

		Date	Month	Year
1	Date of Receipt	29	11	2022
2	Date of Registration	30	11	2022
3	Decided on	08	02	2023
4	Duration of proceeding	70 days		
5	Delay, if any.	55 days		

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. 22799528

Grievance No.C-474-2022 dtd. 30/11/2022

Mohammedali T. Merchant

.....Complainant

V/S

B.E.S.&T. Undertaking

.....Respondent

Present

Chairman

Coram :

Shri S.A. Quazi, Chairman

Member

1. Smt. Anagha A. Acharekar, Independent Member
2. Shri S.S. Bansode, Technical Member

On behalf of the Complainant

: 1. Shri Raj Merchant

On behalf of the Respondent (1)

: 1. Shri. S.M. Virkar

On behalf of the Respondent (2 to5) :

2. Mrs. Zainab Dhuliwala
- (3. Fatema H. Rassiwala)
- (4.Esmile E. Rassiwala)
- (5.Mariam E. Rassiwala)

Date of Hearing

: 08/12/2022 & 18/01/2023

Date of Order

: 08/02/2023



(Signature)
(Milind Karanjkar)
Secretary
CGRF BEST

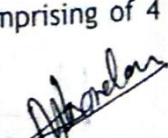
(Signatures)

Judgment

- 1.0 The present complaint / dispute filed by the complainant Shri Mohammedali T. Merchant for new connection of electricity in the premises described in the application. The complaint was received in the office of the Forum on 29/11/2022 and it was registered on 30/11/2022. As the matter is in the respect of new connection of electricity, it is to be decided within 15 working days from the date of filing of the grievance and accordingly the notice was issued to the Respondent No.1 / BEST Undertaking to file their reply and after filing of their reply the matter was scheduled to be taken up for hearing on 08/12/2022. On that date, in the course of hearing it was noticed that the Respondent No. 1 / BEST Undertaking had asked the complainant to produce NOC of all co-landlords of the premises and as the NOC was not produced, the connection has not been yet given to the complainant. It was also revealed that co-landlords i.e. the Respondent No. 2 to 5 had already taken objection against request of the complainant regarding the application for giving electric connection. In view of such circumstances, the Forum found that it is necessary to give show cause notice to the Respondent No. 2 to 5 and to appear and file their reply before this Forum. Accordingly on the date of hearing i.e. 08/12/2022, direction was given to issue a notice to the Respondent No. 2 to 5 and the matter was then required to be adjourned for appearance and reply of the Respondent No. 2 to 5. Accordingly, the Respondent No. 2 to 5 submitted their written application in the office of the Forum stating that they are unable to appear for hearing before 12/01/2023 and they requested to keep the matter for hearing after 12/01/2023. In view of their said request, the matter was scheduled to be taken up for hearing on 18/01/2023. On 18/01/2023, the matter was heard and reserved for order. Hence, now the order is being passed today i.e. on 08/02/2023. However, in the aforesaid process the matter could not be decided within prescribed time limit of 15 working days from the date of filing of the dispute / complaint. Hence, the reasons for delay have been recorded in this para as per the requirement of MERC (CGRF & EO) Regulations, 2020.
- 2.0 The instant complaint / dispute is about the grievance of the complainant in respect of Respondent No.1 / BEST Undertaking's decision to ask the complainant to produce NOC of co-landlords i.e. Respondent No. 2 to 5 of the premises in question as a condition precedent for giving new electric connection to the premises i.e. Shop No. 4, ground floor, 32-40 Rassiwala Building, 2nd Marine Street, Dhobi Talao, Mumbai - 400 002.
- 3.0 The case of the complainant may be stated as under :
- a) There is building called 32-40 Rassiwala Building situated at 2nd Marine Street, Dhobi Talao, Near Gol Masjid, Mumbai 400 002. The said building is comprising of 4 floors




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i.e. ground + 3 floors. The complainant and the Respondent No. 2 to 5 and others being family members being child of same ancestor are the owners of properties including the aforesaid building. In the aforesaid building there are tenants in various flats / shops situated therein. The Shop no. 4 is situated on the ground floor of the aforesaid building namely 32-40 Rassiwala building as the subject matter of the instant complaint / dispute.

