

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
B.E.S. & T. UNDERTAKING

(Constituted under section 42(5) of Electricity Act 2003)

Ground Floor, Multistoried Annex Building,
BEST's Colaba Depot
Colaba, Mumbai - 400 001

Telephone No. 22853561

Representation No. S-D-179-2012 dtd. 12/12/2012

Mr. Anil J. JhaveriComplainant

V/S

B.E.S.&T. UndertakingRespondent No. 1
MSFCRespondent No. 2
Ishwar Bhavn CHSRespondent No. 3

Present

Quorum : Chairman
Shri R U Ingule, Chairman

Member
1. Shri M P Thakkar, Member
2. Shri S M Mohite, Member

On behalf of the Complainant : 1. Shri Anil J. Jhaveri
2. Shri Pradeep J. Jhaveri
3. Smt. Bharti A. Jhaveri

On behalf of the Respondent no.1 (BEST) : 1. Shri G.M. Bhagat, DECC(D)
2. Shri T.D. Jadhav, Supdt. CC(D)
3. Shri G.D. Ubalkar, AAM(IGR)
4. Shri S.N. Bhosle, Ag. CLA

On behalf of the Respondent No. (2) & (3) (MSFC & Ishwar Bhavan CHS) : 1. Shri Pratap Gaikwad
2. Shri Chandran
3. Shri Jamnu Hundlani
4. Shri Vasim Shaikh
5. Shri Kalpak

Date of Hearing : 18/01/2013

Date of Order : 11/02/2013

Judgment by Shri. R.U. Ingule, Chairman

Mr. Anil J. Jhaveri, Flat no. 3A, 3rd floor, Shree Ishwar Bhavan, 369, Little Gibs Road, Malabar Hill, Mumbai - 400 006 has come before the Forum for delay in processing of reconnection of electric supply at above mentioned address.

Complainant has submitted in brief as under :

- 1.0 The complainant has approached to IGR Cell on 07/09/2012 for delay in processing Connection Requisition. The complainant has approached to CGRF in schedule 'A' dtd. NIL (received by CGRF on 10/12/2012) as no remedy is provided by the Distribution Licensee regarding his grievance. The complainant has requested the Forum to reconnect the electric supply to his premises at Flat no. 3A, 3rd floor, Shree Ishwar Bhavan, 369, Little Gibs Road, Malabar Hill, Mumbai - 400 006 as he is in occupation of the said flat which is purchased by him through the auction from Sheriff of Mumbai and confirmed by Hon'ble High Court.

**Respondent No.1 BEST Undertaking in its written statement
in brief submitted as under :**

- 2.0 Shri Anil J. Jhaveri complained in Annexure 'C' form on 07/09/2012 due to delay in processing electric reconnection. Vide letter dated 06/11/2012, we replied that, delay in processing reconnection requisition is because of the objection raised by Ishwar Bhuvan Co- op Hsg. Society as the case is pending in High Court. Installation of meter at his premises is only possible after receiving the order of Hon'ble Court in that respect.
- 3.0 On 13/04/2011 vide requisition no. 40748 Shri Anil J Jhaveri applied for electric supply to flat No. 3A, 3rd floor, Ishwar Bhuvan Co-Op Hsg. Society alongwith the documents, Certificate of Sale Under Section 65, PAN Card & Electricity Bill. After site investigation & receiving payment of all dues, from applicant, Connection Order No. 40748 was prepared on 12/07/2011 and on the same day installation inspector visited above site to carry out preliminary inspection of meter cabin, before installation of meter. But representative of Ishwar Bhuvan Co- Op. Hsg. Society refused to give meter room key. This was informed to the applicant immediately. Again on 22/07/2011, installation inspector visited at above premises for inspection, but again society refused to give meter room key. Then, on 25/07/2011 Undertaking served notice under section 163 of Electricity Act 2003 to Ishwar Bhuvan Co- Op Hsg Society. Due to non response, Undertaking has served second notice under section 163 of Electricity Act 2003 as reminder on 02/08/2011. The society accepted the second notice and submitted the documents of Hon'ble High Court Order directing to maintain status quo.
- 4.0 On seeking the legal opinion in the matter, Legal Department informed us that, "*more than one and half year has lapsed after passing the order of Hon'ble High Court to maintain the status-quo and we are not aware about the present status of the matter. Hence, the Applicant Shri Anil Jayraj Jhaveri be asked to submit the present status of the matter. In the absence of which we are unable to give any opinion.*" Accordingly, we informed the applicant to submit the latest court order / status against status quo order dtd 05/02/2010 of Hon'ble High Court. In reply to our letter applicant submitted a letter through his advocate Mansukhall Hiralal & Co. and contended that the order dated 05/02/2010 directing the parties to maintain status quo, is concerning the disturbance of possession of the auction flat and creation of third party rights. It is further stated that

