ssp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2694 OF 1999

M/s.Hubtown Limited & Anr. ...Petitioners
vs.
The Municipal Corporation
of Greater Mumbai ...Respondent

Mr.R.D.Soni i/b Ms.Khona & Keyser for the Petitioners
Ms Shobha Ajitkumar for the respondent

CORAM : A.S.OKA, &
V.L.ACHLIYA,JJ.
DATE : OCTOBER 16, 2015

ORAL JUDGMENT : (PER A.S.OKA,J.)

1 Heard the learned counsel for the petitioners. By this petition under Article 226 of the Constitution of India, the petitioners have challenged the validity of the Rules 5 and 6 of the Sewerage and Waste Removal Rules (for short `the said Rules) framed by the Standing Committee in exercise of the powers under section 170 of the Mumbai Municipal Corporation Act,1888. The second prayer in the petition is for refund of a sum of Rs.5,34,390/- as well as a sum of Rs.10,39,500/- received from the petitioners by way of sewerage charges. The third prayer is for restraining the Municipal Corporation from recovering sewerage charges.

2 The contention of the petitioners is that the

first petitioner is developing various slum properties under Regulation 33 (10) of the Development Control Regulation of 1991. Though there is no facility of municipal sewers was used in respect of the properties in question at the relevant time, the Mumbai Municipal Corporation issued bills for sewerage tax and sewerage charges. It is contended in the petition that the first respondent is not entitled to claim any sewerage charges. By amending the petition, it was pointed out that when the petitioners approached the Mumbai Municipal Corporation for the grant of water connection, while issuing `P Form', a demand in the sum of Rs.10,39,500/- was made towards extra sewerage charges. It is contended that though the demand was illegal, the petitioners were forced to pay the said amount as on failure to pay the said amount, the Mumbai Municipal Corporation would not have released the water connection. As far as payment of Rs.5,34,390/- is concerned, the contention of the petitioners is that the said amount is towards the sewerage charges which had to be paid by the first petitioner as without the payment of the said amount, the Occupation Certificate would not have been granted.

3 The learned counsel for the petitioners submitted that the Municipal Corporation had no authority to recover the sewerage charges or tax under the Sewerage and Waste Removal Rules. He pointed out the averments made in the petition and the grounds therein by contending that no services

of sewers were provided by the Municipal Corporation to the properties in question and the petitioners had never beneficially used the Municipal sewer or infrastructure created by the Mumbai Municipal Corporation in that behalf. The learned counsel relied upon the decision of the Division Bench of this Court dated 28th January 1997 in the case of Hindustan Ciba Geigy Limited vs. Mumbai Municipal Corporation in Writ Petition No.839 of 1983. He invited our attention to one of the bills annexed to the petition which show that the demand was for both the sewerage charges and sewerage tax. He invited our attention to the affidavit-in-reply filed by Shri Sunildatta Mukund Rasal, the Assistant Engineer (WW), T ward. He pointed out the averments made in clause (i) of the paragraph 4 of the said affidavit in which the Officer has contended that the Mumbai Municipal Corporation has not recovered both the sewerage charge and tax from the petitioners and that they have levied only sewerage charges. It is contended by the learned counsel for the petitioners that this submission is factually incorrect as the bills shows that in fact, there was a demand for both the sewerage tax and charge.

4 He, therefore, submitted that on their own showing, the respondents were not entitled to collect both the sewerage charges as well as tax. The learned counsel for the petitioners submitted that the petitioners are not pressing for the challenge to the validity of Rules 5 and 6 of the said Rules.

5 The submission of the learned counsel for the Mumbai Municipal Corporation is that what is invoked by the Municipal Corporation is Rule 5 which provides for levy of sewerage charge when water is supplied under section 92 of the said Act of 1888. She pointed out that there is no levy made under Rule 4. She would urge that the subsequent amount of Rs.10,39,500/- was recovered as per Rule 5.2 of the said Rules. She would therefore urge that no interference is called for in this petition under Article 226 of the Constitution of India.

6 We have given careful consideration to the submissions. It is true that a contention has been raised in the petition that the petitioners have not taken any benefit of the municipal sewers and there was no sewer connection to the property. We have perused the Rules. Rule 4 is applicable to levy of sewerage charges in lieu of sewerage tax for services rendered. Rule 4 is applicable when water is supplied to any premises by meter measurement. In the present case, the levy is made under Rule 5 of the said Rules. Rule 5 provides for the levy of sewerage charges where the water is supplied under section 92 of the said Act of 1888. Therefore, even taking the contention of the petitioners that there was no service rendered in terms of providing sewer connection as correct, there is nothing wrong with the demand of sewerage charges as Rule 4 is not invoked, but what is invoked is Rule 5. As stated earlier, it is not the case of the petitioners that there was no water connection provided or there was

no water supplied to the property by the Mumbai Municipal Corporation. Under Rule 5.1, it is provided that when water is supplied under section 92 of the said Act of 1888, whether such premises are connected to municipal sewers or not and where water charges are leviable, sewerage charges as specified therein are payable. In such a case, sewerage charges are payable at 60% of water charges/extra water charges. Rule 5.2 is applicable whenever water is used for construction and alteration purposes from any source whatsoever other than the municipal water main. In such cases, the sewerage charges shall be recoverable at the rate of Rs.125/- per sq.m of the built up area.

