IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.71 OF 2009

Gorai (1) Sanghmitra Co-operative Housing Society Limited & Anr. ….. Petitioners

V/s

Mumbai Municipal Corporation & Ors. ….. Respondents

Mr. S.A. Sawant for Petitioners.
Mr. K.H. Mastakar for Respondent MMC.
Mr. Vineet Naik, Senior Advocate i/b Mr. Mohit Jadhav for Respondent No.4.

CORAM : A.A. SAYED, J.
DATED : 13 MARCH 2015

P.C.

1 This Petition filed by the Petitioner-Society under Article 226 of the Constitution seeks cancellation of the auction dated 16 October 2008 of the Petitioner Society's property being Plot No.95 RSC-5, Municipal "R" Ward, Gorai (1), Borivali (West), Mumbai 400 091 alongwith the structures standing thereon.

2 The Petitioner Society has 40 members belonging to Economically Weaker Section (EWS). MHADA had leased the said Plot No.95 to the Petitioner Society under an Indenture of Lease dated 14 November 1990 on payment of lease premium of Rs.1,20,000/- and lease rent of Rs.480/- per annum to be paid by

each member of the Petitioner Society proportionately for and on behalf of the Society for the purpose of construction, maintenance and location of houses by the members on the developed plots respectively. MHADA has framed a Sites and Services Scheme under the Bombay Urban Development Project which is aided by the World Bank. The said Plot No.95 was allotted to the Petitioner Society under the aforesaid Sites and Services Scheme. MHADA had also provided finance to the tune of Rs.4,10,000/- to individual members through the Petitioner Society to defray the expenses of building a house as a suitable residence for members. The finance was made available to the members on repayment with interest at the rate of 12% per annum. An Indenture of Mortgage dated 18 January 1992 was executed between the Petitioner Society and MHADA. On receipt of funds from MHADA, some of the members of the Petitioner Society constructed their houses and the Petitioner Society collected maintenance of an amount of Rs.90/- from the members having an area 25 square meters and Rs.105/- from the members having an area of 40 square meters.

3 On 16 February 2002 a Warrant of Attachment for Rs.1,81,175/- was issued by the Respondent Corporation. Certain part payments were made by the Petitioner Society. On

11 September 2006 another Warrant of Attachment was issued for Rs.2,63,162/-. On 15 February 2008 the property of Petitioner Society was put to auction on account of non-payment of taxes. Auction was conducted on atleast four occasions. On the first and second occasion there was no bidder present. On the third occasion the final bid was Rs.5.41 lacs which was less than the reserved cost and the auction was therefore postponed. The auction was finally fixed on 16 October 2008 without any reserve bid. On 16 October 2008 there were five bidders were present. The property of the Petitioner Society was ultimately auctioned for Rs.6,11,000/-.

4 The Auction Purchaser was added as Respondent No.4 to the present proceeding upon a Chamber Summons being taken out by them. It is not disputed before the Court that from the year 2002 till 2005 the affairs of the Petitioner Society was managed by the Administrator appointed by the Deputy Registrar Co-operative Society, MHADA. It is contended on behalf of the Petitioner Society that the Administrator failed to collect the tax from the members. It is submitted on behalf of the Petitioner Society that only when the Managing Committee took over the affairs of the Society they came to know about the arrears and came across some of the demand notices sent by the

Respondent Corporation. The Respondent Corporation informed the Petitioner Society that an amount of Rs.2,62,162/- was the arrears of the property tax for the period of 1 October 2002 to 30 September 2005 and the Petitioner Society therefore made payment vide two cheques dated 29 March 2005 and 13 July 2005 in a sum of Rs.1,92,000/- and Rs.82,000/- respectively. It is averred by the Petitioner Society that the Respondent Corporation again issued demand notice dated 26 September 2005 for payment of property tax of Rs.30,668/- + Rs.5,913/- as penalty for delayed payment. On 11 October 2006 a letter was also addressed by the Law Officer of the Respondent Corporation to the Petitioner Society stating that an amount of Rs.2,62,162/- is outstanding against the Petitioner Society and the matter has been entrusted to him for advertising the property for sale by auction, in default payment of the property tax.