their client Shri Anil Jhaveri continues to be in possession and occupation of flat. On this our Legal Dept. opined to install electric meter in applicant's flat". Accordingly, when our Installation Inspector visited the premises for installation of meter, the representative of Society refused to give meter room key. We informed the Chairman/ Secretary Ishwar Bhuvan Co-Op Hsg. Soc. "To make the key available on 29/09/2011 at 11.30 hrs to undertaking representative failing which your electric supply will be disconnected as per the provision of section 163(3) of Electricity Act 2003, without giving any further intimation or notice in this regards". Thereafter Society submitted the objection letter dtd. 29/09/2011 along with copy of Chamber Summonss through their advocates.

- 5.0 Meanwhile, Undertaking also received another objection letter on 07/10/2011 from Maharashtra State Financial Corporation (MSFC) regarding not to install electric meter in the name Shri Anil J Jhaveri. Therefore, vide our letter dtd 11/10/2011, MSFC was asked to submit the present status as regard to status-quo order dtd 05/02/2010. In response to which on 17/10/2011, Undertaking had received a letter along with court documents from Dr. Arun Kumar Barthakur, Advocate Mumbai High Court on behalf of MSFC and raised the objection for installation of meter in the name of Mr. Anil Jhaveri. On 25/10/2011, legal department advice us to ask the applicant to obtain the order of the court since the matter is subjudice in Court" as the strong objection taken by the society as well as MFSC.
- 6.0 Accordingly, vide our letter dtd. 03/11/2011, we asked the applicant to submit Court Order for installation of meter. On 03/05/2012 applicant Shri Anil Jhaveri has submitted again some court documents and zerox copy of FIR (First Information Report). Thereafter, we once again sought the legal opinion who advice us that, "the applicant failed to produce on record any order of the Hon'ble Court regarding giving electric supply. Hence we may not take any action of giving electric supply to the premises under dispute. Vide our letter dtd. 23/05/2012, we asked applicant to submit Court Order for installation of meter. In reply to our letter, applicant submitted a letter alongwith declaration cum Indemnity bond through his advocate on 23/08/2012. However, it was decided to maintain status quo as per the legal opinion and same was also informed to the applicant vide our letter dtd. 27/09/2012.
- 7.0 As Shri Anil Jayraj Jhaveri filled his complained in Annexure 'C' the matter was taken up with the Management on 01/11/2012, who directed that, unless the applicant brings appropriate order from the Court, we may not sanction electric supply to the premises to avoid contemptuous action of Hon'ble High Court.
- 8.0 We also regret that, though the applicant is a senior citizen, heart ailment, diabetic and depression patient, in the absence of High Court Order, we are not in a position to install the meter. We had already taken all efforts for installing the meter to applicant's premises as narrated above.
- 9.0 We pray to the Hon'ble Forum to dismiss the grievances made by the applicant till the applicant submit the order of Hon'ble High Court for installing electricity meter.
Respondent No.2 MSFC in their written statement submitted in brief as under :
- 10.0 We have to say that Maharashtra State Finance Corporation (MSFC) is a statutory corporation established under Section 3 of the State Financial Corporation Act, 1951 for the state of Maharashtra and Goa and is the mortgagee of the suit flat by way of security for the short term loan of Rs. 240 lakh sanctioned to M/s Moti Electric Industries Limited which is in liquidation. The said loan was to be repaid in eleven instalments, out of which only amount of Rs. 43.40 lakhs towards principal amount and interest upto January 1997

