.1 addressed a letter of the said date in Marathi to the Sr. Inspector of D. B. Marg Police station seeking Police protection for installation of the said meter in the said Parekh building with respect to the said premise.
- (xii) On or about 25th April 2022, the police protection was granted and accordingly, on 26th April 2022, the Respondent No.1 with the help of the Police protection, installed the new meter connection for electricity with respect to the said premise.
- (xiii) On the same day i.e., on 26th April 2022, the Respondent No.3, on several occasions threatened to kill the Appellant. Therefore, as precaution, on 26th April 2022, the Appellant, filed an NC with the Senior Inspector, D. B. Marg Police Station.
- (xiv) Shockingly, on 29th April 2022 at around 5.22 pm, it witnessed a sudden blackout in the said premise, while electricity of the other premises of the said Parekh building were operational. Nonetheless, upon checking the CCTV footage, which was installed by the Appellant, it was learnt that the Respondent No.2 with the help of a few other unknown persons had stolen or removed the newly installed electric meter of said premise from the electric meter room, resulting in the aforesaid sudden blackout.
- (xv) Considering the said action of the Respondent No.2 as theft, on the same date i.e., 29th April 2022, the Appellant filed a complaint with the local police station against the Respondent No.2 and further intimated the Respondent No.1 about the same.
- (xvi) However, on 2nd May 2022, the officers of the said local police station informed the Appellant that the said electric meter was in fact removed by the representatives of the BEST Undertaking and was not an act of theft by the Respondent No.2.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




- (xvii) Therefore, the Appellant visited the office of Respondent No.1, D-Ward, to enquire about the said illegal action committed by its representative in collusion with Respondent No.2 by removing the newly installed electric meter without any prior intimation/notice.
- (xviii) Upon arriving at the office of Respondent No.1, the Appellant initially met one Mr. Chandankar (one of the representatives of Respondent No.1) who requested to meet Mr. Urunkar (Assistant General Manager of Respondent No.1). The said Mr. Urunkar further informed that the said action of removal of electric meter, conducted by its representatives was pursuant to the oral directives of Mr. Lokesh Chandra (General Manager of Respondent No.1) and therefore, requested to directly meet the General Manager.
- (xix) As the Appellant did not receive any concrete answer/reason of illegal removal of the said electric meter with respect to the said premise, the Appellant, vide letter dated 4th May 2022 addressed to one Mr. S. Deshmukh, representative of Respondent No.1 requested to immediately install back the electric meter.
- (xx) On the same day i.e., 5th May 2022, in order to resolve the said issue immediately, the Appellant attempted to meet the General Manager. However, his personal assistant requested to meet one Mr. Dhikle to seek clarity with respect to the aforesaid action on the part of the Respondent No.1.
- (xxi) The Appellant states that the said Mr. Dhikle informed that the aforesaid action was in fact a mistake on their part and therefore, the Appellant was once again requested to meet the General Manager.
- (xxii) After running from pillar to post, the Appellant finally met the General Manager. However, the said General Manager did not entertain and directed to simply submit a letter recording his grievances and further informed the Appellant that the Appellant shall receive a reply to the said letter dealing with its grievances.
- (xxiii) On 9th May 2022, the said Mr. Deshmukh (representative of Respondent No.1) replied to the aforesaid letter dated 4th May 2022 of the Appellant. In the said reply, Mr. Deshmukh reiterated the facts and circumstances as already mentioned above, and further informed that the Respondent No.2 vide his letter dated 29th April 2022


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



took objection for installation of the electric meter on the ground that the said sale transaction was fraudulent. Based on the said objection dated 29th April 2022, the higher authorities of Respondent No.1 instructed/ ordered removal of the said electric meter.

- (xxiv) On a bare perusal of the aforesaid reply dated 9th May 2022, it is crystal clear that the authorities of the Respondent No.1 in collusion with the Respondent No.2 have illegally removed the electric meter of the premise owned by the Appellant and deprived him from the electric connection which is an essential commodity.
- (xxv) The Respondent No.1 in one breath states that the electric meter connection was sanctioned as per the legal advice from its Legal Department who also dealt with the objections raised by Respondent No.2 and 3, and in the other breath states that the said electric meter was removed on the basis of instructions of the higher authority pursuant to the objections raised by Respondent No.2.
- (xxvi) Therefore, the Appellant, on 9th May 2022, filed a grievance before the Forum requesting it to take immediate action and initiate necessary legal enquiry against the culprits.
- (xxvii) The Respondent No.1, 2 and 3 filed their respective replies before the said Forum objecting to the grievance filed by the Appellant.
- (xxviii) However, said Forum vide its order dated 4th July 2022 without appreciating the settled law of the land, dismissed the grievance of the Appellant on the grounds that he is not the legal owner of the said premise and therefore, not entitled for restoration of the electric connection in the said premise.
- (xxix) The aforesaid decision passed by the said Forum is in direct violation of the fundamental rights and particularly Article 14, 19 (1) (g) and Article 21 of the Constitution of India.
- (xxx) As per Section 43 of the Electricity Act, 2003, the distribution licensee has to see whether the premise is occupied by the Applicant or not and is not required to go into the ownership dispute of the premise.
- (xxxi) Therefore, the objection raised by the Respondent No. 2 and 3 cannot be considered, and on the basis of such frivolous objections, meter could not have


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




been removed by the Respondent No.1, when in fact its Legal Department themselves gave an opinion to install the meter.

- (xxxii) Assuming but not admitting that the landlord of the said Parekh Building is Respondent No.2, as per the provisions of the Maharashtra Rent Control Act and particularly Section 29 thereof, the landlord of any premises cannot object towards supply of basic amenities such as electricity.
- (xxxiii) Being aggrieved by the action/ inaction on the part of Respondent No. 1 and the aforesaid decision dated 4th July 2022 passed by the said Forum dismissing its grievance, the Appellant challenged the same before the Hon'ble Bombay High Court. However, the Hon'ble Bombay High Court, vide its order dated 18th October 2022, directed the Appellant to exhaust the alternate remedy and to approach the present Electricity Ombudsman.
- (xxxiv) It is therefore prayed that the Respondent No.1 be directed to forthwith install the electric meter in the said premise i.e., Shop No. 3, Parekh Building, ground floor, Mama Parmanand Marg, Opera House, Charni Road, Mumbai 400 004.

4. The Respondent No.1 (BEST Undertaking) has filed its reply dated 03.11.2022. Its submission and arguments in hearing in brief is as under:


- (i) Initially on 29.06.2019, Vatsa Corporation Ltd. had submitted application No. 409586 for new connection of electricity to the premises at shop no.3, located on ground floor of the building known as "Parekh Building" situated at Plot No. 18-A, Mama Parmanand Marg, Opera House, Mumbai- 400004. The application was rejected for non-submission of proof of physical occupation, and this was informed to Vatsa Corporation Ltd. vide letter dated 08.07.2019.
- (ii) On 22.07.2021, the Appellant (Digitech Electronics System Pvt.) submitted application No. 479133 for new connection of electricity to the said premises along with copy of registered Sale Deed dated 16.07.2021.
- (iii) The Landlord of the premises i.e., Respondent No.2 had taken objection for giving new electric connection. As per the Declaration/Undertaking given by the Appellant along with the new connection application, it is mandatory to submit No


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Objection Certificate (NOC) from the landlord. Hence vide letter dated 10.08.2021, Respondent No.1 had informed the Appellant to submit NOC of Landlord within 15 days failing which the Application No. 479133 for New Electric connection dated 22.07.2021 will stand cancelled without any further intimation.

