IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5522 OF 2012

M/s. Bhagat Housing Development
Pvt. Ltd. .. Petitioners
vs.
Municipal Corporation of Greater
Mumbai & Anr. .. Respondents

Mr. R. V. Pai with A. R. Pai i/b. Mr. S. J. Khera for Petitioners.
Mr. S. S. Pakale with Ms Pallavi Thakar for Respondent – MCGM.

CORAM : M. S. SONAK, J.
DATE: 05 MARCH 2015

P.C. :-

1] The memo of the petition in this case runs into 134 pages and no less than 19 reliefs have been claimed therein. All this, during the pendency of a statutory appeal before the Small Causes Court under the provisions of Section 217 of the Mumbai Municipal Corporation Act, 1888 ("said Act"). The main reliefs prayed for in the present petition are as follows:

(a) to set aside the warrant of attachment dated 9 March 2012, which demands inter alia an amount of Rs.4.65 crores from the petitioners towards municipal taxes and other taxes;

(b) Order dated 16 March 2012 made in Municipal Appeal No. 3106 of 2011, which grants interim relief in favour of the petitioners subject however to the deposit of an amount of Rs.1,82,25,000/-;

2] Apart from the aforesaid main reliefs, the petitioners seek several reliefs, which in fact form subject matter of statutory appeal, which is pending consideration before the Small Causes Court.

3] Section 217 of the said Act *inter alia* provides that no appeal shall be entertained by the Appellate Authority, unless the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value upto the date of the filing of the appeal has been deposited by the appellant with the Commissioner and such appeal shall be accompanied by a receipt of the amount of tax to which appeal relates. Sub Section (2A) of Section 217 of the said Act provides that where the appeal is not filed in accordance with the provisions of clauses (a) to (d) of sub-section (2), it shall be liable to be summarily dismissed. Sub clause (d) of sub section (2) provides for pre-deposit in the matter of entertaining of appeal under Section 217 of the said Act.

4] In the present case, though the appeal was instituted sometime in the year July 2011, till date, the petitioners have deposited only an amount of Rs.10,00,000/-, when in fact the demand was in the range of Rs.4.65 crores. Since, there was no interim relief in the appeal, which is possibly yet to be considered for the non-compliance with statutory provisions with regard to non deposit, the Municipal Corporation issued a warrant of attachment for recovery of the amount of Rs.4.65 crores or thereabouts. At this stage, the petitioners applied for interim relief before the Appellate Authority. One of the submissions made by the petitioners was that the warrant of attachment is a composite warrant of attachment for the period between 1 October 2008 to 31 March 2012. For the period between 1 April 2010 and 31 March 2012, there has been a revision in the assessment and the revised assessed rates have not been only accepted by the petitioners, but further payments in terms of the same have also been effected to the Municipal Corporation. Accordingly, it was submitted that there is no justification whatsoever to levy any demand for the period from 1 April 2010 to 31 March 2012.

5] By order dated 16 March 2012, the Appellate Authority has granted interim relief to the petitioners but the same is subject to the petitioners depositing within two months from the date of the order, an amount of Rs.1,82,25,000/-.

6] Mr. Pai, the learned counsel for the petitioners submitted that in a situation where a composite warrant is issued and thereafter it is conclusively established that payments in respect of a portion thereof is varied and thereafter accepted, the entire composite warrant falls and cannot be further executed. Mr. Pai further submitted that the Municipal Corporation had itself filed an affidavit claiming the amount of Rs.1,82,25,000/- for the period from 1 April 2010 to 31 March 2012. Mr. Pai pointed out that thereafter there has been a revised assessment for the very same period and therefore the Appellate Authority was not at all right in requiring the petitioners to make a deposit of Rs.1,82,25,000/- as a pre-condition for interim relief.

7] Mr. Pakale, the learned counsel for the Corporation has pointed out that the Appellate Authority has in fact arrived at the aforesaid calculation on the basis dues for the period between 1 August 2008 to 31 March 2010, which dues are reflected in the impugned warrant of attachment clearly and unambiguously. Further, Mr. Pakale pointed out that there is absolutely no bar to execution of the warrant of attachment, notwithstanding the circumstances that some amounts referred to therein may have been varied and eventually paid by the petitioners. In so far as the amounts for the periods between 1 October 2008 to 31 March 2010 are concerned, there is no dispute that the petitioners have till date not paid the said amount.

8] Rival contentions now fall for my determination.