7 The submission of the learned counsel for the Municipal Corporation proceeds on the footing that what was invoked by the Municipal Corporation was Rule 5 of the said Rules.

8 Now it will be necessary to make a reference to the reply filed by Shri Sunildatta Rasal. It is pointed out that a sum of Rs.10,39,500/- was demanded as extra sewerage charges. The said extra sewerage charge was only in respect of sale buildings during the construction period. It is pointed out that the extra charge was demanded under the old Rules, but the new Sewerage and Waste Removal Rules were brought into effect from 1st February 2001. When regular water connection was applied for by the petitioners, a demand for the sewerage charges of Rs.10,39,500/- was made.

9 In clause (i) of paragraph 4 of the said affidavit, it is stated that the subsidised taxation is allowed for rehab building only in case of a SRA scheme. However, the sale component attracts regular assessment (and taxes). A very categorical statement is made in clause (i) of paragraph 4 which reads thus:

> (i) ...I say that these Respondents have not recovered both sewerage taxes as well as sewerage charges from the petitioners. I say that these respondents have only levied Sewerage charges from M/s.Akruti Nirman Pvt.Ltd in respect of property situated at Gavanpada, Mulund (E), Mumbai. I say that only in respect of sale building, these Respondents have demanded extra sewerage charges as stated above and the same are paid by M/s.Akruti Nirman Pvt.Ltd., under protest. I say that the said protest is not accepted by these Respondents."

10 Thus, the stand taken in the reply is that as far as the first demand of a sum of Rs.5,34,390/- is concerned, it constitutes sewerage charges recovered from the petitioners under Rule 5 of the said Rules. As far as subsequent demand made during the pendency of the petition in the year 2005 is concerned(i.e the sum of Rs.10,39,500/-), it was made on the basis of Rule 5.2 which is effective from 1st August 2002, as water was used for construction purpose from a

source other than the water supply of the Municipal Corporation. Though in the petition, by way of amendment, a prayer is made for refund of Rs.10,39,500/-, there is no specific challenge to the validity of Rule 5.2. There is no rejoinder filed by the petitioners. The general challenge to Rules 5 and 6 is not pressed.

11 Therefore, we find nothing wrong with both the demands as both the demands are of sewerage charges. The stand of the Municipal Corporation is that what is recovered from the petitioners is only sewerage charges and not the sewerage tax. It is obvious that if both the amounts are of sewerage charges, the petitioners are not entitled to refund. Only if any part thereof constitutes sewerage tax, in that case, the petitioners will be entitled to refund.

12 Hence, we dispose of the petition by passing the following order:

(i) The challenge to the validity of Rules 5 and 6 of the said Rules is not pressed and therefore not dealt with;

(ii) As far as prayer (b) and prayer(c) are concerned, the same relate to the recovery of sewerage charges or extra sewerage charges in future. It is obvious that sewerage charges or extra sewerage charges shall be recovered only in accordance with Rules. Hence, it is not necessary to grant any relief in terms of prayer clauses (b) and(c);

(iii) Prayer for refund of sewerage charges and extra sewerage charges is rejected subject to direction in clause (iv);

(iv) However, we direct the Assistant Assessor and Collector of T ward of the Mumbai Municipal Corporation to issue notice to the petitioners and hear the petitioners on the issue whether any amount forming a part of the amounts of Rs.5,34,390/- and Rs.10,39,500/- constitutes sewerage tax;

(v) The petitioners will be entitled to seek inspection of the bills on the basis of which the said amounts have been recovered;

(vi) The said Officer shall make adjudication on the question whether any part of the said amounts constitutes a tax. If he finds that a component of tax is included in the said amounts, the Municipal Corporation shall forthwith refund the amount of tax, if any, as even according to the case of the Mumbai Municipal Corporation, no sewerage tax is payable by the petitioners and what is recovered is sewerage charges or extra sewerage charges;

(vii) The said Officer shall conclude the enquiry and pass appropriate order on or before 31st January 2016;

(viii) Subject to above directions, no other relief can be granted;

(ix) Rule is accordingly disposed of;

(x) All concerned to act upon an authenticated copy of this order.

(V.L.ACHLIYA,J.) (A.S.OKA,J.)