- (iv) As the Appellant failed to submit NOC from Landlord the said application was automatically cancelled by its OLCCS system after 15 days.
- (v) Further, vide letter dated 12.08.2021 and 6.10.2021, the Landlord (Respondent No.2) informed the Respondent No.1, that he is the sole Owner/Landlord of the premises and Respondent No.3 is the tenant of the said premises.
- (vi) The Appellant again applied for electric supply for the said premises vide his Requisition No. 492469 dt. 23.11.2021.
- (vii) As there was objection from the Landlord, a letter was sent to the Appellant on 14.12.2021 for submission of necessary documents (NOC) in support and detailed address of the subject premises within seven days from receipt of the letter.
- (viii) In response to letter dated 14.12.2021 to the Respondent No.2, a reply dated 15.12.2021 was submitted by Respondent No.3 through his advocate. **He informed that he is tenant of shop no 3, and the premises were sub-rented out by him to Vatsa Corporation. He also informed that Income tax Dept. has attached the shop no 3 for non-payment of dues of Rs.42 crores. Further, he informed that he had not permitted Vatsa Corporation for selling the premises to Sahil Tarunkumar Shah & Akash Tarunkumar Shah and then to Digitech Electronics systems Pvt. Ltd.** The sale transaction has been done by fraudulent means and bogus documents and it does not give any right to Digitech Electronics systems Pvt. Ltd for purchase of the premises.
- (ix) In view of the above, the case was referred to the Legal Department along with the documents submitted by the Appellant, letters submitted by Landlord (Respondent No.2) and Respondent No.3 for their advice. Legal Department on 14.02.2022 gave their general opinion based on Section 29 of the Maharashtra Rent Control Act 1999 wherein it is mentioned that the landlord shall not cut off or withhold essential supply or service. The application was processed based on this opinion, which was in turn based on the available documents. It is pertinent that, at this point of time,


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




no documents were submitted regarding the attachment of property by Income Tax department. Had these documents been available, the legal view might have been different.

- (x) On 16.02.2022, the Respondent No.1 visited the site for installation of meter. However, the keys of the meter cabin were not made available by the Appellant. Also, necessary wiring for installation of meter was not completed. It was the responsibility of the Appellant to carry out necessary lead wiring and make meter cabin accessible for installation of meter. Hence meter could not be installed on 16.02.2022.
- (xi) The Appellant vide its letter dated 17.02.2022 informed that the keys of the meter cabin were not made available by the building caretaker, hence meter was not installed. Further he requested to seek police protection for installation of meter. This fact indicates that there was a serious dispute regarding the property, to the extent that police intervention was sought. As per request letter dated 17.02.2022 from the Appellant, the Respondent No.1 informed Sr Police Inspector, Dadasaheb Bhadkamkar Marg Police Station vide letter dated 18.02.2022, along with relevant documents that the meter could not be installed on 16.02.2022 as access to meter cabin was not made available. It was also informed that it is responsibility of the Appellant to make the meter cabin accessible for installation of meter. Further, it was also requested to provide police protection as requested by the Appellant.
- (xii) The Appellant vide its letter received dated 18.04.2022 informed that necessary police protection for installation of meter had been arranged on 20.04.2022 and requested to depute staff for installation of meter. However, the same was cancelled and rescheduled due to non-availability of police protection; and meter No. N210567 was finally installed on 26.04.2022.
- (xiii) Vide letter dated 29.04.2022 along with documents of Income Tax Department attachment orders dated 20.11.1998 and 27.03.2012, the Respondent No.2 took objection for installation of meter, stating that there are Income Tax Department Recovery orders pending against Vatsa Corporation and legal heirs of Kalyanji Bhagat, respectively. Further Respondent No.2 also submitted a letter from Vatsa Corporation dated 29.11.2018 addressed to him, wherein it is mentioned that they

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (Vatsa Corporation) have taken premises on sub-rent from Respondent No.3, tenant, and are paying compensation every month regularly, and requested to inform any dues pending in his book.
- (xiv) As there was attachment order from Income Tax Department, and considering that prima-facie the Appellant had no legal entitlement to occupy the premises, and also considering lack of compliance (landlord's NOC) as per Undertaking/Declaration signed by the Appellant along with New Supply Connection Application given under Clause 5.6 of MERC (Electric Supply Code) considering all these factors, including objections of the landlord, disconnection of supply was done without serving notice as per terms of contract of Undertaking/declaration clause 28. Hence, the Meter No. N210567 was removed on 29.04.2022 by the Respondent No.1.
- (xv) A letter No.3613/2022 dated 30.04.2022 received by BEST Undertaking from Dr. D.B. Marg Police Station informed that they have received a complaint regarding removal of meter by unknown persons at the subject premises. They asked to confirm whether the meter was removed by Respondent No.1 (BEST Undertaking). A confirmative reply was given vide letter CCD ward/Adm-43/34/2022 dated 02.05.2022 that the Meter No. N210567 was indeed removed on 29.04.2022 by BEST Undertaking as there was objection from the Landlord i.e., the Respondent No.2.
- (xvi) The Respondent No.1 received a letter from the Appellant on 04.05.2022 raising queries regarding removal of meter, and the same was replied vide letter DECCD/CM/43/2022 dt. 09.05.2022.
- (xvii) Further the Appellant approached the Forum on 10.05.2022. The Forum vide its order dated 04.07.2022 found the decision of disconnection of electricity supply at the said premises on 29.04.2022 as legal and valid.
- (xviii) Brief Justification for Disconnection of electric supply and removal of meter N210567 is as under:
- (xix) Noncompliance towards submission of NOC from Landlord of the premises and hence breach of terms of contract of /undertaking/declaration.**



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (xx) Hiding the information of Income Tax Attachment on the premises on two separate occasions. The said premises is still under attachment as confirmed by Income Tax department, as per reply from Income Tax department against RTI application filed by Shri Ashok Mehta, the Respondent No.2. The property was locked and sealed by the Income Tax department. If is illegally sold, there is a risk that outstanding payments will never be recovered. The culprits will sell the property and make a profit instead of paying income tax dues. Hence, in such cases, the transfer of property has been banned or prohibited by the IT Act. In view of this the transfer to the Appellant seems to be illegal.
- (xxi) As regards ownership of the premises, this is under dispute and litigation. Respondent No.3 (Vinod K Bhagat) has filed a Writ Petition Suit (L) No. 13078 of 2022 against Vasta Corporation and others including the Appellant as well as the Respondent No.1 in the Bombay High Court on 21st April 2022. This is still pending for hearing.
- (xxii) In view of above, it is prayed to dismiss the present Representation filed by the Appellant.

5. The Respondent No.2, the original landlord, has filed his reply dated 10.11.2022. His submission and arguments in hearing in brief is as under:

- (i) The Respondent 2 is the owner of Parekh Building, and presently residing at said Building, 3rd Floor, 18, Mama Parmanand Marg, Opera (House, Mumbai).
- (ii) The present Representation has been filed with malafide intentions of usurping his legal right, title and interest and depriving him of the premises in question being shop No. 3, Ground Floor, Parekh Building admeasuring 1680 sq. ft. bearing C.S. No. 1/1497.
- (iii) At the outset, it is submitted that the Appellant has not come with clean hands and has suppressed material facts and hence he is not entitled to any of the reliefs claimed in this Representation. The Appellant is guilty of *suppressio veri* and *suggestio falsi*.
- (iv) The Respondent No.2 has filed a detailed affidavit in reply before the Hon'ble High Court of Judicature in Bombay in Writ Petition (L) 26274 of 2022. Is prayed that the contents of the said affidavit may be treated as a part of the present reply.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




(v) The relevant facts which are necessary for adjudicating the above-mentioned Representation, but which have been conveniently suppressed by the Appellant are as follows: -