- b) In the aforesaid Shop no. 4 there was tenant by name Nathumal Dharamraj Singhvi alias Nathulal Dharamraj. The complainant being one of the landlords had filed a suit bearing RAE Suit No. 260 of 2020 in the Small Cause Court of Mumbai for eviction in respect of the said tenant and the premises shop no. 4. The legal heir of said tenant Nathumal Dharamraj Singhvi alias Nathulal Dharamraj was party to the suit. Those heirs' names are Dharamchand Nathulal Jain alias Singhvi and his brother Madanlal Nathulal Jain alias Singhvi. In the year 2022, the said Dharamchand Nathulal Jain alias Singhvi and his brother Madanlal Nathulal Jain alias Singhvi approached to the complainant and they surrendered the tenancy rights in favour of the complainant and handed over vacant and peaceful possession of the said shop no. 4 to the complainant. This was recorded in the document called declaration of Surrender Deed signed and registered by the said parties and recorded in the Small Cause Court under Serial/ Register no. 2322 /2022 dtd. 14/10/2022. On 15/10/2022, the Hon'ble Small Cause Court Mumbai was informed about the said Surrender Deed and it was submitted in the court. After scrutinizing the documents, the Hon'ble Small Cause Court passed an order in the words that *"In view of order passed below Exhibit 14 and as the said matter is amicably settled between the plaintiffs and defendant out of the court and plaintiff do not want to proceed with the suit. Therefore this court think it proper to grant permission to the plaintiffs to withdraw of the suits as per Order XXIII Rule 1 (1) of The Code of Civil Procedure, 1908."* The complainant has mentioned in his rejoinder dtd. 08/12/2022 submitted in this Forum that copy of the said order passed by the Small Cause Court dtd. 15/10/2022 is annexed as Annexure 'C' to this rejoinder.
- c) According to the complainant, since 2010 till September 2022 he was the only landlord who signed the rent receipts of Shop no. 4 in the name of tenant Nathumal Dharamraj Singhvi. The Copy of these rent receipts are produced with the aforesaid rejoinder as Annexure 'D'. The complainant further submits that his name is registered as landlord in the records of Municipal Corporation (MCGM) and Maharashtra Housing Area Development Authority (MHADA). Hence, as per this record and as per the other government official's record it is the responsibility of the complainant to pay the MCGM Tax etc. and the complainant looks after the affairs of the building. The complainant has produced the copies of letters dtd. 24/08/2019 and 29/12/2021 issued by MHADA. According to the complainant this proves that he is the sole landlord




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responsible for that building. It is further submitted by the complainant that the Respondent No. 1/ BEST Undertaking had issued a letter to the Assessor and Collection Dept. of MCGM 'C' ward dtd. 07/11/2022 enquiring for the confirmation of the property for ownership of the premises. The said department of MCGM 'C' ward has given reply to the Respondent No. 1 / BEST Undertaking favouring to the complainant in this regard.

- d) According to the complainant despite of the above submissions of the aforesaid documents no legal explanation given by the BEST Undertaking to consider complainant's application for new connection as landlord. In the rejoinder, the complainant has stated further in his words *"Also NOC from landlords for the purpose of basic utilities is not for the purpose of seeking permission from them to provide water, electricity etc. but to confirm the tenancy. So, in order to prove that and confirm tenancy, I have attached registered agreement. The tenancy rights includes water, electricity, right to passage and other common facilities provided to other unit holders. By virtue of agreement, there is no need for Landlord's NOC for water and electric connection."* By these words probably the complainant wants to submit that for the purpose of getting electric connection, landlord's NOC is not required. In this regard, the complainant has relied on the decision of Additional Rent Controller (West) Tis Hazari Courts, Delhi in Misc ARC No. 29774 of 2016 dtd. 24/12/2019 and copy of this order is produced by the complainant as Annexure 'F' to the aforesaid rejoinder. The complainant is also relied on and produced a copy of judgment of Hon'ble Supreme Court in the case of Dilip through LRS. v/s Satish and Others in Criminal Appeal No. 810 of 2022 (Arising out of special leave petition (CRL) No. 8917 of 2019. Referring to this decision of the Hon'ble Supreme Court, the representative of the complainant has submitted that electricity cannot be declined to the tenant on the ground of failure / refusal of the landlord to issue NOC. The representative of the complainant has also referred to the decision of the Hon'ble Supreme Court in the case of Kanaklata Das and Others v/s Naba Kumar Das in Civil Appeal no. 3018 of 2008 dtd. 25/01/2018. The copy of this judgment is annexed with rejoinder as Annexure 'H'.

- e) It is submitted by the representative of the complainant that as the complainant is the only landlord who looks after the affairs of the building, no NOC is required to confirm the tenancy or ownership. In view of this and in view of the documents produced above by the complainant, it is submitted that the complainant is entitled to get the electric connection in the said premises without NOC of the other landlords. Hence, it is submitted that necessary directions to be given to the Respondent No.1 / BEST Undertaking to give new electric connection to the complainant in the aforesaid premises of shop no. 4 of Rassiwala Building.