- was paid and thereafter the said company became a persistent defaulter since October 1996.
- 11.0 The said loan was secured by an equitable mortgage of the suit flat by depositing the title deeds of the suit flat and other following documents.
- a) Memorandum of Entry dtd. 28/02/1996.
 - b) NOC to mortgage dtd. 27/02/1996 issued by Shree Ishwar Bhavn Co-op. Hsg. Soc. in respect of the suit flat.
 - c) Original Share Certificate no. 14 dtd. 20/06/1972 issued by the society.
 - d) The original Sale Agreement dtd. 16/01/1970 in respect of the suit flat.
 - e) Agreement dtd. 28/02/1996 between M/s Moti Electric Industries Ltd. & MSFC in respect of the short term loan of Rs. 240 lakhs and creation of the security of the suit flat owned by M/s Lachmibai Devji Badlani by way of collateral security and personal guarantee for the loan in her capacity as Director of the company and
 - f) Declaration dtd. 28/02/1996.
- 12.0 The MSFC failed to receive any amount from the said company, therefore they issued a notice on 22/012/2000 under Section 29 of State Finance Corporation Act, 1951 asking the company to repay the outstanding amount of Rs. 5,06,13,405.00 due as on 31/12/2000, on or before 22/01/2001 failing which the company was informed that MSFC would take over the possession of the said flat in exercise of its power under Section 29 of SFC Act. As the company has failed to repay the amount in response to their notice, the MSFC took over physical possession of the said flat on 23/01/2001 after preparing a "Panchnama of possession", which was duly signed by Shri Shashikant P. Parikh, the manager of the society and ever since the suit flat had been in the possession of MSFC. Subsequently, the MSFC has filed O.A. no. 646 of 2010 before DRT-1, Mumbai and obtained final order for recovery of dues of Rs. 5,06,75,500.00 against the borrower company and its directors.
- 13.0 The Assistant Official Liquidator of Hon'ble High Court, New Delhi informed vide letter dtd. 29/08/2002 addressed to MSFC that the subject company has been ordered to wind up as per order dtd. 17/01/2000 passed by Hon'ble High Court, New Delhi and Official Liquidator attached to the Hon'ble High Court has been appointed as its liquidator with the direction to take over the possession of the assets / properties of the said company. Further, the Assistant Official Liquidator of Hon'ble High Court, New Delhi confirmed the letter dtd. 29/08/2002 referred above by his letter dtd. 11/02/2004 regarding taking over the possession of assets / properties of the company.
- 14.0 The MSFC further states that M/s Kamal Trader, a Partnership firm of various persons including Smt. L.D. Badlani availed a loan of Rs. 98 lakhs from National Small Industries Corporation Ltd. (NSIC). However, the flat no. 3-A was not mortgage to NSIC. The dispute between NSIC and the said M/s Kamal Trader was referred to arbitration and an arbitration award was passed. Accordingly, the High Court ordered to sale the flat no. 3-B. However, the society objected for the same on the ground that the area of the flat shown to be 901 sq. ft. instead of its actual area 620 sq. ft. (In this connection it may be noted that flat no. 3-A which actually admeasures 1108 sq. ft. belongs to Smt. L.D. Badlani and stands mortgaged to MSFC as stated above). Accordingly, Dy. Sheriff of Mumbai filed his report dtd. 01/06/2007 before the Ld. Chamber Judge of the High Court. The said dispute was then decided by the Ld. Chamber Judge Shri S.R. Sathe by his order dtd. 15/06/2006 and cancelled the sale of flat no. 3-B in which portion of area forming part of flat no. 3-A was wrongly included to flat no. 3-B unauthorisedly inflates its area.
- 15.0 Inspite of above decision of Hon'ble High Court dtd. 15/06/2007 the area of two flats no. 3-A & 3-B were once again fraudulently reworked by employing a private Valuer and