- a) The Respondent No.2 is the Lessee of Plot No.18/A bearing C.S. No. 1/1497 situated at Mama Parmanand Road, Opera House, Mumbai – 400 004 together with the building known as “Parekh Building” standing thereupon. Respondent No.2 is the sole and exclusive owner of “Parekh Building.” The shop premises in question is unit No.3 situated on the ground floor of Parekh Building admeasuring 1597 sq. ft.
- b) The Appellant is purporting to be the owner of Shop Premises. It is nothing more than a trespasser who is trying to usurp the Shop Premises based on false documents and a fake paper trail. This can be ascertained from the chain of documents submitted by the Appellant to prove his ownership itself, as the Agreement dated 31.01.1987, through which the Appellant claims transfer of ownership, has been held by the lower Courts as well as by the Hon’ble Supreme Court, vide its order dated 8th December, 2010, **to not even remotely suggest transfer of ownership rights in favour of Nahalchand Laloochand Pvt Ltd.** The relevant details regarding the same are being reiterated hereinbelow: -

Formation and Subsequent Dissolution of Society: -

- c) In the year 1987, as Parekh Building required major repairs and renewal work, M/s Nahalchand Laloochand Pvt Ltd (“Nahalchand Laloochand”) approached to repair and reconstruct Parekh Building. Under a letter/ arrangement dated 31.01.1987, Nahalchand Laloochand was authorized to repair and reconstruct the building where the Shop Premises is located. Transfer of ownership rights in favour of the tenants was to be negotiated as is evident from Clause 13 of the letter dated 31.01.1987, which clearly states that **in the event Respondent No.2 agree to convert the repaired tenement into ownership basis, then he and Nahalchand Laloochand shall negotiate for the consideration payable and on the same being finally agreed upon Nahalchand Laloochand shall pay**


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



the same to Respondent No.2. However, Nahalchand Laloochand never negotiated.

- d) Pertinently, Clause 12 of the letter dated 31.01.1987 also states that after completion of the reconstruction, Respondent No.2 should accept the tenants/persons who have surrender their premises for reconstruction, back as his tenants.
- e) That after reconstruction of the Parekh Building, Nahalchand Laloochand dishonestly and fraudulently created a society behind his back and without his consent. Nahalchand Laloochand alleged that there was a transfer of ownership of the premises from Respondent No.2 to its tenants/ occupants. Accordingly, Respondent No.2 was compelled to initiate necessary litigation to deregister the said society.
- f) That by an order dated 06.05.2000, passed in Appeal No. 15/2000, the Division Jt. Registrar, was pleased to set-aside the order passed by the Dy. Registrar CHS and further pleased to set-aside the order for the formation of the society. By the order dated 06.05.2000, the Ld. Divisional Jt. Registrar was pleased to observe that Nahalchand Laloochand had made **misrepresentations** by stating that Respondent No.2 had entered into an arrangement for sale of Parekh Building and was further pleased to record and hold that the amount of Rs.35,00,000/- so paid by Nahalchand Laloochand to Respondent No.2 was only as interest free security deposit.
- g) That the said order dated 06.05.2000 came to be challenged by Nahalchand Laloochand before the Hon'ble Bombay High Court. **The Hon'ble Bombay High Court, vide its order dated 03.08.2004, confirmed the order of the Ld. Divisional Jt. Registrar and categorically held and observed that the Agreement dated 31.01.1987 did not even remotely suggest the transfer of property, thereby confirming right of the Respondent No.2 as the owner of the premises in the building. The said order was further confirmed and upheld by the Supreme Court vide order dated 08.12.2010.**

Thus, it is no longer *res integra* that neither Nahalchand Laloochand nor the Respondent No. 3 and/or any of the other tenants acquired any title in

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



respect of the building of which the Shop Premises is a part and that the ownership rights of the building and the tenements therein vest with Respondent No.2.

Admissions by Vatsa Corporation Ltd. that it is only a Licensee of the Shop Premises:

- h) It appears that in the year 1994 Vatsa Corporation Ltd., the sub-tenant, defaulted in making timely payment of the license fee to the Respondent No. 3, the tenant. Accordingly, the Respondent No. 3 issued a notice dated 01.12.1994 and terminated the Leave and License Agreement with Vatsa Corporation Ltd.
- i) In counter thereto, in December 1994, Vatsa Corporation Ltd. filed a suit before the Hon'ble Small Causes Court, being RAD No. 75/1995, *inter alia* praying therein that Vatsa Corporation Ltd. be declared as the lawful sub-tenant. The said suit was filed in the year 1995. Pertinently, in the said suit, Vatsa Corporation Ltd. had claimed only tenancy rights and not ownership rights in the Shop Premises. Subsequently the said RAD suit was dismissed and the claims made by Vatsa Corporation Ltd., rejected.
- j) Even in communications addressed by Vatsa Corporation Ltd. to government officials and other parties, it has time and again reiterated that the Shop Premises were taken by it on leave and license basis and particularly the letter dated 14.10.1996 addressed by Vatsa Corporation Ltd. to the Income Tax authorities wherein it was categorically mentioned that it had taken the Shop Premises on leave and license basis.
- k) Further, by letter dated 20.07.1999, Vatsa Corporation Ltd. once again reiterated that it had taken the Shop Premises on leave and license basis.
- l) In fact, even as late as November 2018, Vatsa Corporation Ltd., has, vide its letter dated 29.11.2018 to Respondent No.2 (Ashok Mehta) categorically mentioned that it has taken the premises from the Respondent No. 3 on rent, and that in the event they would change their business, they would intimate Respondent No.2 according to the provisions of Rent Control Act. Not only that, but it has also even claimed to be paying compensation regularly every

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



month to Respondent No.2 and has offered to clear any dues that may be pending.

All the aforesaid Documents have already been annexed to reply dated 18.05.2022 of Respondent 2 before the Forum.

Attachment of premises in Question by Income Tax: -

- m) The Income Tax authorities have twice attached the Shop Premises. **Once, in the year 1998 for non-payment of dues to the tune of Rs. 8,10,80,010/- (Eight Crores Ten Lakh Eighty Thousand and Ten Only) by the licensee Vatsa Corporation Ltd. and thereafter, once again, in the year 2012 for non-payment of dues to the tune of Rs. 42.02 crores by the Respondent No. 3. The Respondent No.2 believe that both the orders of attachment continue to be valid and in existence till date.**
- n) **The Respondent No.2 had inquired about the existence about the attachment orders dated 20.11.1998 and 27.03.2012 under Right to Information (RTI). Vide reply dated 16.06.2022, the office of the Tax Recovery Officer- 20 confirmed the existence and validity of the attachment order dated 27.03.2012 till today. No reply has been received with respect to the attachment order dated 20.11.1998, and the Respondent No. 2 has filed an Appeal under RTI before the relevant authorities for the same.**
- o) **That the attached status of the premises in question is well within the knowledge of the Appellant as can be ascertained from the fact that he has filed a Writ Petition before the Hon'ble Bombay High Court, being Writ Petition (L) No. 11497 of 2022, for quashing the attachment order of 27th March, 2012 and/or any other attachment order levied against the Shop Premises.**

Multiple Applications by Appellant:

- p) The Appellant has suppressed the fact that this is his 2nd application for electricity meter. The Appellant had already applied for an electricity meter vide application no. 479133 dated 22.07.2021. Under the said application, on 13.08.2021, Respondent No. 1 called upon the Appellant to provide an NOC



(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai




from the landlord, failing which the application would be rejected. Being aware that Appellant is merely a trespasser and not the owner and/or the tenant, the Appellant made no attempt to procure the NOC from Respondent No.2 as required under the rules. Therefore, on 25.08.2021, the 1st electricity meter application of the Appellant came to be rejected.

- q) Thereafter, the Appellant applied afresh and this time round, though a demand for NOC was once again raised, the Appellant, with the help and cooperation of an officer of the Respondent No. 1, against whom enquiry is ongoing, was able to evade the same, by simply submitting its letter wherein no mention was made about Respondent No.2 in his capacity as landlord and owner, and the Respondent No. 3 was shown to be the purported owner. In this manner and based on false representations and inducements, the electricity meter came to be wrongly granted to the Appellant. However, upon realizing the error, the BEST immediately and forthwith withdrew the meter. The Respondent No.2 state that the order dated 04.07.2022 is absolutely correct, legal, and binding. There is no interference warranted with the said order. Any interference with the said order would lead to a travesty of justice thereby granting an interloper the authority to use electricity who has no right to do so.