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4.0 The Respondent No.1 / BEST Undertaking has filed its reply and opposed the aforesaid complaint filed by the complainant before this Forum. The case of the Respondent No.1 / BEST Undertaking may be stated as under :

a) It is not disputed that the complainant Shri Mohammedali T. Merchant had registered requisition no. 532658 dtd. 18/10/2022 for reconnection of meter at shop no. 4, ground floor, 32-44 Rassiwala Building, 2nd Marine Street, Dhobi talao, Mumbai - 400002. The Respondent No. 1 had produced copy of the said application for connection vide Exhibit 'A' to their reply. It appears from the application that the complainant had requested the Respondent No. 1 to give new service connection in respect of commercial use of the electricity. According to the Respondent No. 1 on the basis of the documents submitted by the complainant, the electric connection to the said shop no.4 was sanctioned on 21/10/22 by the Respondent No. 1 subject to the compliance of production of the documents namely latest rent receipt, latest MCGM tax extract, NOC of all co-landlords to install the meter for the applied premises and recovery of outstanding dues / vigilance claim / proclaim, if any, of the old consumer a/c no. 335-263-005 of the said premises. Mentioning all the aforesaid requirements, the Respondent No. 1 issued a letter dtd. 21/10/2022 to the complainant. Copy of the letter is produced by the Respondent No. 1 with their reply at Exhibit 'B'. In response to the said letter of the Respondent No. 1, the complainant produced the following documents.

- i) Declaration of Surrender Agreement dtd. 14/10/2022.
- ii) General Power of Attorney dtd. 29/09/2022.
- iii) Old rent receipt for the period from April 2008 to March 2009 for the applied premises in the name of Nathumal Dharamraj.
- iv) MCGM property extract.
- v) Letter from MHADA dtd. 24/08/2016.
- vi) Copy of judgment of Additional Rent Controller No. 29774/16 Tis Hazari Court, Delhi in Hari Mohan V/s S.K. Marwaha.
- vii) Copy of judgment in Criminal Appeal no. 810 of 2022 passed by Hon'ble Supreme Court.

b) According to the Respondent No. 1 / BEST Undertaking after scrutinizing the aforesaid documents it has been revealed that the complainant has not submitted valid occupancy proof for the applied premises as per Clause 5.6 (b) of MERC (Electricity Supply Code and Standard of Performance including Power Quality) Regulations, 2021 (herein after it shall be referred as MERC Supply Code). It is further submitted that the complainant did not provide NOC from co-landlords. As regards the occupancy proof, the complainant had produced the declaration of Surrender Deed purportedly signed by the heirs of the original tenant dtd. 14/10/2022. According to the



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Respondent No. 1, after the scrutiny of the said documents, it has been found that the existing owner of the said premises has expired and Surrender Deed has been given by one of the legal heirs Shri Dharamchand Nathulal Jain alias Singhvi. Further it is also found that other legal heir of the said original tenant has given Power of Attorney to his brother to surrender the tenancy rights of shop no. 4 to the landlord Shri Mohammedali T. Merchant. The Respondent No. 1 further submits in their reply that it has been found that on the copy of declaration of Surrender Deed, some part of clause 4 rubbed out. Therefore, it seems that the document may be faked or fabricated.

- c) The Respondent No. 1 / BEST Undertaking has further submitted that meanwhile on 21/10/2022 an objection was raised from co-landlords i.e. Fatema Rassiwala, Esmile Rassiwala, Mariam Rassiwala. In their written objection, they have stated that the occupation of the complainant Shri Mohammedali T. Merchant is illegal / bad in law / null and void and therefore this objection was raised for allotment of new electric meter in the name of Shri Mohammedali Merchant.
- d) The Respondent No. 1 further submitted that one same objection letter dtd. 20/10/2022 from one Zainab Rassiwala daughter of one deceased co-landlord has been received in the office of the Respondent No. 1. The said Zainab Rassiwala raised objection stating that the meter should be installed in the original tenant's name only and giving of new connection should be stopped. Zainab Rassiwala further stated in her objection letter that the said building is jointly owned by 6 co-landlords who are equal owners of the building. The shop no. 4 is situated in the said building for which the requisition has been registered for requirement of the new meter by the complainant.
- e) The Respondent No. 1 has further submitted that said Zainab Rassiwala also submitted the authority given to her by other three co-landlords of the said building that they have authorized Zainab Rassiwala to manage the affairs of the said building. The Respondent No. 1 has produced the aforesaid documents produced by Zainab Rassiwala as Annexure 'J' to the Respondent No. 1.
- f) The Respondent No. 1 further submits that as clear picture could not be ascertained, the said matter was referred to Legal Dept. on 14/11/2022 with all the documents. The Legal Dept. has given opinion dtd. 28/11/2022 which reads as under :

"The applicant has not provided the valid document of his exclusive rights of ownership upon the requisitioned premises and the objection as to the rights of the ownership for the same has been already raised by some co-owners of the said building of the requisitioned premises. Further, the occupation of the applicant to the said premises is not seems to in the settled position. In the above circumstances, the requisition for the said premises is not entitled to be processed."