Industrial Consultant. The said consultant drew sketches of flat no. 3-A unauthorisedly showing its area to be 910.50 sq. ft. as against its actual area of 1108 sq. ft. as per society's record and flat no. 3-B as having an area of 881.50 sq. ft. as against its actual area of 620 sq. ft. The flat no. 3-A, thus fabricated area was sold to Shri Anil Jhaveri by suppressing the judgment dtd. 15/06/2007.

- 16.0 Hon'ble High Court, New Delhi vide order dtd. 22//11/2007 allowed MSFC to dispose off the flat under reference. Subsequently, Hon'ble Division Bench High Court Bombay vide their judgment dtd. 13/07/2009 had referred the dispute between MSFC and NSIC for the decision of the High Power Committee of the Central Govt. However, the sale was later on got confirmed by NSIC from the Ld. Chamber Judge, Dr. D.Y. Chandrachud by suppressing the judgment dtd. 15/06/2007 passed by Justice S.R. Sathe and also the judgment and order of Division Bench High Court Bombay dtd. 13/07/2009. After learning the judgment dtd. 23/07/2009 passed by the Ld. Chamber Judge, Dr. D.Y. Chandrachud the MSFC took out the Chamber Summons no. 1961 of 2009 before the High Court for recalling the order dtd. 23/07/2009. Therein the High Court by its order dtd. 05/02/2010 directed the parties to maintain status quo which continues up to this date.
- 17.0 Thereafter Shri Anil Jhaveri took out the Chamber Summons no. 2028 of 2011 seeking the relief of allowing him to occupy the flat no. 3-A on humanitarian grounds and for restraining the officials of the society from obstructing his entry to the said flat. After hearing both the parties Ld. Chamber Judge, Kathawalla, passed an order dtd. 07/02/2012 that all the Chamber Summons have to be decided by the same judge, Dr. D.Y. Chandrachud. It may also be noted that in the said Summons no. 2028 of 2011 Shri Anil Jhaveri has admitted the status quo order to be maintained and it is also to be noted that Shri Jhaveri's above request has not been granted by the Hon'ble High Court.
- 18.0 Under the circumstances the matter is sub-judice before the High Court and Shri Jhaveri has already contempt the status quo order issued by Hon'ble High Court by entering the suit flat. As such it will amount to contempt of the Hon'ble High Court dtd. 05/02/2010 if the Hon'ble CGRF passes the order for providing electricity connection to the suit flat. It is therefore respectfully submitted that Hon'ble Forum may reject the complaint and advise the complainant to obtain order from the Hon'ble High Court in the Chamber Summons no. 2028 of 2011 taken out by him.

Respondent No. 3 Iswar Bhavan CHS has submitted in brief as under :

- 19.0 In respect of above complaint it is submitted that the court has sanctioned the sale of the flat no. 3-A situated on 3rd floor of Shree Iswar Bhavan CHS, 369, Little Gibbs Road, Malbar Hill, Mumbai - 400 006, to Shri Anil Jhaveri. However, as the said flat was mortgage to MSFC by the original owner, MSFC filed an application before the Hon'ble Court vide Chamber Summons no. 1961 of 2009 and challenged the sanctioned of sale of the said flat. By an order dtd. 05/02/2010 MSFC sought stay of the proceedings in respect of the said flat. Though Shri Anil Jhaveri had made an oral application for vacating the stay on the said flat, the order of status quo is not vacated till date.
- 20.0 Thereafter Shri Anil Jhaveri forcibly tried to enter the said flat in November, 2011 and tried to install electric meter too. However, the society had objected to install the meter as the status quo order is passed by the Hon'ble High Court. Instead of taking proper proceedings, Shri Anil Jhaveri is harassing the society and its committee members by filing frivolous police complaint.