The False Document and Fake Paper Trail Created by the Appellant, Respondent No. 3, Vatsa Corporation Ltd. and, Sahil Tarunkumar Shah & Akash Tarunkumar Shah:

- r) The Appellant, Respondent No.3, Vatsa Corporation Ltd., Sahil Tarunkumar Shah & Akash Tarunkumar, have, in connivance with each other, prepared and concocted a false and fabricated agreement dated 04 July 1994 (“the False Document”), with the sole intention to usurp the Shop Premises and defeat the right, title and interest of the Respondent No.2 therein. Pertinently, the False Agreement itself is an unregistered document. The very genesis of the purported flow of title of the Shop Premises starts from this False Document. Assuming without admitting the genuineness of the False Document, as the False Document is an unregistered document purportedly dealing with immoveable property, it cannot be relied upon to convey title.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




- q. By the said False Document, the Respondent No. 3 (Vinod Bhagat), the tenant, purportedly sold to Vatsa Corporation Ltd. the Shop Premises. The Respondent No. 3 and Vatsa Corporation Ltd. falsely stated therein that the Respondent No. 3 is exclusive owner of the Shop Premises. Under the guise of letter dated 31.01.1987, the Respondent No. 3 and Vatsa Corporation Ltd., claimed that after redevelopment of the Parekh Building (where the Shop Premises is situated), the ownership of the Shop Premises was transferred to the tenants, and by virtue of the same, the Respondent No. 3 became the owner of the Shop Premises.
- r. If Vatsa Corporation Ltd. obtained ownership rights of the Shop Premises as on 04.07.1994, by no stretch of imagination would it claim to be a licensee thereafter.
- s. In order to perpetuate their crime, the Respondent No. 3 and Vatsa Corporation Ltd. has connivingly recorded in the False Document that Nahalchand Lallochand Pvt. Ltd. (the redeveloper) had, in the year 1987, paid an amount of Rs. 34,00,000/- to Respondent No.2 for the transfer of ownership of the respective premises to the tenants.
- t. The Respondent No.2 categorically and emphatically deny this false statement. This statement has only been inserted in the False Document with the malafide intention to illegally show that the Respondent No. 3 had become the owner of the Shop Premises. Respondent No.2 has not received an amount of Rs. 34,00,000/- (Rs. Thirty-Four Lacs) from Nahalchand Lallochand Pvt. Ltd. towards consideration for transfer of ownership of the respective premises to the tenants as alleged. An amount of Rs. 35,00,000/- (Rs. Thirty-Five Lacs Only) was received by him only as interest-free security deposit. The same can be ascertained and verified from the letter dated 30.12.1993 addressed by Nahalchand Lallochand Pvt. Ltd. to the Respondent No.2 confirming that the amount of Rs. 35,00,000/- so paid by Nahalchand Lallochand Pvt. Ltd. was interest free security deposit.
- u. The fact that there is no transfer of ownership, and that the said payment was towards interest-free security deposit, has already been affirmed and dealt with


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



by the Divisional Jt. Registrar vide its order dated 06.05.2000. The said order dated 06.05.2000 has also been upheld and confirmed by Hon'ble Bombay Court as well as the Hon'ble Supreme Court.

- v. Thereafter, by Sale Deed dated 30.12.2020, Vatsa Corporation Ltd_ sold the Shop Premises to the Sahil Tarunkumar Shah & Akash Tarunkumar Shah for a consideration amount of Rs. 4,01,00,000/- (Rs. Four Crores One Lakh Only). The False Document has been created by the Appellant, Respondent No. 3, Vatsa Corporation Ltd.,_Sahil Tarunkumar Shah & Akash Tarunkumar Shah with the sole intention to show that the right, title and interest of the Shop Premises vested in Vatsa Corporation Ltd. and the title of the shop premises was marketable, so as to induce the Registrar to believe that title in the said Shop Premises has been transferred and to get the Sale Deed dated 31.12.2020 registered with the office of the Registrar.
- w. The False Document has also been attached to the First Sale Deed. This has been done solely with the intention to usurp his Shop Premises and to get the Sale Deed dated 30.12.2020 registered. The First Sale Deed has been registered and bears registration No. BBE-4-6117-2021.
- x. Pursuant thereto, Sahil Tarunkumar Shah & Akash Tarunkumar Shah, thereafter, in a surreptitious and clandestine manner sold the Shop Premises to the Appellant. By the Second Sale Deed dated 16.07.2021, Sahil Tarunkumar Shah & Akash Tarunkumar Shah sold the Shop Premises to the Appellant for a consideration amount of Rs. 4,44,00,000/- (Rs. Four Crores Forty-Four Lacs Only), thereby making a dishonest profit of about Rs.43 lakhs on resale of the property within 7 months.
- y. **Pending Litigation between Parties:**
- Suit filed by the Respondent No. 3, being Suit (L) No. 13078/2022 against the Appellant and Ors seeking *inter alia* to cancel the Deed of Sale and Transfer dated 30.12.2020 and Agreement for Sale dated 16.07.2021.
 - 156(3) Complaint filed by the Respondent No. 3, being Case No. 12/SW/2022, before the Hon'ble 18th MM Court at Girgaon, Mumbai


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




seeking investigation against the Accused No. 2 to 7 u/s 156(3) of the Cr. P.C.

- Writ Petition filed by the Appellant before the Hon'ble High Court of Bombay, being Writ Petition No. 3265 of 2022, for quashing the attachment order of 27th March 2012 and/or any other attachment order levied against the said premises.
- 156(3) Complaint filed by Appellant, being Case No. 62/SW/2022, before the Hon'ble 18th MM Court at Girgaon, Mumbai seeking investigation against the Appellant and Ors. u/s 156(3) of the Cr. P.C.

(vi) From the aforesaid pending litigations, it is amply clear that this is not a simple case of grant or disconnection of electricity meter. It concerns a private dispute of title to property and raises disputed questions of facts with respect to the title and ownership of the Shop Premises. Thus, granting any relief would amount to creating a back-door entry for the Appellant and enabling it to alienate the sovereign rights of the Income Tax for its own commercial profit.

Reply on Written submission of the Appellant:


- (vii) The purported sellers i.e., Sahil Tarunkumar Shah & Akash Tarunkumar Shah had no right, title, interest and/or authority to deal with the premises in question in any manner whatsoever. The question of the Appellant having purchased the premises from them cannot arise and seems to be nothing more than a deviously executed elaborate eyewash.
- (viii) The Appellant was aware of the entire history of the Shop Premises, as he and the purported sellers have acted in connivance to deprive the Respondent No.2 of his legal right, title, and interest in the Shop Premises.
- (ix) The Respondent No.2 is the Owner and Landlord, not only of the building i.e., Parekh Building but also of the Shop Premises situated therein.
- (x) Nahalchand Laloochand has never paid any amount towards the transfer of ownership of the Shop Premises to the tenants as alleged or at all.
- (xi) It is categorically denied that the tenants of the building became the owners of their respective premises in the year 1991 or anytime thereafter as alleged or at all.
- (xii) We would like to draw attention to certain clauses in the said Leave and License Agreement, more pertinently Clause 17 therein which expressly provided that the said


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




Agreement was only for the purpose of granting a license to Vatsa Corporation Ltd. to use and occupy the Shop Premises and did not create any interest as tenant or otherwise. It further specified therein that Vatsa Corporation Ltd shall not sub-let and/or allow any other person to use and occupy the Shop Premises in any capacity or on any basis whatsoever.