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- g) According to the Respondent No. 1, considering the above facts once again the complainant vide letter dtd. 30/11/2022 has been informed to furnish the valid occupancy proof of applied premises and NOC from other co-landlords. In such circumstances the complainant has approached to this Forum. However, until the complainant complies the said requirement, the new connection cannot be given in the name of the complainant. Hence it is submitted by the Respondent No. 1 that the complaint is liable to be dismissed.

5.0 As noted herein earlier the other co-landlords were given notice of the present grievance application. They appeared and filed their reply and they are described in this proceeding as Respondent No. 2 to 5. The Respondent No. 2 to 5 have filed their reply jointly. The case of the Respondent No. 2 to 5 may be stated as under :

- a) The representative of the Respondent No. 2 to 5 has submitted in the course of hearing that admittedly there are six landlords including the complainant and the Respondent No. 2 to 5 in respect of the aforesaid Rassiwala building as well as other buildings. It is submitted that complainant and Respondent Nos. 2 to 5 are children of one common ancestor. Each of them has 1/6th joint share in the property. As far as the premises namely shop no. 4 of Rassiwala building is concerned, it is submitted that the Respondent Nos. 2 to 5 were collecting the rent and were giving rent receipts to the tenants. The Respondent Nos. 2 to 5 have produced rent receipts in respect of the said premises. They have also produced in the course of hearing the 3-4 rent books in which the carbon copies of the rent receipts retained by the landlords i.e. Respondent Nos. 2 to 5 are also seen. These rent receipts bears serial numbers and also the dates and period of rent etc. Therefore, it is submitted by the representative of the Respondent nos. 2 to 5 that legal control and possession of the said premises shop no. 4 is with the Respondent no. 2 to 5 and not with the complainant. Therefore, the complainant is not entitled to get electric connection in his name. The application of the complainant for new electric connection in the shop no. 4 is liable to be rejected on number of grounds.
- b) The Respondent nos. 2 to 5 have further submitted that the complainant has completely misinterpreted the said judgment of the Hon'ble Supreme Court as the said decision is in respect of needy tenant who was in possession of the premises. In the present case before this forum the applicant of the complaint himself is co-owner of the said premises who has other several sources of income and further he was never in occupation of the said premises. According to the Respondent nos. 2 to 5 the said premises is forcefully occupied by the complainant without any authority or consent of other co-owners. Hence, granting of NOC by the Respondent No.2 and other co-owners does not arise in favoring of the complainant as the complainant has malafide intention to illegally occupy the said premises.



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- c) It is submitted that the complainant has only 1/6th share in the property. However, he has applied for the electric connection in his own name for his own personal benefit and hence major of the co-owners are not in favour of any electricity connection being given to the complainant.
- d) According to the Respondent nos. 2 to 5, one Shri Nathulal Dharamraj Jain was the original tenant of shop no. 4. He is passed away and after his demise, for a limited time a care taker by name Mr. Suresh Mandot was using premises and since 2019 no one was occupying the same premises and same was vacant. According to the Respondent nos. 2 to 5, RAE Suit no. 260 was filed with misrepresentation and suppressing facts from the Hon'ble Supreme Court and without knowledge and notices to the Respondent nos. 2 to 5. It appears that the said suit was filed against original tenant despite knowing the fact that the said tenant Shri Nathulal Dharamraj Jain is passed away long back. Further the order dtd. 15/10/2022 passed by Consent Terms filed before Hon'ble Supreme Court was obtained by the complainant by suppressing the material fact about the demise of original tenant. It is the case of the Respondent nos. 2 to 5 that said declaration of surrender of tenancy dtd. 14/10/2022 has relied upon by the complainant is forged and false document. It is submitted that the said Deed of Surrender was not signed by the actual tenant of the premises. The person who has signed the said Deed of Surrender of tenancy i.e. Madanlal Nathulal Jain son of Nathulal Nemichand Jain is no way related to the original tenant Nathulal Dharamraj Jain. The said Nathulal Nemichand Jain who has executed the said Deed of Surrender of tenancy has fraudulently under the guise of being legal heir of original tenant Nathulal Dharamraj alias Nathumal Dharamraj Jain. It is to be noted that name of original tenant was Nathulal Dharamraj Jain whereas on the PAN card, executing the declaration of Surrender Deed of tenancy mentions his father's name is Nathulal Nemichand Jain. The representative of Respondent nos. 2 to 5 has produced copy of PAN card of the person signing the said Deed as Annexure 'B'. It is submitted by their representative that the said copy has been obtained by the Respondent No. 1 where the complainant had filed this document in support of his application for new connection.
- e) As the name of the original tenant is Nathulal Dharamraj Jain alias Nathumal Dharamraj Jain as it is evident from the copy of Complaint RAE Suit (Supra) the aforesaid fraud committed by the complainant may be inferred in respect of creation of false Deed of Surrender of tenancy to claim occupation of the premises illegally. The notice issued by MCGM u/s 361 of MMC Act in respect of the said premises and also the electricity bill issued by BEST Undertaking mentions the name of original tenant as Nathulal Dharamraj Jain. The Respondent nos. 2 to 5 have produced copy of the



