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

WRIT PETITION NO.2109 OF 2007
…

Mhatre Palace Co-operative Housing
Society Ltd. ...Petitioner
v/s.

1 Municipal Corporation of
Gr.Mumbai
2 Asst.Assessor and Collector
R-North Ward, BMC
3 Executive Engineer, BMC
4 M/s.Nimesh Enterprises
5 Kishor R.Mhatre
6 Hareshwar R. Mhatre
7 Ramakant R. Mhatre
8 Nandkumar Tarachand
9 Pramila Tarachand
10 Padmakant Tarachand
11 Jayprakash Tarachand
12 Madhukar Tarachand ...Respondents

…

Ms.Rumana Bagdadi i/b Sumedha Rao for the Petitioner.

Mr.S.C.Thatte for Respondent No.4.

Mr.S.S.Pakale with Ms.K.H.Mastakar for Respondents Nos.1 to 3.

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CORAM : A.A. SAYED, J.

DATED : 19 JANUARY 2015

JUDGMENT:

This Petition impugns final Notice/Order dated 19 September 2007 issued by the Asst. Assessor & Collector "R" (North) Ward, which states that on failure to pay an amount of Rs.25,58,065/-, as demanded towards Property Taxes within forty-eight hours, warrant of distress under section 203 of the Bombay Municipal Corporation Act, 1888 would be issued under the orders of the Municipal Commissioner for execution and that steps would have been taken to disconnect the water connections.

2. The Petitioner is a Co-operative Housing Society registered on 5 March 2001 under the Maharashtra Co-operative Societies Act, 1960. Respondents Nos. 2 & 3 are the Officers of the Respondent No.1-Corporation. Respondent No.4 is a Developer of the Building of the Petitioner. Respondents Nos. 5 to 12 are stated to be the owners of the land, on which the building of the Petitioner stands.

3. It is the case of the Petitioner that Respondents Nos. 5 to 12, who are the owners of the land, were granted exemption under sections 20 and 22 of the ULC Act, 1976 on 20 June 1991. One of the conditions for the grant of exemption was that the land-holders were obliged to

convey flats to a Co-operative Housing Society formed by the purchasers. Respondents Nos. 5 to 12 granted development rights to the Respondent No.4 under an Agreement, who constructed the building as per the IOD dated 8 June 1992 and Commencement Certificate dated 4 July 1992. According to the Petitioner, despite the sale of the flats in 1997-98, Respondents Nos. 4 to 12 have failed to convey the property to the Petitioner.

4. The Petitioner has, *inter alia*, made the following averments in the Petition - that the Respondent No.2-Asst. Assessor & Collector issued the Bills in the names of Respondents Nos. 4 to 12. The property came to be assessed by Respondent No.2 from the year 2001. The Respondent No.2 started issuing Bills in the name of the Petitioner in spite of knowing the fact that the property has not been conveyed to the Petitioner till date. From the date of the registration of the Society, the members have been regularly paying the Property Taxes upto date. Vide Notice dated 21 November 2003, Respondent No.2 demanded the Property Taxes for the period from 1 October 1995 to 30 September 1997 i.e. for the period during which construction was in progress. The Petitioner-society was shocked to receive a warrant of Attachment dated 16 August 2003 for an amount of Rs.13,09,606/-. Vide Notice dated 25

February 2004, the Respondent No.1-Corporation informed the Petitioner that the rateable value of the Petitioner's building has increased. The Petitioner had filed a Complaint against the Respondent No.4 in the District Forum at Bandra under the Consumer Protection Act. The Petitioner was constrained to approach this Court on receipt of Notice dated 19 September 2007 issued by the Respondent No.2 calling upon them to pay Property Taxes for the period from 1995 to 1997, when the building was under construction. The details of the Bills and amounts due are mentioned in the impugned Notice/Order and read as follows:

Sr.No.	Bill Period	Bill Amount	N.D.	Penalty
1	199520	13980.00	50	10872
2.	199610	34794.00	50	27129
3.	199620	34794.00	50	27129
4.	199710	34794.00	50	27129
5.	200011	446192.00	50	426525
6.	200021	398841.00	50	426525
7.	200111	110216.00	50	0
8.	200121	141192.00	50	0
9.	200211	99950.00	50	77806
10.	200221	32698.00	50	25455
11.	200210	313002.00	50	
	Total	**14,09,045.00**	**450**	**10,48,570**