- 21.0 In spite of the fact that BEST has called upon the said Shri Jhaveri to obtain the Hon'ble High Court's order for installation of electric meter, he failed to obtain the order. A Chamber Summons no. 1965 of 2011 was moved before Justice Shri S.C. Dharmadhikari on 12/12/2011 by Shri Jhaveri, no order was passed in the said application. Thereafter Shri Jhaveri moved the said application before Hon'ble Justice Shri Kathawala on 07/02/2012 when His Lordship directed that all the applications may be assigned to one court.
- 22.0 Shri Anil Jhaveri has been requested by BEST authority to submit the order of the Hon'ble High Court for installation of electric meter. Instead of approaching the Hon'ble High Court for vacating the said order of status quo or for seeking permission to install electric meter, Shri Jhaveri has filed dispute before the Hon'ble Forum. We further say that Shri Anil Jhaveri is not a member of society and forcibly occupying the flat in contempt of High Court. Hence, no relief be granted to Shri Anil Jhaveri unless and until he obtains an order from Hon'ble High Court for setting aside the status quo.

REASONS :

23. This Forum has heard Shri Anil J. Jhaveri, Shri Pradeep J. Jhaveri & Smt. Bharti A. Jhaveri for the complainant, for Respondent No. 1 BEST Undertaking Shri G.M. Bhagat, DECC(D), Shri T.D. Jadhav, Supdt. CC(D), Shri G.D. Ubalkar, AAM(IGR), Shri S.N. Bhosle, Ag. CLA have submitted their arguments, for Respondent No. 2 MSFC Shri Pratap Gaikwad, Shri Chandran, for Respondent No. 3 Ishwar Bhavan CHS Shri Jamnu Hundlani, Shri Vasim Shaikh and Shri Kalpak have appeared and submitted their arguments. Perused papers.
24. Intricacies at its extremities, has been a salient feature of the matter on the hand of this Forum. The complainant by filing the instant complaint has submitted that in an auction conducted by Sheriff of Mumbai as a highest bidder he has purchased a flat no. 3A for Rs. 2.52 crores admeasuring 910 sq. ft. in "Ishwar Bhavan Building" belonging to the Respondent No. 3 Ishwar Bhavan Co-op. Hsg. Society Ltd. located at Little Gibs Road, Mumbai - 400 006 on 23/06/2009. Since then as alleged by the complainant he has been staying in the said flat wherein the Respondent BEST Undertaking has denied providing electricity on the ground of order of "*status quo*" order being passed by the Hon'ble Bombay High Court in a *Chamber Summons no. 1961/2009* in Execution Application no. 197/2004 in Arbitration case no. 2/2001 between **National Small Industries Corporation Ltd. v/s M/s Kamal Traders and Respondent Maharashtra State Financial Corporation** (an applicant). Therefore the instant controversy, to be resolved by this Forum.
25. In counter the Respondent Maharashtra State Financial Corporation (for short "MSFC") has submitted before this Forum *inter-alia* that the MSFC has sanctioned a short term loan of Rs. 240 lacs to M/s Moti Electrical Industries Ltd. Mrs. Lachmibai D. Badlani, a director of the said company in a creation of collateral security and personal guarantee for loan, has mortgaged the said flat to the MSFC. Thereafter as the said company failed to repay the loan amount, therefore to acquire the physical possession of this flat no. 3A, presently allegedly occupied by the complainant, after preparing a *Panchanama of possession* signed by Shri S.P. Parikh, manager of the society, from 23/01/2001 the said flat no. 3A has been in possession of the Respondent MSFC. This Forum finds a *Panchanama* dtd. 23/01/2001 being placed before this Forum at Exhibit 'I' at pg. 41.
26. The Respondent MSFC later on learnt that M/s Kamal Traders, partnership firm including Smt. Lachmibai D. Badlani, availed a loan of Rs. 98 lacs from National Small Industries Corporation Ltd. (for short "NSIC"). However, the said flat no. 3A was not mortgaged to NSIC. Later on the dispute between the *NSIC and M/s Kamal Traders* was referred to

arbitration and an *arbitration* award was passed therein and in pursuance thereto the Bombay High Court order sale of the said flat no. 3B in 2007.