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notice of MCGM, electricity bill and copy of rent receipts issued in favour of the original tenant Nathulal Dharamraj Jain.

- f) Even without prejudice to the above submissions, the Respondent nos. 2 to 5 have submitted that if it is considered that the said declaration is valid and surrender of tenancy is valid, the same is not registered and is merely notarized. Moreover, the complainant is not the only landlord but the Respondent nos. 2 to 5 are also landlords / owners of the premises. Therefore, the surrender of the tenancy in favour of the complainant does not make the complainant only landlord of the premises. Hence, the said surrender in favour of the complainant is void. As the premises was vacant without being occupied by any of the tenant since past few years, now it belongs to all co-owners and not only the complainant. It can be said to be undivided property of all the co-owners who have equal and undivided rights in the premises. The complainant has only 1/6th share and therefore the complainant cannot claim exclusive rights.
- g) It is submitted by the Respondent nos. 2 to 5 that in respect of room no. 19 of the same building similar application for electricity was filed by one Smt. Shamim Merchant wife of present complainant Shri Mohammedali T. Merchant. The said Shamim Merchant had obtained new connection in respect of room no. 19 by using false documents including false rent receipts. On the objection raised by these Respondents, the Respondent No. 1 was required to be cancelled the change of name of earlier tenant as consumer to the name of the complainant (cancelled the change of name of consumer in favour of Shamim Merchant). Thus it is submitted that the complainant and his family are illegally trying to obtain the premises fraudulently by using fraudulent tactics.
- h) About the letter of MHADA dtd. 29/12/2021 relied upon by the complainant, the Respondent nos. 2 to 5 have submitted that this document is tampered one. The original letter of MHADA received by the other co-owners is produced by the Respondent nos. 2 to 5 with their reply and annexed at Annexure 'J'. In this letter produced by the Respondent nos. 2 to 5, it appears that it was issued by MHADA on 29/12/2021 addressed to one of the Respondent Fatema Rassiwalla stating that in the property card in respect of the aforesaid building six persons names have been mentioned in the record as co-owners in which the names are mentioned as 1. Hakimuddin T. Rassiwalla , 2. Saifuddin T. Rassiwalla, 3. Haider T. Rassiwalla, 4. Mohammedali T. Rassiwalla, 4. Esmile E. Rassiwalla and 5. Mariam Ebrahim Rassiwalla. The representative of the Respondent nos. 2, to 5 have also pointed out that the rent receipts produced by the complainant is also false and forged document to purport that the complainant used to give rent receipts to the original tenant. It is submitted that the said rent receipts does not bear any serial number of the rent book. It is submitted that the rent receipt relied upon by the complainant at pg. 21 of his