- (xiii) The 'False Document' dated 04.07.1994 is an unregistered and insufficiently stamped Document executed on a Rs. 50/- stamp-paper and is also currently under challenge by the Respondent No. 3, who has filed a Suit being Suit (L) No. 13078/2022, before the Hon'ble High Court. The Respondent No. 3, himself has denied the validity and genuineness of the False Document. In fact, the Respondent No. 3 goes on to state that the signature on the False Document is not even his signature and the False Document is a forged document.
- (xiv) When neither the Respondent No. 3 nor Vatsa Corporation Ltd had any right, title, or interest in the said premises of whatsoever nature, the question of them selling it further cannot and does not arise. No amount of false and fabricated paper trail can validate what is essentially an illegal and unlawful trespass. Moreover, **once a property has been attached by the Income Tax, which in the case of the premises in question has happened twice, once in the year 1998 and once in 2012, any ownership claim arising after the date of the notice is void ab-initio.**
- (xv) Despite the falsehood and untruthfulness of the representations made by the said Sahil Tarunkumar Shah and Akash Tarunkumar being brought to the notice and knowledge of the Appellant along with documentary proofs, he, rather than taking action against the abovementioned sellers with whom an Indemnity Bond has been executed, is instead seeking to regularize what is clearly an illegal act, thereby raising serious questions regarding the exact extent of his involvement in the entire conspiracy.
- (xvi) The Appellant had first approached the Respondent No. 1 (BEST Undertaking) for an electricity connection in July 2021, vide Requisition No. 479133, but as the demand to obtain NOC from Landlord was raised, the Appellant chose not to proceed further and thus the same was dismissed. Similarly, an earlier application filed by Vatsa Corporation Ltd for seeking electric meter connection, vide Application No. 409586 was dismissed for want of Documents in the year 2019.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




- (xvii) The Legal Department of Respondent No.1 (BEST Undertaking) should have, in the very first instance, considered the objections raised by the Respondent No.2. They should not have simply classified the case to be another routine case of landlord and tenant dispute, and should have at the very least referred to, if not demanded additional investigation regarding the attachment of the premises by the Income Tax Department, taking into consideration the fact that the premises was without electricity for 20+ years.
- (xviii) Employees of the Respondent No.1 came for the installation of electricity connection however, it was their lack of authority to deal with a property attached by the Income Tax, the Appellant's inability to furnish the "No Objection Certificate" from the Income Tax and the fact that the necessary wiring for the installation of the meter was not completed, that caused them to return.
- (xix) What has conveniently been omitted to be mentioned by the Appellant is the surreptitious and clandestine manner in which the installation of electric meter was done, where the officials of the Respondent No.1, without even making a cursory attempt to obtain the meter room keys from Appellant, in his capacity as the Owner and Landlord of the building, proceeded to, in connivance with an Officer of the Respondent No. 1, against whom an enquiry is currently ongoing due to dereliction of duty, directly unhinge the latch of the Electric Meter Room and install the meter. Not only that, but they also even allowed the Appellant to install a CCTV camera in, what essentially is, his private property. The reason for such undue haste and overt accommodability towards the Appellant exhibited by the Respondent No. 1 was beyond comprehension, considering the fact that the Shop Premises has been without an electricity connection for more than 20 years.
- (xx) The meter was removed by the Respondent No. 1 on 29th April 2022 and the same was done after the illegal manner in which it was installed in the first place was highlighted and brought to the attention of the higher authorities.
- (xxi) The Respondent No. 1 was well within its jurisdiction and authority to disconnect a meter which did not comply and / or satisfy the requirements laid down by the Respondent No.1 and which was obtained based on falsity and untruthfulness.
- (xxii) It is denied that the meter was illegally removed or that the premises in question are owned by the Appellant or that the Appellant is being deprived in any manner whatsoever as alleged. I say that the removal of the meter was in no manner illegal but what, however,


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



was illegal is the manner in which the meter was installed in the first place, the blatant disregard exhibited by the concerned officer of the Respondent No. 1 to the orders and authority of the Income Tax, and the flagrant manner with which the Appellant is openly being allowed to get away with relying on documents which are clearly fabricated and false document as well as hiding vital and pertinent facts. **The Legal department were not furnished by the Appellant with complete information and documents regarding the attachment of the premises in question by the Income Tax, and therefore their approval was based on the misrepresentation made before it and thus carried no significance.**

- (xxiii) It is denied that the Forum did not appreciate the settled law of the land as alleged, and state that the law of the land, viz-a-viz the provisions of the Income Tax Act, 1961, which prohibit any transfer of a property attached by the Income Tax, was duly considered by the said Forum.
- (xxiv) The shield of fundamental rights is available only to those who adhere to law and respect legal processes and not to those who are out to hoodwink and deceive the Judiciary by not coming with clean hands.
- (xxv) It is denied that the objections raised by the Respondent No. 2 and 3 should not be considered, or that they were frivolous objections. That misrepresentation or false representation and suppression of material facts or documents amounts to fraud, and the Appellant is guilty of the same as he portrayed himself to be the owner of a premises in which he has no right, title, or interest of whatsoever nature. Thus, the Respondent No.1 was wholly justified in their decision to remove the meter on being informed about the fraud committed by the Appellant. As far as the opinion of the Legal Department is concerned, I reiterate that the legal department were at no point of time furnished by the Appellant with complete information and documents regarding the attachment of the premises in question by the Income Tax and therefore, their approval was based on the misrepresentation made before it.
- (xxvi) The provisions of the Maharashtra Rent Control Act and / or Section 29 thereof cannot be applied in the present scenario as neither do the Respondent No.2 recognize the Appellant as tenant nor is it the case of the Appellant that he is tenant.



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (xxvii) The conduct of the Appellant may be noted, who sought to supersede or rather bypass this office of the Ombudsman by choosing to file a Writ Petition before the Hon'ble Bombay High Court without first exhausting the alternate statutory remedy available to it.
- (xxviii) The Forum has passed the order in challenge after duly hearing the parties concerned and deliberating the documents and evidence submitted and therefore, the said order dated 4th July 2022 has no ambiguity and thus deserves no interference.
- (xxix) Under the above circumstances, it is submitted that the Appellant has miserably fled to make out a case for having the order dated 4th July 2022 set aside and / or modified. Moreover, the Appellant should not be allowed to take advantage of his own wrongdoings. Hence, the Representation fails and deserves to be dismissed in line with exemplary costs.

6. The Respondent No.3, the tenant (Vinod Bhagat) filed its reply dated 09.11.2011. His submission and arguments in brief are as below:


- (i) The present Appeal is required to be dismissed with cost as the Appellant has approached this Hon'ble Tribunal with unclean hands.
- (ii) The Appellant has miserably failed to show any illegality in the order passed by the Forum.
- (iii) The Appellant has absolutely no right in respect of the premises where the Appellant is seeking electricity connection. It is to state that the Appellant is guilty of fraud in obtaining the said premises.
- (iv) As a matter of fact, the Respondent No.3 has already filed a suit being Suit (L) No. 13078 of 2022 and took out Notice of Motion against the Appellant and their predecessor-in-title for confiscation of all the documents under which the Appellant is fraudulently claiming the ownership right in the said premises which is pending before Hon'ble High Court Bombay and the Appellant is duly served with the said suit and Notice of Motion and the Appellant has suppressed the said fact from this Hon'ble Court.
- (v) The Appellant has no right in respect of the said premises in question and the Appellant while taking the said premises, had become a party to the act of fraud and cheating while obtaining the said premises.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



(vi) It is stated in plaint in Suit (L) No. 13078 of 2022 about the fraudulent act of the Appellant and their alleged predecessor-in-title. Some of the facts which Respondent No.3 have stated in the said suit clearly shows that the Appellant has absolutely no right in respect of the premises in question and therefore, the Appellant cannot take advantage of their own wrong and fraudulent act for seeking various amenities from various statutory authorities including electricity connection.