27. The Respondent No. 2 MSFC further submits that the Respondent No. 3 Society objected to sale of the flat no. 3B on the ground that its area was wrongly shown to be 901 sq. ft. instead of its actual area being 620 sq. ft. As per submission of the Respondent No. 2 MSFC, the flat no. 3A mortgaged to it has been admeasuring 1108 sq. ft. while the adjoining flat no. 3B was measuring 620 sq. ft. The flat no. 3A was owned by Smt. Lachmibai D. Badlani. While the flat no. 3B was owned by Smt. Lachmibai V. Badlani. For pointing out the objection raised by the society in respect of the area of the flat no. 3B, the Dy. Sheriff of Mumbai filed a report dtd. 01/06/2007 before the Hon'ble Bombay High Court. The said dispute has been decided by the Hon'ble Justice Shri S.R. Sathe in Execution Application no. 197/2004 by passing order dtd. 15/06/2007.
28. This Forum finds it expedient to advert to the said order dtd. 15/06/2007 passed by J. Shri S.R. Sathe of Bombay High Court placed on file before this Forum by the Respondent No. 2 MSFC. Therein this Forum observes that His Lordship observed that the claimant NSIC at one stage by moving a Chamber Summons has categorically said that the society has informed that the flat no. 3B is 620 sq. ft. and flat no. 3A is 1108 sq. ft. His Lordship further observed that in the said proclamation it was mentioned that flat no. 3B admeasuring 901 sq. ft. was to be sold. His Lordship further observed that from the submission before him, it was appeared that some portion out of flat no. 3A might have been included in flat no. 3B by the mutual agreement between the owners. However, the Respondent Society's record was showing otherwise i.e. flat no. 3A admeasuring 1108 sq. ft. and flat no. 3B has 620 sq. ft. His Lordship on observing such complication regarding right, title and interest of respective parties and objection raised by the society proceeded to cancel the auction held by the Sheriff of Mumbai.
29. The Respondent MSFC further pointed out that it had taken out a *Chamber Summons no. 1639/2008* in Execution Application 197/2004 in Arbitration Petition 2/2001 as objector / intervener. Therein it was *inter-alia* submitted that the Respondent No. 2 MSFC has been objecting to take possession of flat no. 3B, which is now renumbered as flat no. 3A by the Respondent Society admeasuring 1108 sq. ft. carpet area, by the Bailiff of Sheriff of Mumbai, without knowledge of the Respondent No. 2 MSFC. At the time of possession of this said flat, the Respondent No. 3 Society has shown the said flat being no. 3B and later on renumbered as 3A.
30. The Secretary of the Respondent Society informed the Respondent No. 2 MSFC by their letter dtd. 27/05/2008 about receiving a letter from the Sheriff of Mumbai that in Judge's order no. 66/2007 in Execution Application no. 197/2004 between NSIC claimant v/s M/s Kamal Traders, *Her Ladyship Smt. Roshan Dalvi* passed an order on 14/03/2007 for breaking open the flat no. 3B. However instead, Sheriff's Bailiff was pointed out the flat no. 3A in the said building. The Respondent No. 3 Society vide its letter dtd. 27/05/2008 confirmed that on 23/02/2001 the Respondent No. 2 MSFC had taken possession of the flat belonging to Smt. Lachmibai D. Badlani u/s 29 of State Finance Corporation Act, 1951. The Respondent MSFC further submitted that the Respondent Society wrongly and mischievously created confusion about the numbers of the flat owned by Smt. L.D. Badlani which was mortgaged to it. The Respondent No. 2 MSFC therefore prayed to set aside and quash an auction procedure in respect of the flat no. 3A mortgaged to it by Smt. L.D. Badlani.
31. At this juncture about the said confusion, this Forum finds it interesting to observe that even the complainant himself in his affidavit signed in the month of December 2011 and

filed in *Chamber Summons No. 256/2011*, has state in paragraph no. 3 that “*The said society initially had stated the said flat no. 3A belongs to Respondent No. 2 and flat no. 3B belong to Respondent No. 4. There is confusion as to which flat is 3A and which flat is 3B. However, there is confusion as to the ownership of flat no. 3A and flat no. 3B. However, in execution of the decree passed in the Arbitration matter no. 2, both flats are required to be sold.*”