5 On 16 March 2007 a letter was received by the Petitioner Society from the Joint Municipal Commissioner stating that an amount of Rs.30,668/- plus Rs.5,913/- as penalty is outstanding against the Petitioner Society. On 30 March 2007 the Petitioner Society by their letter requested the Respondent Corporation to inform them the total outstanding dues against it. In response to the said letter, the Respondent No.4 informed the Petitioner

Society by letter dated 9 August 2007 that a total amount of Rs.4,17,499/- is outstanding towards property tax. According to the Petitioner Society they paid the amount of Rs.30,688/- towards the bill dated 1 April 2007, and Rs.30,688/- towards the bill dated 1 October 2008. From the year 1995 till the year 2008 the Petitioner Society claims to have paid the total amount of Rs.5,64,087.60 towards the property tax to the Respondent Corporation. It is averred in the Petition that the Petitioner Society learnt that the Respondent Corporation has conducted auction of the said property for nonpayment of dues when an Application was made by the Petitioner No.2 under the Right to Information Act (RTI Act) demanding all relevant documents pertaining to the auction. The Petitioner Society also submitted their representation dated 7 November 2008 to the Respondent No.3 Assistant Assessor & Collector, R/C Ward, contending therein that they had made substantial payment of the dues and therefore the auction, if any, conducted be stayed/cancelled. By letter dated 14 November 2008 the Information Officer of the Respondent No.2 Corporation informed the Petitioner Society that the auction of the said property was completed on 16 October 2008 and the property was sold for Rs.6,11,000/- and the notice of the auction was published on 22 September 2008. It is contended on behalf of the Petitioner Society that the Respondent Corporation authorities without following procedure contemplated under the MMC Act have auctioned the said property of the Petitioner Society despite the Petitioner Society having paid substantial amount of the taxes and only a meager amount had remained due and payable. It is contended that instead of taking recourse to section 209 A of MMC Act and serving a Bill on each of the tenant/member of the Petitioner Society, the Petitioner Society has conducted the auction which would render the members of the Petitioner Society homeless.

6 Learned Counsel for the Petitioner Society has relied upon the following two judgments:

i) Ebrahim Haji Joonas vs. Municipal Corporation of Gr. Bombay, 1999 (4) Bom.C.R. 724 (O.S.);

ii) Dalpat T. Anjaria vs. Municipal Corporation Gr. Mumbai, 2005(3) ALL MR 517.

7 Learned Counsel for the Respondent Corporation and the learned Counsel for the Respondent No.4 submitted that the Petitioner Society had failed and neglected to pay the property tax dues and the auction was conducted by following the due procedure and the amount of Rs.6,11,000/- has been paid by the

Respondent No.4 to the Respondent Corporation as Respondent No.4 was the highest bidder.

8 Learned Counsel for the Petitioner Society at the outset fairly stated that the Petitioner Society is ready and willing to pay all the property tax dues and the costs of the auction to the Respondent Corporation as well as interest/compensation to the Respondent No.4 auction purchaser. He urged that the auction be set aside.

9 It is noticed that the demand notice and attachment pursuant to which the auction was carried out covers the taxes for the period during which there was an Administrator appointed in respect of the Petitioner Society. It is pertinent to note that the plot was allotted to the Petitioner Society under a Scheme aided by the World Bank wherein MHADA has provided finance to the tune of Rs.4,10,000/- to individual members of the Petitioner Society to defray the expenses of building a house as a suitable residence for the members which amount was repayable with interest at the rate of 12% per annum. It is further required to be noted that the land as a matter of fact belongs to Maharashtra Housing and Area Development Authority (MHADA). The members of the Petitioner Society admittedly belong to the

Economically Weaker Section (EWS) and the entire scheme of MHADA was only in order to render necessary help and assistance to the members of the Petitioner Society to have their own homes. Inasmuch as the Petitioner Society is ready to pay the amount as indicated above, the consequences of the auction would be rather harsh and against the spirit of the very scheme to provide homes to the members of the Petitioner Society. The Petitioner Society has made certain payments towards the property tax. It appears that at that relevant time there may have been some mismanagement and an Administrator was appointed to manage the affairs of the Petitioner Society and the tax dues were not collected. In any event, there is no explanation from the Respondent Corporation as to why the procedure under section 209A of the MMC Act of sending Bills to individual flat owners/occupiers was not followed. Admittedly, in the fourth attempt of the bidding of the said property, there was no reserved price fixed by the Respondent Corporation. There is nothing placed on record to show that the value of the said property was infact the true and correct market value at which it has been sold.