- a) The Respondent No. 3 that on 03.12.1984, he took the premises i.e., Shop No.3 situated on the Ground Floor, Parekh Building, 18, Mama Parmanand Road Opera House, Mumbai-400004 admeasuring 1680 Sq. Ft. Carpet area. The said premises is a Commercial premises which was taken under the Agreement of Tenancy from the Owner Mr. Ashok Chandra Kant Mehta (Respondent No. 2) and Cine Agency (India) on a Monthly Rental basis. The copy of the tenancy agreement dated 03.12.1984 is submitted.
- b) A proper agreement of tenancy was made on 03.12.1984 by the Landlord Respondent No. 2 and Cine Agency (India) with Respondent No.3 whereunder the said landlord had put the Respondent No.3 into possession of the said premises as a tenant thereof.
- c) On 01.12.1992 under the Leave and License agreement, the Respondent No.3 gave the said premises to Vatsa Finance Limited which is now known as Vatsa Corporation Limited on a monthly compensation for the period of Nine Years and Eleven Months. The copy of Leave & License agreement is kept on record. Thereafter, said Vatsa Corporation limited had filed R.A.D Suit being R.A.D Suit No. 75 of 1995 for a declaration as the tenant of the said premises. In the said Suit, Vatsa Corporation clearly admitted the fact that they are the monthly lawful sub-tenant of his premises i.e., said Shop No.3. The Respondent No. 3 has contested the said R.A.D suit, which was subsequently dismissed for non-prosecution.
- d) On 14.10.1996 Vatsa Corporation Limited wrote a letter to the Assistant


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Commissioner of Income Tax that they had taken the property on leave & License basis, and they have categorically admitted that they have not purchased the said premises.

- e) On 20.11.1998, the Tax Recovery Officer of Central Mumbai of Income Tax Department had attached this said premises on the ground that Vatsa Corporation Limited failed to pay the Income Tax, and therefore their right, title and Interest in the property was attached by the income tax authority.
- f) The said Vatsa Corporation also issued letter dated 20.07.1999 informing that they have not paid any amount towards rent to Respondent No.3 being their licensor and the tenant of the said premises since 1st January 1995 till date as the matter is sub-judice before the Small Causes Court.
- g) It is stated that again on 27th March 2012 as the tenant's father Late Mr. Kalyanji Bhagat failed to give the Income Tax, the Income Tax Authority again passed the order and had attached all his right, title and interest in the said premises being the legal heir of Late Mr. Kalyanji Bhagat. A copy of the order dated 27th March,2012 is attached.
- h) **The Income tax Authority has attached the said tenanted premises which continue to be under the attachment under the Income Tax Authority till date. In order to grab the property, the said Vatsa Finance Limited through his director Heena Dinesh Jadhav and one Akash Tarunkumar Shah and Sahil Tarunkumar Shah had jointly prepared a forged document dated 04.07.1994 purported to have been executed by Respondent No.3 in favour of Vatsa Finance Limited. The said document purported to be termed as agreement dated 04.07.1994.**
- i) The said document dated 04.07.1994 is a forged .document created by the director of Vatsa Finance Limited i.e., Director Heena Dinesh Jadhav and by Akash Tarunkumar Shah and Sahil Tarunkumar Shah in order to claim ownership right of his tenanted premises. Agreement dated 04.07.1994 is

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



made after forging Respondent No.3 signatures.

- j) By making the said forged document dated 04.07.1994 the Vatsa Finance Limited through its Director Heena Dinesh Jadhav and with active connivance with Akash Tarunkumar Shah and Sahil Tarunkumar Shah fraudulently created purported ownership right in respect of his premises under the guise of selling of shares to Respondent No.3 for the sum of Rs. 22 Lakh. As a matter of fact neither the Respondent No.3 purchased any shares nor is he aware of such fraudulent transaction, but in order to give the Vatsa Finance Limited a right to claim ownership right in respect of his tenanted premises a forged and fabricated document was created by the said Vatsa Finance Limited and it was purported to be signed before the Special Metropolitan Magistrate on 04.07.1994 allegedly by Respondent No.3.
- k) **It is stated that after the said Deed of sale and transfer dated 30.12.2020 was executed by said Vatsa Finance Limited in favour of Akash Tarunkumar Shah and Sahil Tarunkumar Shah, the said Akash Tarunkumar Shah and Sahil Tarunkumar subsequently sold the said property by the registered agreement of sale dated 16.07.2021 to the Appellant i.e. Digitech Electronic Systems Pvt Ltd through his director Mr. Minesh Dharnendra Shah, on the basis of which the Appellant is trying to get the new electricity meter in his tenanted premises.**
- l) Thus, the said Vatsa Finance Limited was inducted by Respondent No.3 as a licensee in his tenanted premises and continued to claim as licensee of his client till 2000 and not stated a word about the said Document of 04.07.1994. He subsequently with active connivance of Akash Tarunkumar Shah and Sahil Tarunkumar Shah and a fraudulent document of 04.07.1994 created a forged and fabricated ownership right in his tenanted premises in favour of Vatsa Finance Limited and thereby took the premises on the purported Deed of sale and transfer in their favour.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Subsequently after 7 months of taking the said premises they again sold the said premises to the Appellant i.e., Digitech Electronic Systems Pvt Ltd.


- m) As the Appellant had gotten the possession pursuant to the forged document and in gross violation of the attachment of the Income Tax Authority, the Appellant cannot claim any right in respect of the said premises.
 - n) The Respondent No.3 is the tenant in respect of the said premises and continue to be the tenant of the said premises.
 - o) When Respondent No.3 got to know about the application for electricity connection filed by the Appellant, on many occasions, he had raised an objection for the same through Advocate's letter before the Superintendent, Assistant Engineer, and the Chief Vigilance Officer of the concerned ward.
 - p) A suit has been filed in the Hon'ble High Court, Bombay being Suit(L) No. 13078 of 2022 asking for reliefs.
 - q) A Criminal case is filed by Respondent No.3 against the said Sahil Tarunkumar Shah and Aakash Tarunkumar Shah before the Girgaon Metropolitan Magistrate Court being Case No. S W/1800012/20221 is pending before the Hon'ble Court.
- (vii) The Appellant was fully aware that their predecessor-in-title had created a fraudulent document to get the ownership right from Vatsa Corporation Limited and yet they have purchased the said premises from the said Sahil Tarunkumar Shah and Akash Tarunkumar Shah in conspiracy just to grab the said premises. The Appellant were aware that their Vendor do not have the ownership right of the said premises as it is the Respondent No. 2 who is owner/landlord of the said premises. With fraudulent intention and after the registration of the said fraudulent documents in connivance with the Bank Officer, took a heavy loan on the said premises from the Bank. Now by filing the present Appeal, the Appellant is trying to get further amenities in respect of the premises.



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (viii) The Income Tax Department had also attached the said premises for non-payment of the taxes by his father and according to him the said attachment is continuing and therefore, the said premises could not have been sold to the Appellant.
- (ix) It is clear from the above facts and circumstances that the Appellant is not in settled possession of the premises, and there exists a dispute about the ownership of the premises. The law is very settled that if there is a dispute about the possession of the premises then no connection can be granted.
- (x) It is a mandatory requirement that N.O.C of owner/Landlord is required for new connection which is never granted by Respondent No.2, as Appellant is nowhere connected with the premises in question.
- (xi) It is also an admitted fact that the said property is attached by Income Tax department in 1998 and N.O.C of Income Tax department is also required for new meter connection which the Income Tax department never granted to the Appellant as the Appellant is nowhere connected with the premises in question
- (xii) The Appellant has no legal right of ownership/Possession, and in all where electric supply has to be given it is necessary to have undisputed occupancy of the premises. The fact of the present case clearly shows that Appellant is not entitled to get the new meter connection.
- (xiii) By taking into consideration the undertaking of the Appellant given under Regulation 5.6 of the Supply Code Regulations, the said undertaking given by Appellant to Respondent No. 1 clearly held that, before taking the supply, if facts revealed are found false, incorrect, or suppressed, then the Respondent No. 1 would be entitled to disconnect the Supply.
- (xiv) The present appeal is just an act of abuse of process and the Appellant suppressed the facts and documents from the authorities to take the supply which is also an act of cheating.
- (xv) The Appellant's conduct clearly shows that Appellant suppressed the facts and documents to take the supply. The facts clearly show the act of fraud done by the Appellant, and thus there is no violation of fundamental rights, as Appellant's own conduct is bad & illegal.
- (xvi) Therefore, in view of the facts and circumstances of the case, the Respondent


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




No. 3 prays that the representation of the appellant be dismissed.

