IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.58 OF 2004

Citizens For a Just Society,)
through its Vice President Mr. K. Pullaiah,)
F-9/2-2, Sector -7, Sanpada,)
Navi Mumbai – 400 705.).. Petitioner

Vs

1. The State Government of Maharashtra,)
Through Secretary, Revenue and)
Forest Department, Mantralaya,)
Mumbai)

2. The City and Industrial Development)
Corporation (CIDCO),)
CIDCO Bhavan, CBD, Belapur,)
Navi Mumbai.).. Respondents
–

None for the Petitioner.
Shri S.N. Patil, AGP for Respondent No.1.
Shri G.S. Hegde i/by M/s. G.S. Hegde & Associates for the Respondent No.2.

--

CORAM : A.S. OKA & A.K. MENON, JJ

DATE ON WHICH SUBMISSIONS WERE HEARD : 13TH MARCH 2015

DATE ON WHICH JUDGMENT IS PRONOUNCED: 8TH JUNE 2015

JUDGMENT (PER A.S. OKA, J)

. None appeared for the Petitioner. We have heard the learned AGP for the First Respondent and the learned counsel appearing for the Second Respondent. As none appeared for the Petitioner, the learned AGP and the learned counsel appearing for the Second Respondent, apart from canvassing the case of their respective clients, have assisted the Court.

2. The Second Respondent is the City and Industrial Development Corporation of Maharashtra Limited (for short "the CIDCO"). In the decade of 1960-1970, the State Government decided to establish a satellite city of Navi Mumbai with the object of reducing congestion in the city of Mumbai. By exercising power under Sub-section (3A) of Section 113 of the Maharashtra and Regional Town Planning Act, 1966 (for short "the MRTP Act"), the CIDCO was appointed as an Agent of the State Government and consequently, as the New Town Development Authority for the area constituting the city of Navi Mumbai.

3. Large tracts of lands were acquired by the State Government for setting up the twin city of Navi Mumbai and the same were placed at the disposal of the CIDCO. The CIDCO granted leases in respect of the various plots of lands in the city of Navi Mumbai by

exercising powers under the Navi Mumbai Disposal of Lands Regulations, 1975 (for short "the said Regulations").

4. On 19th June 1999, the State Government issued a Government Resolution. The said Government Resolution was issued by the Revenue and Forest Department of the State Government. The said Government Resolution refers to an earlier order dated 28th September 1995 under which a direction was issued to levy non-agricultural assessment on the lands held by the CIDCO. The Government Resolution dated 19th June 1999 which is impugned in this Public Interest Litigation records that as the CIDCO was acting as an Agent of the State Government, it cannot be said that the CIDCO is the occupant of the lands held by it. The said impugned Government Resolution, however, records that the lands which have been transferred by the CIDCO either by the transfer of Occupancy Rights or by way of executing lease are subject to payment of non-agricultural assessment. Reliance was placed on the relevant provisions of the said Regulations which provide that lessees are liable to pay all rates, taxes and other charges due in respect of the lands given on lease by the CIDCO. Reliance is also placed on a Regulation which provides that a lessee shall, during the continuance of lease, pay the land revenue assessed in respect of the demise land. The impugned Government Resolution directs that the CIDCO shall recover non-agricultural assessment from

the allottees of the lands or from the lessees and shall credit the same with the State Government.

5. The challenge in this Public Interest Litigation is to the said Government Resolution dated 19th June 1999. It is contended that on the basis of the said impugned Government Resolution, recovery of non-agricultural assessment is attempted to be made by the CIDCO with retrospective effect. It is contended that the State Government has no right to direct the CIDCO to collect non-agricultural assessment.

6. On 31st March 2004, this Court passed an interim order restraining the CIDCO from levying and/or collecting the non-agricultural taxes from the citizens of Navi Mumbai.

7. There is a reply filed by Shri Digambar Anant Karandikar on behalf of CIDCO. It is stated therein that the CIDCO has issued notices only to its allottees asking them to pay non-agricultural assessment as per the terms and conditions of the Agreements. It is specifically stated that the CIDCO is demanding non-agricultural assessment from the date of the handing over possession of the lands to the concerned allottees and not from the inception of the city of Navi Mumbai. In the said affidavit, it is contended that the allottees or the lessees under the provisions of the Maharashtra Land Revenue Code,

1966 (for short “the said Code”) are primarily liable to pay the non-agricultural assessment.

8. The State Government has filed an affidavit of Shri Nandkumar Jantre, the Collector of Thane. Even in the said affidavit, it is reiterated that the non-agricultural assessment is being recovered by the CIDCO from the date on which the possession of the lands is handed over by it to the concerned allottees. It is contended that under the provisions of the said Code, the persons who are in actual possession of the lands are liable to pay non-agricultural assessment.

9. Both the learned AGP and the learned counsel appearing for the CIDCO have supported the impugned Government Resolution. However, the learned counsel appearing for the CIDCO stated that in view of the interim order passed by this Court, the CIDCO is not collecting the non-agricultural assessment.

10. We have carefully perused the averments made in the Petition, the impugned Government Resolution and the affidavits on record.