9] There is no merit in the contention of Mr. Pai that a composite warrant cannot be enforced, once some of the amounts are varied and even paid by the petitioners. In this case, the order impugned before the Appellate Authority made reference to an amount of Rs.4.65 crores. The warrant of attachment also makes reference to this amount. However, thereafter, the Corporation has itself revised the amount for the period from 1 April 2010 to 31 March 2012. In these circumstances, the Appellate Authority has emphasized upon the assessment dues for the period from 1 October 2008 to 31 March 2010. The said amount comes to Rs.1,82,25,000/- and it is this amount which the petitioners have been directed to deposit as a condition for interim relief.

10] Similarly, this is no occasion to entertain the submissions in relation to the illegality or otherwise of the order impugned before the Appellate Authority. For example submissions were made that there was no compliance with the provisions of Section 162 of the said Act or that no final assessment order has either been made or in any case no copy thereof has been furnished to the petitioners. These are matters that can be and will be gone into in the appeal, if the same is validly instituted. Similarly, it cannot be said that the impugned order is based upon the calculations submitted by the Corporation in their affidavit and relate to the period after 1 April 2008. If we go by the warrant of attachment itself, it is clear that for the period between 1 April 2008 and 31 March 2010, the dues claimed are Rs.1,82,25,000/-.

11] In my judgment, the filing of this petition, constitutes an abuse of the process of this Court. The entire objective appears to be to stall the recoveries and to circumvent the provisions contained in Section 217 of the said Act. In the context of deciding the validity of the provisions of Section 217 of the said Act, this Court has observed that the provision for pre-deposit is neither onerous nor excessive nor arbitrary rather the same is in public interest. Further, this Court in the case of *Fleet Fastners Private Limited & Anr. vs. Municipal Corporation of Greater Mumbai*[1], has made certain observations with regard to modus operandi adopted by the parties, after they have preferred an appeal under Section 217 of the said Act without complying with the requirement of pre-deposit. Paragraph 12 of the said judgment and order, reads thus :

1 Writ Petition No. 10229 of 2013 decided on 13.02.2015

“12] The petitioners, on the basis of institution of the appeal in August 2011, have, till date managed to stall the recovery of arrears of taxes and other dues. The modus operandi appears to be that once such appeal is instituted without complying with the conditions of pre-deposit, the same is kept pending, until the Corporation actually moves to recover the arrears of taxes. Once coercive proceedings are taken for demand of arrears, the application is made for interim reliefs. Thereafter, the application for interim relief is perused, on some basis that the requirement of pre-deposit is to be complied with only at the stage of entertainment of the appeal and not at the stage of consideration of motion for interim relief. Pending the consideration of motion for interim relief, either some ad-interim relief is obtained or some statement is wriggled out to the effect that no coercive proceedings would be proceeded with. Once motion for interim relief is declined or granted conditional upon deposit, the matter is carried to this Court challenging not merely the order on interim reliefs, but also the original order which is subject matter of appeal, inter alia on the ground that the same is without jurisdiction. Considerable time is taken before this Court in pursuing the petition. All this while, there is neither any offer to or deposit of the arrears of taxes, notwithstanding, the provisions contained in Section 217 of said Act. Such modus operandi is clearly intended to frustrate the provisions of Section 217 of said Act to stall the recovery of arrears of taxes or at least protract the same without any just cause. The petitioners, in adopting such a modus operandi in the present case, have abused the process of Court.........”

12] If the facts and circumstances in the present case are taken into consideration, it is clear that the entire objective of the petitioners was to obtain interim relief, without complying with the requirement of pre-deposit as contemplated by Section 217 of the said Act. The petitioners, to a great extent, have succeeded in this mission because the demand was made prior to the year 2011. The appeal, without compliance with the requirement of pre-deposit was instituted some time in July 2011. Till date, the petitioners have paid hardly an amount of Rs.10,00,000/- as against the demand of Rs.4.65 crores in the first instance. Even after giving credit for the period post 1 April 2010, the demand in its principal amount is Rs.1.82 crores. Accordingly, no fault can be found with the order made by the Appellate Authority that the amount of at least Rs.1,82,25,000/- be deposited, in order to avail some interim relief in the matter.

13] Accordingly, there is no merit in this petition. This petition is liable to be dismissed, and is so dismissed, with costs which are assessed at Rs.25,000/- (Rupees Twenty Five Thousand). Costs to be paid to the respondent – Corporation within a period of four weeks from today.

14] It is clarified that this Court has basically examined the issue in the context of impugned order dated 16 March 2012, which in facts grants the petitioners interim reliefs subject to deposit of the amount of Rs.1,82,25,000/-. Accordingly, all observations are *prima facie.* The Appellate Authority to decide the petitioners appeal, uninfluenced by such observations, provided of course such appeal is validly instituted and complies with the statutory provisions contained in Section 217 of the said Act.

(M. S. SONAK, J.)

Chandka