Analysis and Ruling

7. Heard the parties and perused the documents on record. The Appellant contended that it purchased the Shop No. 3, ground floor, Parekh Building, as per Registered Agreement for Sale dated 16th July 2021 from one Mr. Sahil Tarunkumar Shah and Mr. Akash Tarunkumar Shah for a consideration of Rs.4,44,00,000/- (Rupees Four Crores and Forty-Four Lakhs only) for commercial purpose. Pursuant to the aforesaid purchase, the Appellant applied for a new electric connection on 23rd November 2021 along with relevant documents. However, Respondent No.2 and Respondent No. 3 subsequently raised objections with Respondent No.1 against releasing the new connection. The Respondent No.1 had referred the case to its Legal Department for legal advice. The Legal Department cleared the same on the ground that the landlord cannot withhold essential supply or service as per Section 29 of the Maharashtra Rent Control Act, 1999, and advised to process Appellant's application. However, it is seen that the Income Tax attachment orders were not placed before the Legal Department at this point of time; hence its legal opinion could be influenced by this fact.

8. Thereafter, the Respondent No. 1 sanctioned the Application for new connection and on 16th February 2022, the Appellant paid the requisite fees and Security Deposit as per demand notice of the Respondent No.1. On the same day, the Respondent No.1 visited the said Parekh Building to install the new electric meter. However, allegedly the Respondent No.2 denied to hand over keys of the meter room for fixing new meter. On 26th April 2022, the Respondent No.1 with the help of Police protection, installed the new connection for electricity. However, the Respondent No.1 (BEST Undertaking) disconnected the supply by removing the said electric meter on 29th April 2022 as per strong objections of the Respondent No. 2 as well as Respondent No. 3.

9. The Appellant claims that the licensee is duty bound to provide supply as per request application by the owner or occupier of any premises. That the distribution licensee is not required to go into the ownership dispute of the premise, and is only required to see whether


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



the premise is occupied by the Applicant or not. The relevant provisions of Section 43 of the Electricity Act, 2003 which specify Duty to supply on request are quoted below:

“43. Duty to supply on request –

(1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity of such premises, within one month after receipt of the application requiring such supply:

.....
.....
(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default”.

In the Act, there is no definition of the word “occupier.” The occupier of any building or land means a person in lawful occupation of that building or land in general. An occupier should be at least in settled possession. The phrase ‘settled possession’ implies that the occupier should have been residing in the premises, or in the case of commercial premises, should have been running a shop in the premises for a long time, with electric supply, and that disconnection of electric supply would thus lead to loss of an existing business in case of commercial premises. This is not the situation in the current case. The Appellant has neither been actually running a commercial enterprise in the premises, nor has there been any electric supply in the premises at least since 1994, i.e., for the last 28 years.

10. The Regulation 5.6 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021(Supply Code & SOP Regulations 2021) provides the requirements of new electric supply. The said Regulation is reproduced as below:

“5. Application for Supply/additional load/shifting of services / extension of services / restoration of supply

5.6 For application for new supply, Distribution Licensee shall seek only following documents and details along with application form:

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




- a. Proof of identity of the Applicant/ authorisation document (in case of Firm or Company)
- b. Proof of ownership / occupancy (in case of owned or leased premises)
- c. Mobile Number of the Applicant (owner as well as occupier, if both are different)
- d. E-mail of the Applicant, if available (owner as well as occupier, if both are different)

*Provided that the Distribution Licensee may also provide the option of e-KYC to the Applicant: For all other statutory requirements, **the Applicant shall provide declaration/undertaking for confirmation that the information provided in the application is true, the Applicant has complied with all requirements under all statute for the time being in force**, the Applicant himself/herself shall be held legally responsible for any issue arising out of any such non-compliance and it indemnify the Distribution Licensee from any loss that may occur on account of such noncompliance.”(Emphasis added)*

The licensee has further laid down the requirement of NOC of the original landlord, in case of pagadi system or tenanted properties. This NOC is required to ensure that in future the risk of non-payment of electricity dues is minimized. This NOC also minimizes future litigation in case there is a dispute about ownership.

The agreement (declaration / undertaking) signed by the Appellant (Digitech Electronic Systems Pvt. Ltd.) while applying for the new electricity connection; clearly states that the owner’s NOC should be obtained; however, such an NOC was never submitted due to the strong objection of the owner / Respondent No. 2. Thus, the Appellant did not fulfil the first and foremost condition for grant of electricity connection.

11. Another crucial fact is the letter from Vatsa Corporation to Respondent No.2 as late as in November 2018 mentioning that they have taken the premises from his tenant i.e. Respondent No.3, and that they were regularly paying monthly compensation, and requested to inform them about pending dues, if any. This letter clearly establishes the status of Vatsa Corporation as a sub-tenant, and not as owner. Hence their sale transaction with Shah Brothers in December 2020 seems to be prima facie illegal. The Appellant has failed to provide any reason as to how Vatsa Corporation claims to be the owner of the premises under the


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



unregistered agreement dated 04.07.1994 and simultaneously claims licensee / tenancy rights under the above –mentioned correspondence.

12. The various events put on record by the Respondent No. 2 are reproduced below:

(a) 17th November 1908: Agreement of lease of Plot bearing No. 18 admeasuring 2360 sq. yard from the Trustees for improvement of the City of Bombay. The plot was developed for two buildings, namely Parekh Building and Parekh House.

During the hearing, Respondent No. 2 was asked to furnish documents regarding the original lease of land and taxes paid by the lessee, if any. Accordingly, Respondent No.2 furnished the following documents – Property tax bill, repair cess bill, land revenue receipt of Collector of Mumbai, ground rent bill and original lease deed of Parekh building.

(b) 3rd August 1984: Shop premises of Parekh Building given on rent to Tenant Mr. Vinod Bhagat (Respondent No.3) by Ashok Mehta (Respondent No.2)


(c) 31st January 1987: Development Agreement between Landlord and Nahalchand Laloochand for repairs / renovation.

(d) 14th August 1991: After completion of renovation, Mr. Vinod Bhagat was given back possession by Nahalchand Laloochand.

(e) 1st December 1992: Mr. Vinod Bhagat inducted M/s. Vasta Corporation as a Licensee to the shop premises by entering into leave and license agreement for a period for 9 years & 11 months.

(f) 20th November 1998: Order of Attachment of Immovable Property was served on 20th November 1998 to M/s. Vasta +- (Safe Deposit Vault) by Tax Recovery Officer, Central-I Mumbai because of his failing to pay a sum of Rs.8,10,80,010/-

(g) 27th March 2012: Order of Attachment of Immovable Property was served to the Legal Heirs of Late Shri Kalyanji G. Bhagat by T.R.O. Rg. 18(1) Mumbai-12 failing to pay an amount of Rs. 42.02 Cr. This means that henceforth no sale – purchase transactions of the said property would be allowed. However, as recorded below, two further transactions happened, which amount to an illegality.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (h) 30th Dec. 2020: M/s Vatsa Corporation sold the shop on ownership basis to Shah Brothers on fake and forged paper.
- (i) 16th July 2021: Shah Brothers sold the Shop premises to M/s Digitech Electronics for consideration amount of Rs. Four Crores Forty-Four Lakhs. The Appellant claims his title through an unregistered agreement dated 04.07.1994, and transfer of title from tenancy to ownership basis under the agreement dated 31.01.1987. However, the issue of transfer of ownership has been settled in as much as the issue went up to the Supreme Court which issued an order dated 08.12.2010 in favour of the tenants of Respondent No.2.