5. The grievance of the Petitioner in the Petition is essentially that notice is not addressed to the Respondents Nos. 4 to 12 who are liable to pay the Property Taxes prior to formation of the Society and that the amount claimed is illegal as only one year's arrears can be recovered as per the provisions of law. The Petitioner had addressed a letter dated 23 September 2007 to the Respondent No.4-Developer calling upon them to pay the said amount, which the Respondent No.4 failed to do. The apprehension of the Petitioner is that the Respondent No.2 may disconnect the water supply, which will cause great hardship to the residents of the building.

6. The Respondent No.1-Corporation has filed a reply stating that the Petitioner had filed an Appeal in the Small Causes Court being M.A.No.285 of 2002 challenging the order dated 22 November 2001. The said Appeal came to be dismissed on 23 January 2007. The Petitioner has failed and neglected to pay the Property Taxes and therefore the Respondent No.1-Corporation was constrained to issue a impugned Notice/Order. The property was assessed as “new construction” under TWR No.100 of 2000-2001 at the rate of rateable value of Rs.8,22,425/- N.P.A. w.e.f. 11-04-2002 and the special notices were served upon the Petitioner, against which Complaint was filed and

the same was registered under No.RNCH/114 of 2000-01. The said Complaint was heard by the Investigating Officer on 17-9-2001 and 22-11-2001, when the representative of the Petitioner was also present. After hearing the Petitioner, the Investigating Officer modified the rateable value to Rs.7,28,475/- N.P.A. w.e.f. 1-4-2001. The said property was assessed in the name of Smt.Shantibai Ramchandra Mhatre and 9 Ors. and before formation of the Society the Bills were issued to the Developer. However, after the Society was formed the Bills were sent regularly to the Society and the Society has been paying the Property Taxes regularly and outstanding Property Taxes are pending before the Society came into formation. The property was attached for non-payment of Property Taxes on 16-9-2003 for outstanding taxes amounting to Rs.13,09,606/-. The rateable value was later on confirmed at the rate of Rs.7,49,705/- w.e.f. 1-4-2003. The members of the Petitioner are in occupation of the property and are present owners of the property. The Petitioner be directed to pay the Property Taxes and in turn may recover the same from Respondents Nos. 4 to 12.

7. A reply has also been filed on behalf of the Respondent No.4- M/s.Nimesh Enterprises, who is the Developer. In his reply, the Respondent No.4 has, *inter alia*, stated as follows:-

After completion of the building in question, the flat owners requested the Respondent No.4 to give possession of their respective flats, on humanitarian ground and as they were facing tremendous hardship, as they wanted to make furniture, even though the Occupation Certificate was not issued by Respondent No.1. It is admitted that initially assessment charges and other taxes were paid by them to the Municipal Corporation of Gr.Mumbai. Respondent No.4 had entered into Development Agreement dated 4 April 1991 with Respondents Nos.5 to 12. Due to difference of opinion amongst the owners of the land, the transaction between them and the owners regarding right of 60% of the land was delayed and hence, there was delay in obtaining the Occupation Certificate of the building in question. However, by an Agreement for Development dated 10-7-2005 the remaining 60% of rights of the owners in respect of T.D.R./F.S.I. for the land reserved for D.P.Road, the owners i.e. Respondents Nos. 5 to 12 agreed to assign their rights in their favour. Ultimately, the Respondent No.1 granted D.R.C. for the respective land reserved for DP road by their letter dated 6-7-2007 and they are in process of obtaining the Occupation Certificate. The respective members of the Petitioner are in arrears of maintenance and outstanding to the tune of Rs.4,35,190/- and in spite of the repeated demands by them, the members of the Petitioner have not cleared their respective arrears. According to the Respondent No.4, since the members of the Petitioner have been in occupation of their respective flats, it is their obligation to pay the maintenance and outgoing in respect of their respective flats, and therefore, they alone are liable to pay the Property Taxes.

8. The Respondent No.1-Corporation has filed further two affidavits and have also claimed further amounts towards the Property Taxes.