32. This Forum finds that the Hon'ble Bombay High Court J. Shri S.C. Dharmadhikari passed the order in the said *Chamber Summons no. 1639/2008* on 23/03/2009 and proceeded to dismiss the said Chamber Summons moved by the MSFC *inter-alia* on two grounds. One the said application was not maintainable under Order 21 Rule 99 of the Civil Procedure Code. Secondly, in the said application the MSFC has made serious allegation against the Respondent No. 3 Society therefore no relief can be granted to the MSFC.
33. This Forum further finds that the Respondent MSFC thereafter preferred an Appeal no. 181/2009 challenging the said order passed by J. Shri S.C. Dharmadhikari before the Division Bench of Hon'ble Bombay High Court. In this appeal on observing that the Ld. Councils from both the sides agreed to set aside the order passed by the Single Bench of the Bombay High Court viz. Shri S.C. Dharmadhikari in order to follow a mechanism provided in the Supreme Court's judgment in 1995 Supp (4) SCC 541 between ONGC v/s CCE and Rajkamal Builders v/s Ahmadabad Municipal Corporation reported in (2009) 1 SCC 497. The Hon'ble Division Bench of the Bombay High Court thus proceeded to recall the said order passed by Single Bench and allowed the appellant i.e. MSFC to withdraw the said appeal in *Chamber Summons no. 1639/2008*. The Respondent No. 2 MSFC therefore vehemently submits that NSIC ought to have taken a recourse to such mechanism as ordered by Division Bench.
34. Now this Forum turns to consider the second contention raised by the Respondent No. 2 MSFC that vide the order dtd. 13/07/2009, the Hon'ble Division Bench of the Bombay High Court had directed to take recourse to the mechanism provided in the Supreme Court judgment referred to above, that too on the consent being given by both the parties to the Chamber Summons no. 1639/2008 in Execution Application no. 197/2004 in Arbitration Petition no. 2/2001. However, the NSIC deliberately did not bring the said order dtd. 13/07/2009 passed by Hon'ble Division Bench of the Bombay High Court to the notice of Single Bench of Hon'ble Bombay High Court and proceeded to obtain the order dtd. 23/07/2009 from J. Dr. D.Y. Chandrachud in Execution Application no. 197/2004 upholding the forfeiture in accordance with the terms and conditions of the sale.
35. The Respondent No. 2 MSFC thereafter placed a heavy reliance on *Chamber Summons no. 1961/2009* moved by it in Execution Application no. 197/2004 in Arbitration Petition 2/2001, *inter-alia* submitting that in the said Chamber Summons it had prayed to the Hon'ble Bombay High Court (i) to recall its order dtd. 23/07/2009 confirming the sale of flat no. 3A admeasuring about 1108 sq. ft. which wrongly shown to be 910 sq. ft. (ii) to quash and set aside the sale of the flat no. 3A admeasuring 1108 sq. ft. (iii) to restore to the applicant MSFC the possession of the flat no. 3A (iv) pending the hearing and final disposal of this Chamber Summons, all proceedings taken by the Dy. Sheriff of Mumbai in respect of sale of the flat no. 3A and flat no, 3B to be stayed (v) to initiate appropriate action against the claimant i.e. NSIC and its concerned officers for obtaining the order dtd. 23/07/2009 by suppressing the judgment passed by Hon'ble Division Bench of the Bombay High Court dtd. 13/07/2009 in Appeal no. 181/2009 and (vi) to initiate appropriate action against the claimant NSIC and its officers for causing the business and industrial consultant to prepare the sketch maps of the flat nos. 3A & 3B dtd. 31/07/2008

showing false area and for their sale regardless of judgment and order dtd. 15/06/2007 passed by His Lordship Shri S.R. Sathe.