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rejoinder for the period from April 2010 to March 2011, April 2011 to March 2012, April 2021 to March 2022 and April 2022 to September 2022 does not bear serial nos. It is submitted that the complainant has not produced the rent receipt book of the duplicate receipts whereas the Respondent nos. 2 to 5 have produced 3-4 rent receipt books in which carbon copies of the rent receipts issued by them can be seen and also serial nos. imprinted thereon can be seen. The Respondent nos. 2 to 5 have produced copy of rent receipts bearing serial no. 1012 and it is for the payment of rent for the period from April 2010 to March 2011. It is submitted that these genuine rent receipts have been given by the Respondent nos. 2 to 5 for accepting rent from original tenant in respect of the premises in question. However, the complainant has produced rent receipt without bearing serial number imprinted on it in the office of the Respondent no. 1 for getting electric connection. This rent receipt is for the period from April 2010 to March 2011 whereas for the same period the Respondent nos. 2 to 5 had issued a rent receipt bearing imprinted serial number on it. Similarly, the rent receipt produced by the complainant for the payment of rent from the period from April 2011 to March 2012 without bearing any imprinted serial number of rent receipt whereas the Respondent nos. 2 to 5 have produced rent receipt for the same period i.e. from April 2011 to March 2012 bearing imprinted serial number. The rent receipt book is also produced in the course of hearing to show carbon copies of those rent receipts lying in the rent receipt books. Pointing out these circumstances, the representative of the Respondent nos. 2 to 5 has submitted that the complainant is relying on false and forged documents to claim that the premises is in his occupation which cannot be relied upon and cannot be proof of the complainant.

- i) For the aforesaid circumstances, the representative of the Respondent nos. 2 to 5 have submitted that the present complaint is liable to be dismissed as the complainant cannot be treated as exclusive owner of the premises to get the electric connection in his name.
6. We have heard the submissions of parties and noted their submissions as above. In view of the above submissions of the parties and case pleaded by them, the following points arise for determination, on which we record our findings as under, for the reasons to follow.

Sr. No.	Points for determination	Findings
1	Whether the complainant is entitled to get the electric connection in premises in question without NOC from the Respondent nos. 2 to 5 and other co-owners ?	Negative
2	What order is required to be passed by this	The Grievance Application is



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Forum for disposal of this Grievance Application?	liable to be dismissed, as is being indicated in the operative order being passed herein below.
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7.0 We record reasons for aforesaid findings as under :

- a) We have noted submissions and contentions of parties herein earlier. What appears is that there are some buildings including the Rassiwala building 32-44, 2nd Marinee Street, Dhobi Talao, Mumbai - 400 002. It appears that this building was purchased by ancestors of the complainant and Respondent nos. 2 to 5. These ancestors are no more alive. There are tenants in the said buildings. It appears that in respect of the premises in question i.e. shop no. 4, ground floor in the aforesaid Rassiwala building there was a tenant by name Shri Nathumal Dharamraj alias Nathulal Dharamraj Jain. Admittedly this person by name Shri Nathumal Dharamraj alias Nathulal Dharamraj Jain is not alive. The dispute between the complainant and the Respondent nos. 2 to 5 is in respect of the occupation of the premises i.e. shop no. 4. The complainant is claiming that he had filed eviction suit in Small Cause Court against the said Nathulal Dharamraj Jain vide RAE suit no. 260 of 2020. It is further case of the complainant that heirs of said Nathulal Dharamraj Jain are Madanlal Nathulal Jain and Dharamchand Nathulal Jain and the said Madanlal Nathulal Jain for himself and on behalf of his brother has signed declaration of surrender of tenancy in favour of the complainant Mohammedali T. Merchant in respect of the said shop no. 4 situated at ground floor, Rassiwala building described above. The complainant's case is that this Surrender Deed is produced in RAE suit no. 260 of 2020 before the Small Cause Court and Hon'ble Small Cause Court has passed order dtd. 15/10/2022 accepting the said Surrender Deed and allowing the complainant to withdraw eviction suit. The complainant is therefore claiming that on the basis of the said surrender of tenancy by the tenant in his favour, the premises is in his exclusive possession and therefore he is entitled to get the electric connection in his name exclusively. We have noted the objection of the Respondent nos. 2 to 5 in respect of the aforesaid claim of the complainant. They have submitted that the said filing of the suit and filing of surrender of tenancy therein etc. are not reliable documents to hold that the complainant is the exclusive occupier of the premises. It is submitted that the persons who have signed the purported Surrender Deed of tenancy were not the heirs of the original tenant Shri Nathulal Dharamraj Jain alias Singhvi. They have also pointed out that the rent receipts allegedly issued by the complainant are also false and fabricated documents and they also cannot be genuine proof of exclusive possession over the premises so as to grant electric connection exclusively in the name of the complainant.