10 While issuing the Rule in the present Petition, the learned Single Judge has observed that prima facie the procedure raising

the demand leading to the impugned action/auction was not followed and the consequences of auction would spell disaster for the Petitioner Society and its 40 members. The Court directed the Petitioner Society to pay an amount of Rs.2,50,000/- to the Respondent Corporation out of the property tax dues of Rs.5,66,442/- and granted an ad-interim order staying the further steps, even if the auction has been held. Admittedly, the sale certificate to the auction purchaser has not been issued.

11 Learned Senior Counsel appearing on behalf of the Respondent Corporation has submitted a Statement in hand-writing which is taken on record and marked 'X' for identification. The said Statement reads as follows:

"Gorai Sangha Mitra C.H.S. Ltd.
RC-02-1187-85-2-0000

Outstanding Taxes 199710 to 200720	Warrant of attachment cost & sale cost	Amount in Deposit u/No. DR 722/2008-09	Balance Amount to be pd by Society
Rs.6,36,461/-	Rs.36,000/-	Rs.2,50,000/-	Rs.4,22,461/-

sd/-
Asstt. Assessor & Collector
R/Central Ward."

12 Learned Counsel for the Petitioner Society however points out that in so far as the amount of Rs.36,000/- which is shown towards warrant of attachment and costs of auction sale, the same has already been paid by the Petitioner Society as

reflected in page 100 of the Petition and certain other amount has also been paid.

13 Taking on overall view of the matter and in the interest of justice, I am inclined to allow the petition and in my view the following order would meet the ends of justice:

i) The Petition is allowed in terms of prayer clauses (a) and (b) which read as follows:

"(a) call for the relevant records and papers from the office of the Respondent Authorities pertaining to the auction of the property being Plot No.95, RSC-5, Municipal "R" Ward, Borivali (West), Mumbai 400 091 and buildings standing thereon and after going into the legality, validity and propriety thereof be pleased to quash and set aside the impugned auction taken place on 16th October, 2008 as stated in the letter dated 14th November, 2008 of the petitioners property bearing Plot No.95, RSC-5, Municipal "R" Ward, Borivali (West), Mumbai 400 091 and buildings standing thereon;

(b) This Hon'ble Court be pleased to pass an order directing the Respondents to cancel the auction of the petitioners property bearing Plot No.95, RSC-5, Municipal "R" Ward, Borivali (West), Mumbai 400 091 and buildings standing thereon;

ii) The direction in clause (i) above would be conditional upon the Petitioner Society paying the Respondent Corporation a sum of Rs. 4,22,461/- towards the property tax dues within a period of 10 weeks from today.

iii) The Petitioner Society is granted liberty to make a representation to the Respondent Corporation for adjustments in the future Bills in respect of the amount of costs of Warrant of Attachment and costs of auction sale and/or such other amounts which have already been paid by the Petitioner Society to the Respondent Corporation and the Respondent Corporation shall decide the same at the earliest. The Petitioner Society shall accept the said decision.

iv) In addition to the above payment, the Petitioner Society shall deposit with the Respondent Corporation a sum of Rs.2,00,000/- which amount represents the compensation to the Respondent No.4 Auction purchaser. The Respondent Corporation shall refund within a period of 12 weeks from today to the Respondent No.4 Auction purchaser the sum of Rs.6,11,000/- and a further sum of Rs.2,00,000/- as indicated herein above.

v) In the event, the amounts as indicated above are not paid by the Petitioner Society within the stipulated period, the benefit of this order shall not be available to the Petitioner Society and the Petition shall be treated as dismissed.

vi) The Petitioner Society shall be issued a letter/no dues certificate for the period 199710 to 200720 (i.e. April 1997 to March 2008) as stated in the Statement of the Respondent Corporation which has been produced on record in respect of the payments made by the Petitioner Society to the Respondent Corporation.

14. The Petition shall stand disposed of in the aforesaid terms.

(A.A. SAYED, J.)

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