36. The Respondent MSFC further pointed out that in this *Chamber Summons 1961/2009* moved by it, J. Shri V.M. Kanade of Hon'ble Bombay High Court directed the officer of the NSIC to file reply to the affidavit in the support of the Chamber Summons, in the meantime directed all the parties to *maintain status quo* of 05/02/2010. The Respondent MSFC therefore vehemently submitted that in view of such directions given by the Hon'ble Bombay High Court to maintain the *status quo*, the Respondent BEST Undertaking has been justified in denying to provide an electric supply to the complainant.
37. This Forum also finds its expedient to advert to a decision passed by J. Shri S.J. Kathawala of the Hon'ble Bombay High Court in a Chamber Summons no. 2028/2011 moved by the complainant himself in Execution Application no. 197/2004 in arbitration matter no. 2/2001. In this Chamber Summons His Lordship has directed that these three Chamber Summons i.e. i) 2028/2011 ii) 1965/2011 and iii) 256/2011 to be heard by one court and further directed parties to move the Ld. Chief Justice of the Hon'ble Bombay High Court to get these Chamber Summons assigned to one court. This order has been passed by J. Shri S.J. Kathawala on 07/02/2012.
38. This Forum observes at the juncture that in the aforesaid *Chamber Summons no. 256/2011* moved by the complainant, it has been submitted in para 43 referring to *Chamber Summons no. 1965/2011*, and prayer has been made that the applicant (present complainant) *to be permitted to arrange to install electric meter* and enable applicant (present complainant) to stay in the suit flat. The complainant in para 44 further submitted that he being a senior citizen and suffering from various ailment, unable to stay without electricity in the said premises. This Forum thus finds that the complainant has already submitted a prayer before the Hon'ble Bombay High Court to issue a direction for arrangement to be made for *installation of electric meter* for availing electric supply therefrom.
39. In the aforesaid observation and discussion this Forum finds that the *ownership* and *occupation* of the premises i.e. flat no. 3A & 3B located at 3rd floor of Respondent No. 3 Iswar Bhavan CHS alleged by the complainant, has been a matter of challenge and interpretation of the various orders passed by Hon'ble Bombay High Court referred to above.
40. As such as submitted by the Respondent No. 1 BEST Undertaking the alleged *ownership* and *occupation* of the premises by the complainant has been thus "*sub-judice*". There is already the order has been passed by Hon'ble Bombay High Court to maintain *status quo* passed by J. Shri Kanade on 05/02/2010. Besides it to resolve the entire controversy between the parties His Lordship J. Shri S. J. Kathawala has already passed order dtd. 07/02/2012 to place the said three Chamber Summons before the one High Court giving a liberty to the party to move the Hon'ble Chief Justice of Bombay High Court.
41. To reiterate besides it, the complainant has already made a prayer before the Hon'ble Bombay High Court in the *Chamber Summons no. 1965/2011* moved by him to *permit him to arrange him to install electric meter* for availing electricity for his premises. Thus this Forum finds that the Hon'ble Bombay High Court has been seized with the matter in respect of alleged *ownership* and *occupation* of the premises, as well as is entitlement to avail the electricity.

42. It is therefore obvious that in the teeth of such admitted set of facts and circumstances this Forum cannot proceed to grant the relief to the complainant as submitted by the Respondent No.1 BEST Undertaking. Needless to mention that there is a merit in the arguments submitted on behalf of the Respondent No. 2 MSFC as well as that by the Respondent No. 1 BEST Undertaking. In the net result the complaint should fail. Accordingly we proceed to pass the following order.

ORDER

1. The complaint no. S-D-179-2012 stands dismissed.
2. Copies be given to both the parties.

(Shri S M Mohite)
Member

(Shri M P Thakkar)
Member

(Shri R U Ingule)
Chairman