11. It will be necessary to make a brief reference to the provisions of the said Code. Under Section 64 of the said Code, all the

lands, whether applied to the agricultural or other purposes are liable to the payment of the land revenue to the State Government unless there is a specific exemption. Chapter VII of the said Code deals with the assessment and settlement of land revenue of the lands used for non-agricultural purposes. There is an elaborate procedure laid down for determining the non-agricultural assessment of lands in non-urban and urban areas. A power is conferred to the Collector to fix the standard rent for the non-agricultural assessment. Section 168 of the said Code reads thus:

> "168. Liability for land revenue.
>
> (1) In the case of -
>
> (a) unalienated land, the occupant or the lessee of the State Government,
>
> (b) alienated land, the superior holder, and
>
> (c) land in the possession of a tenant, such tenant if he is liable to pay land revenue therefor under the relevant tenancy law,
>
> shall be primarily liable to the State Government for the payment of the land revenue, including all arrears of land revenue, due in respect of the land. Joint occupants and joint holders who are primarily liable under this section shall be jointly and severally liable.
>
> (2) In case of default by any person who is primarily liable under this section, the land revenue, including arrears as aforesaid, shall be recoverable from any person in possession of the land.
>
> Provided that, where such person is a tenant, the amount recoverable from him shall not exceed the

> demands of the year in which the recovery is made.
>
> Provided further that, when land revenue is recovered under this section from any person who is not primarily liable for the same, such person shall be allowed credit for any payments which he may have duly made to the person who is primarily liable, and shall be entitled to credit, for the amount recovered from him, in account with the person who is primarily liable."

12. In this Public Interest Litigation, we are not dealing with the alienated lands. Thus, in case of unalienated lands, the occupant or lessee of the State Government is primarily liable to pay the land revenue.

13. Clause 23 of Section 2 of the said Code defines "Occupant" as a holder in actual possession of an unalienated land, other than a tenant or Government lessee. A person who is lawfully in possession of a land is said to hold the said land. Under Section 39 of the said Code, every occupant is required to pay land revenue as per the said Code, but a Government lessee is required to pay as land revenue, the lease money fixed under the terms of the lease.

14. The contention of both the State Government and the CIDCO is that the allottees of various plots of land to whom allotments have been made by the CIDCO or the lessees of the CIDCO are occupants who are primarily liable to pay non-agricultural assessment.

15. On perusal of the provisions of the said Code, we find that there is no provision under which the State Government could have delegated its power to recover the revenue assessment to the CIDCO. Under Chapter XI of the said Code, there are elaborate provisions made for recovery/realization of the land revenue. The powers under Chapter XI of the said Code are required to be exercised by the Revenue Officers within the meaning of the said Code. The State Government has not come out with the case that any particular statutory power has been exercised by it to delegate its power of collection of revenue assessment to the CIDCO. The CIDCO may be an Agent of the State Government as far as Sub-section (3A) of Section 113 of the MRTP Act is concerned. The CIDCO is the Agent of the State Government to do the work of development in the area of the New Town and, therefore, under the said Regulations, there is a power vesting in the CIDCO to dispose of the lands. We have perused the Navi Mumbai Disposal of Lands (Amendment) Regulations, 2008 as well as the unamended Regulations. In both the Regulations, there is a clause that the lessee of CIDCO shall, during the continuance of the lease, pay the land revenue assessed on the demise lands. Thus, the land revenue is to be paid by the lessees to the State Government and not to the CIDCO.

16. We must note here that our attention is invited to a decision of the Apex Court dated 18th March 1997 in Civil Appeal No.2036 of 1997 in the case of Nagpur Improvement Trust v. Nagpur Timber Merchants Associations and Another. The said decision will not apply to the present case as the Rule 9 of the Nagpur Improvement Trust (Land Disposal) Rules, 1955 (for short "the said Rules") specifically provided that where the land revenue is payable in respect of a plot transferred by the Trust, the same shall be payable by the Trust. The Apex Court observed that in view of the said Rule 9, liability for the payment of the land revenue in respect of the lands disposed of under the said Rules was of the Nagpur Improvement Trust. The Apex Court observed that the Rule 9 does not preclude the Improvement Trust from requiring its lessees to pay the land revenue which the Improvement Trust is required to pay to the State Government.

17. In the present case, there is no provision in the said Regulations on par with the aforesaid Rule 9 of the said Rules. There is no statutory provision, even according to the State Government, which makes the CIDCO liable to pay land revenue in respect of the lands disposed of by it either by transfer of Occupancy Rights or by way of executing leases. It is not the case of the State Government that the CIDCO is liable to pay the revenue assessment in respect of the lands disposed of by it.

18. Therefore, the direction issued under the impugned Government Resolution by the State Government to the CIDCO to recover land revenue/revenue assessment from the persons to whom the lands have been allotted by the CIDCO has no legal basis and hence it is completely illegal. It is for the Authorities under the said Code to ensure that proceedings for recovery of the revenue assessment are initiated against those who are primarily liable to pay the revenue assessment. We make it clear that if under a contract between the CIDCO and its transferees, the CIDCO is entitled to recover any amount including the revenue assessment, notwithstanding this judgment and order, it will be open for the CIDCO to recover the requisite amount in terms of the contract.

19. Hence, the Petition must succeed in part and we pass the following order:

ORDER :

(a) The impugned Government Resolution dated 19th June 1999 is quashed and set aside to the extent to which a direction has been issued by the State Government to the CIDCO to recover non-agricultural assessment from its transferees and pay the same to the State Government;

(b) Rest of the Government Resolution is not disturbed and shall continue to be in force;

(c) We make it clear that this Judgment and Order will not affect the rights of the CIDCO under the contracts with the transferees of the lands;

(d) The Rule is made partly absolute in above terms with no order as to costs.

(A.K. MENON, J) (A.S. OKA, J)