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Mohamedali

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 (Mithul K. Ranjan)
 Secretary
 CGRF, BEST

- b) We have examined the aforesaid submissions of the parties and objections pointed out by Respondents. We have found merits in the submission of the Respondents that the documents produced by the complainant to claim proving exclusive occupation and possession over the premises i.e. shop no. 4 are not genuine and reliable documents. It is rightly pointed out by the representative of the Respondent nos. 2 to 5 that Deed of Surrender of tenancy relied upon by the complainant does not appear to have been signed by legal heirs of the original tenant. It is also not disputed that the original tenant is not alive. It is also not disputed that since 2018 the premises in question was unoccupied. Now the Surrender Deed relied upon by the complainant is said to have been signed by Shri Madanlal Nathulal Jain alias Singhvi for himself and also on behalf of his so called brother Shri Dharamchand Nathulal Jain alias Singhvi. According to the complainant both these persons are legal heirs of original tenant Shri Nathulal Dharamraj Jain. The representative of the Respondent No. 2 to 5 has pointed out from the documents received from the Respondent no. 1 that the complainant has produced these documents before the Respondent no. 1 in support of his application for electric connection to shop no. 4. This document is a copy of PAN card annexed to the said Deed of Surrender of tenancy dtd. 14/10/2022. This PAN card shows that the name of the person on PAN card is Madanlal Nathulal Jain, a son of Nathulal Nemichand Jain. It means that the person who was holding this PAN card has signed the said Deed of Surrender on 14/10/2022 before the Notary whereas it is admitted fact that the original tenant of the premises of shop no. 4 was Nathulal Dharamraj Jain Singhvi alias Nathulal Dharamraj Jain and not Nathulal Nemichand Jain. It means the said Madanlal Nathulal Jain is son of Nathulal Nemichand Jain and not son of original tenant Nathulal Dharamraj Jain alias Singhvi. This basic finding of the case of the complainant about getting the premises surrendered from the heirs of the original tenant gets collapsed due to the aforesaid circumstances pointed out from the aforesaid documents including the Deed of Surrender of tenancy and copy of PAN card of the person who has signed the said Deed. The other peculiar circumstances pointed out by the representative of the Respondent nos. 2 to 5 that the falsity of the claim of the complainant by producing the rent receipt and relying on it to prove that he was accepting the rent from the original tenant and issuing receipts to him. As noted above, the complainant has produced rent receipts to purport that he has issued these rent receipts to the original tenant for the rent received for the period from April 2010 to March 2011, April 2011 to March 2012, April 2021 to March 2022 and April 2022 to September 2022. All these receipts do not bear the imprinted serial numbers. Therefore, it is doubtful that these receipts were issued from any regularly maintained rent receipt book. On the other hand, the Respondent no. 2 to 5 have produced the copies of rent receipts for the period from April 2011 to March 2012 and these receipts issued by the Respondent nos. 2 to 5 bear imprinted serial numbers. The representative of the Respondent nos. 2 to 5 had produced 2-3 rent receipt books and in one of the rent receipt book, the carbon copy of these rent receipts have been seen




(Milind K. Ahijkar)
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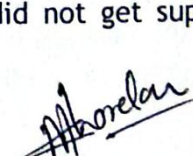



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by us. Therefore the rent receipts produced by the Respondent nos. 2 to 5 seems to be the genuine findings of the fact that these Respondents were accepting rent from the tenant and were giving the rent receipts. Whereas, for the same period from April 2010 to March 2011 and April 2011 to March 2012 the rent receipts produced by the complainant without bearing imprinted serial numbers seems to be doubtful. Therefore, the case of the Respondents will have to be accepted and the case of the complainant will have to be rejected that he used to accept the rent from original tenant and he used to issue the rent receipts. Therefore, the rent receipts produced by the complainant did not prove that the complainant is having exclusive occupation and control over the premises.

- c) The other document replied upon by the complainant to claim his occupation and control over the premises in question includes the record from MCGM regarding taxation of building. The said record indicates that the name of the complainant is mentioned as tax payer of the said building. However, these circumstances by itself could not make the complainant exclusive owner and occupier of the premises in question in view of the admitted fact that the Respondent nos. 2 to 5 are also co-owners of the building. As far as the letter issued by the MHADA relied upon by the complainant is concerned that also does not show that the complainant is exclusively occupier of the building. On the contrary this letter shows that in the record of the property card maintained by concerned department of MCGM, the names of the complainant as well as the Respondent nos. 2 to 5 and other co-owners are mentioned. Therefore, the complainant cannot claim that he is exclusive owner and occupier of the premises and therefore he is entitled to get the electric connection exclusively in his name unless the other co-owners give NOC for it.
- d) The decision relied upon by the complainant in support of his claim to get electricity without NOC of co-owners is not at all helpful for the complainant. As far as the decision of Additional Rent Controller (West) TIS Hazari Courts, Delhi is concerned it is not binding and moreover it is a dispute between landlord and tenant wherein it was held that the tenant should not be refused the electric supply. The decision of the Hon'ble Supreme Court in the case of Dilip v/s Satish and Others is also not helpful to the complainant in claiming the facts of the instant case. The facts in the case of Dilip v/s Satish and Others were that the tenant had applied for supply of electricity on the basis of NOC purportedly issued by landlord / owner. The landlord alleged that the NOC was fabricated and signature thereon of Shantilal Maniklal Jaiswal brother of the Appellant landlord has been forged by the Respondent. FIR was lodged on the said facts. The proceeding for causing of FIR was initiated before the Hon'ble High Court of Bombay and the FIR was quashed by the Hon'ble High Court observing that the tenant needs electricity during the business in the premises and landlord was not giving NOC. The landlord took over step to see that tenant did not get supply of