13. **Income Tax Attachment:**


It is noted that the Income Tax Authorities have twice attached the said Shop Premises.

- (A) Order of Attachment of Immovable Property was served on 20th November 1998 to M/s. Vasta Corporation (Safe Deposit Vault) by Tax Recovery Officer, Central-I Mumbai failing to pay a sum of Rs. 8,10,80,010/- as per attachment order. The content of the order is reproduced as below:

“ It is ordered that you, the said M/s. Vasta Corporation (Safe Deposit Vault) be, and you are hereby prohibited and restrained, until the further order of the undersigned, from transferring or charging the under- mentioned property which is included in the property of the defaulter by virtue of the explanation to sub. Sec. 222 of the I.T. Act 1961 in any way that all persons be, and that they are hereby prohibited from taking any benefit under such transfer or charge”

- (B) Order of Attachment of Immovable Property was served on 27th March 2012 to the Legal Heirs, Late Shri Kalyanji G. Bhagat by T.R.O. Rg. 18(1) Mumbai-12 failing to pay an amount of Rs. 42.02 Cr as per attachment order. In Specification of Property, it has mentioned as

“The Right, Title, Interest of Mr. Vinod Bhagat legal Heir and benamidar of Late Shri Kalyanji G. Bhagat in shop No. Ground floor, Parekh Mansion, Dr.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




Parmanand Marg, Opera House, opp. Panchratan Building, Mumbai-400004”

Both these orders of attachment continue to be valid and in existence till date. Not only that, but the Appellant was also fully aware of these orders of Income Tax attachment, as is evident from the fact that he has filed the W.P. No. 11497 of 2022 for quashing of the said attachment orders. Despite this knowledge, they went ahead with the sale-purchase transaction dated 16.07.2021.

This office had requested the Tax Recovery Officer – 20, Mumbai by letter dated 20.12.2022 for clarification on status of Income Tax Attachment on Shop No. 3, Parekh Building and whether this attachment is still valid or not. With reference to this letter, Tax Recovery Officer – 20, Mumbai by its letter dated 22.12.2022 has confirmed as below:

“With reference to clarification sought from your good office about the genuineness and correctness of copy of information received under RTI Act, it is to be clarified that the information received under RTI Act as per copy attached from your office is genuine and correct as verified and available on record.”

14. One of the crucial points to be considered in this case is the above-mentioned issue of Income Tax attachment of the said property. A RTI application made by the Respondent No. 2 indicates that the Income Tax attachment is genuine, and that the said property cannot be sold legally once it comes under the purview of the Income Tax attachment. Therefore, it is clear that the two sale purchase transactions which have occurred after 2012 are illegal in nature, including the latest transaction by which the Appellant has purchased the said property in 2021. Thus, it seems that the Appellant has not come with clean hands for seeking the electricity connection, rather he has entered into an illegal and invalid purchase agreement. The office of the Electricity Ombudsman (Mumbai) cannot be allowed to be used directly or indirectly for validating such purchases.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




15. A perusal of the orders of the Income Tax attachment of immovable property issued by the Tax Recovery Officer of the Income Tax department indicates that dues of Rs.8.10 crores and Rs.42.02 crores were pending as Income Tax dues at that point of time. This amount may have increased much further by now. In fact, it is surprising to note that the Income Tax department, despite the resources at its disposal, has not been able to protect its interest in the said property or to prevent the illegal transactions from taking place. The pending dues of Rs.8.10 crores and Rs.42.02 crores or more is not a minor amount which can be ignored while taking the decision of whether or not to grant the electricity connection. The property under dispute is a prime property in the heart of Mumbai and has been used or rather misused to carry out illegal sale transactions, which amount to nothing less than a scam. This fact cannot be allowed to be used to facilitate further such transactions for profit.

16. The series of sale transactions which have happened after the Income Tax attachments have taken place even without electricity connection in the premises. It is established that there has been no electricity connection in the said premises at least since 1994. In another words, lack of electricity connection has not hindered or hampered the sale purchase transactions in the past and may not do so in the future. Even the latest transaction has occurred despite there being no electricity connection in the said premises, which did not hamper or discourage the current Appellant from purchasing the property. A similar situation cannot be ruled out in the future also, and the property may again be resold even in the face of the Income Tax attachment and despite lack of electricity connection.

17. Specifically, the said property was sold by Vatsa Corporation to Shah brothers on 30.12.2020 despite the Income Tax attachment and even in the absence of electricity connection. Once again, this property was sold by the Shah brothers to Digitech Electronics System Pvt. Ltd., the Appellant on 16.06.2021 despite the Income Tax attachment and in the absence of electricity connection.

18. In view of the orders of attachment, if electric connection was granted, there would be a risk of outstanding payment in future. The transfer of property could be even revoked or the property could be again sealed by the Income Tax department.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




19. In the instant case, it is not a situation where the applicant tenant is already residing in the said premises or is already running a shop in the said premises, and thus, would be put to severe losses if the electricity is disconnected. This is not the situation; on the contrary, the premises are in the dark for the last few decades, and seem to be recently used only for paper transactions or resale to make a profit. In fact, it is quite likely that in this scenario, if electricity connection is granted, it would only yield higher profit for future illegal sale transactions.

20. The Respondent No. 3 pointed out during the hearing that he has filed Suit No. 13078 of 2022 before the Hon'ble Bombay High Court against the Appellant wherein he has challenged the Appellant's claim of ownership on the ground of obtaining it fraudulently. It is clear that separate litigation is already going on with respect to the various claims of ownership and title of the said property which will take their own due course. In the meantime, it will not be proper to grant any benefit to the Appellant, such as electricity connection, which is liable to be misused either for resale of the property or for strengthening the claim of ownership. If the electricity connection is indeed granted in these circumstances where the ownership is under dispute, it cannot be ruled out that the mere fact of being granted electricity connection may be used or misused by one party to strengthen their claim of ownership, which may actually go against the interest of justice.

21. Various Litigations are pending before the High Court against Shop No. 3 which are as below:

- a. Civil Suit No. 13078/2022 filed by Mr. Vinod Bhagat on 21.04.2022 against the Appellant and Ors seeking *inter alia* to cancel the Deed of Sale and Transfer dated 30.12.2020 and Agreement for Sale dated 16.07.2021.
- b. Writ Petition (L) No. 11497 of 2022 filed by M/s Digitech Electronics on 07.04.2022 for quashing the income tax attachment order of 27th March 2012 and/or any other attachment order levied against the Shop Premises.
- c. Writ Petition in Suit No.37316 of 2022 filed by Ashok Mehta V/s. Kalyanji Bhagat & Others.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- d. Criminal Complaint filed by the Respondent No. 3, being Case No.SW/1800012/2022, before the Hon'ble 18th Metropolitan Magistrate Court at Girgaon, Mumbai seeking investigation against the Accused No. 2 to 7 u/s 156(3) of the Cr. P.C.


There is force in the submission of the Respondent No.1 that pending such disputes, it would not be in the interest of the distribution licensee to grant electricity connection to the Appellant, as in the event of declaration of title in favour of the Respondent No.2, there would be a possibility of outstanding electricity dues not being cleared. Further, as already discussed above, the Appellant cannot be said to be in settled possession of the premises.

22. Considering various aspects mentioned above, I come to the conclusion that the Appellant is not entitled to get an electricity connection for the said premises.

23. The Forum by its order dated 4th July 2022 has rightly analyzed the case in detail, and hence, it is not necessary to interfere in the order of the Forum.

24. The representation of the Appellant is rejected and disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