9. I have heard learned Counsel for the Petitioner, learned Counsel for the Respondents Nos.1 to 3 and the learned Counsel for the Respondent No.4-Developer. None has appeared on behalf of Respondents Nos. 5 to 12.

10. At the outset it is required to be noted that what has been challenged in this Petition is essentially the Notice/Order dated 19 September 2007 threatening execution of warrant of attachment. There is no challenge in the Petition to the quantum of the Bills or the amount of penalty levied on account of failure to pay the Property Taxes.

11. The grievance of the Petitioner is essentially in respect of the Property Taxes for the period prior to the formation of the Petitioner-Society. It is contended that the liability to pay the Property Taxes prior to the formation of the Society is upon the Respondent No.4. The further the contention of the Petitioner is that the Respondent No.1-Corporation can recover the Property Taxes only for one year.

12. In the present case, there is no dispute about the fact that the Property Taxes have remained due and payable. It is an admitted position that the members of the Petitioner have come into occupation of their respective flats in the building in the year 1997-98. Thus, so far as the demand in respect of Property Taxes from Sr.No.5 to Sr.No.11,in the Chart extracted in para 4 above is concerned, it can hardly be disputed that the liability would be that of the Petitioner-society and its members, inasmuch as that demand is for the period from the year 2000 onwards, when the members of the Petitioner-Society were admittedly in possession of their respective flats. Merely because there may have been a delay in the formation of the Society (which was ultimately registered on 5 March 2001) or the property has not been conveyed, would not absolve the Society or its members from their liability. It is noticed <u>that more than 90% of the amount demanded in the impugned</u>

Notice/Order, as extracted in the Chart at para 4 above, is for the period after the members of the Petitioner came in occupation of their respective premises. Pertinently, there is no prayer in the Petition that in respect of the demand prior to the Petitioner-Society's members coming into occupation, the same should be recovered from the Respondents Nos.4 to 12. (*emphasis supplied*)

13. Under section 212 of the MMC Act, the property taxes in respect of any building or land (subject to the prior payment of the land revenue) shall be a “first charge” on such land or building. Learned Counsel for the Respondent No.1-Corporation has invited my attention to the judgment of the Division Bench of this Court dated 11 August 1992 in Appeal No.449 of 1991 in Writ Petition No.2193 of 1984 (The M.C.G.M. v/s. Bhagwanben H.Bhojani & ors) wherein the Division Bench has held that the property taxes can be recovered by attachment and sale of the structure after a period of more than one year and it cannot be limited only to the extent of tax for a period of one year. The Division Bench further held that section 209(3) cannot be read to provide that the liability for payment of property taxes is limited to one year. Thus, the contention of the Petitioner-Society that the Corporation cannot recover property taxes for a period of more than one year is without merit. The

Division Bench further held that the distinction between the personal liability of the occupier to pay the taxes and the right of the Corporation to proceed against the property irrespective of who is in occupation should not be confused. It is also required to be noted that the Petitioner-Society has approached the Court only in the year 2007 by way of the present Petition impugning the Notice/Letter dated 19 September 2007, which was only a consequent action upon failure of the Petitioner-Society and its members to clear the dues pursuant to the demand and the action of attachment of property taken by the Respondent No.1-Corporation in August 2003. The Petitioner in this Petition has not disclosed the proceedings filed by them in the Small Causes Court and the fact that their Appeal was dismissed on 23 January 2007 for reasons best known to them.

14. In the circumstances, no fault can be found in the impugned action of the Respondent No.1-Corporation of distress and sale under section 203 of the Act. It is, however, clarified that in respect of the claim of the Respondent No.1-Corporation prior to the members of the Petitioner-society coming into occupation of their respective flats, it would be open for the Petitioner to pay the said amount and to claim that amount from the Respondent no.4-Developer and to adopt appropriate proceedings to recover the same from Respondent No.4-Developer in accordance with law. It is further clarified that it would be open for the

Petitioner-society to satisfy the Corporation that the amount covering the impugned Notice/Order has been already paid by them to the Respondent No.1-Corporation.

15. Subject to the above, the Petition is dismissed. Rule is discharged. No order as to costs.

(A.A. SAYED, J.)

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