(Milind Karanjkar)
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electricity. The Electricity Board seeks no objection of landlord only to verify that the possession of tenant is authorized. There is no any other purpose behind obtaining such no NOC from landlord. The landlord cannot prevent the tenant from availing such facility at his own cost. The Hon'ble High Court further observed that it cannot be said in such matter that false record, if any, created has caused any harm to the property or person of the first informant and in view of this circumstances it cannot be said that the tenant or his associate committed offence by taking connection of electricity on the basis of such NOC. Observing as such, the Hon'ble High Court further observed that it will be misused of process of law if the tenants are directed to face the trail for aforesaid offences. In the result, the Hon'ble High Court quashed the FIR initiated against the tenant. Thus said decision of Hon'ble High Court was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court has observed that it is now said proposition of law that electricity is a basic amenity to which the person cannot be deprived. The electricity cannot be declined to a tenant on the ground of failure / refusal of the landlord to issue NOC. All that the electricity supply authority is required to examine whether the applicant asking for electricity connection is in occupation of the premises in question. Observing as such, the Hon'ble Supreme Court further held that Hon'ble High Court clearly fell in error in quashing the FIR as that the fabrication and / or creation of records and or forging a signature does not constitute an offence under the IPC. The Hon'ble High Court further held that the impugned order of quashing of FIR could not be sustained and same was set aside. On perusal of the aforesaid decision again it can be said that it is a dispute between landlord and tenant whereas in the instant case it is a dispute between co-owners and therefore aforesaid observations of Hon'ble High Court that the electricity cannot be declined to a tenant on the ground of failure / refusal of landlord to issue NOC is not helpful to the complainant. Similarly the other decision of the Hon'ble Supreme Court in the case of Kanaklata v/s Nabakumar Das & Othrs (Supra) was in the case where the dispute was between landlord and tenant wherein one of the co-owners had filed suit for eviction of tenant from the premises and the Hon'ble High Court observed that all the landlords or co-owners of the premises need not be implicated as party in suit for ejection or eviction for the premises in question. Therefore, if co-owners or co-landlords can file a suit for eviction against the tenant. Again this ratio of said decision is not helpful to the complainant in the facts and circumstances of the present case where the dispute is not directly involved about entitlement of the present complainant to file suit for eviction of the original tenant Shri Nathulal Dharamraj Jain (Singhvi). The Respondents have raised the dispute before this Forum about the claim of the complainant that he is a exclusive occupier of the premises on the basis of the alleged Deed of Surrender of tenancy executed by the persons were prima facie heirs of the original tenant etc.

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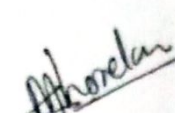
M. K. K.
(Milind Katarjkar)
Secretary
CGRF BEST


- e) Considering all the aforesaid facts and circumstance of the case, we have come to the conclusion that the claim of the complainant that he is the exclusive occupier of the premises cannot be sustained so as to grant electric connection in his exclusive name in respect of the premises i.e. shop no. 4 described above without NOC of the Respondent Nos. 2 to 5 who have raised the objection about giving electric connection in the exclusive name of the complainant is false and therefore the complainant is not entitled to get the electric connection without NOC of the Respondent Nos. 2 to 5. Accordingly, we have answered point no. 1 in negative.
- f) In view of negative findings recorded by us on the aforesaid point no.1, we hold that the instant grievance / submission / complaint will have to be dismissed and accordingly we have answered point no. 2. Hence, we pass the following order.

ORDER

- 1.0 The grievance no. C-474-2022 dtd. 30/11/2022 stands dismissed.
- 2.0 Copies of this order be given to all the concerned parties.


(Shri. S.S. Bansode)
Technical Member


(Smt. Anagha A. Acharekar)
Independent Member


(Shri S.A. Quazi)
Chairman




(Milind Karanjkar)
Secretary
CGRF BEST