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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO. 74 OF 2015
WITH
CIVIL APPLICATION NO. 144 OF 2015

Ashokkumar Krishnarao Sawant and ors.

.. Petitioners

Versus

The State of Maharashtra and ors.

.. Respondents

Mr. S. P. Thorat for petitioners.

Mrs. M. P. Thakur, AGP for State.

Mr. Vishal Kanade a/w Mr. Pravin Kamble for respondent nos.4 and 5.

Ms. Pooja R. Singh i/by Mr. N. R. Bubna for respondent no.3.

CORAM: NARESH H. PATIL &
M. S. KARNIK, JJ.

NOVEMBER 28, 2016.

P.C.

1. Petitioners submit that in the year 2008-2009, the Thane Municipal Corporation inaugurated swimming pool at Prabhodhankar Thackray Krida Sankul at Teen Hath Naka, Opp. Raheja Gardens, Thane (W), Thane. The administration of swimming pool was handed over by the Corporation to one Mr. Nair and since then the swimming pool was known as “the Aquatic Recreation Club of Nairs”. It had 1500 members. Yearly fees for swimming pool for the ordinary member was Rs.7500/- and for

senior citizens it was Rs.6000/-. The members included senior citizens, young boys and girls, many of whom achieved excellence in sport activities. After the property was leased out to respondent nos.4 and 5, it is submitted that certain changes were made to the existence structure. It is alleged that Baby Toddler pool was removed by respondent nos.4 and 5.

2. Petitioners alleged that respondent no.5, who is a sub-lessee, has been insisting on excessive membership fees which ranges from Rs.60,000/- for single, individual member and Rs.80,000/- for couple.

3. Petitioners raise questions about inconvenience caused to the erstwhile members of the Corporation swimming pool and unreasonable charging of excessive membership fees by the lessee/sub-lessee of the subject structures/swimming pool. It is the petitioners' contention that several complaints/representations were addressed to the Corporation but the Corporation failed to protect the interest of its earlier members. It is submitted that it would not be possible for the large section of earlier members to pay exorbitantly high membership fees which respondent no.5 is charging now. Reliance is placed on certain communications made on behalf of the Corporation and more particularly an affidavit filed by Mr.

Sanjay Herwade, DMC of Thane Municipal Corporation filed in Writ Petition No. 7747 of 2016 wherein the deponent stated that the respondent no. 5 was not entitled to charge membership exceeding Rs.10,000/- per person per year plus taxes. The learned counsel, therefore, prays for necessary directions to the Corporation in the interest of the erstwhile members of the sports club or swimming pool.

4. Learned counsel appearing for the respondent nos.4 and 5 submits that after execution of lease/sub-lease, the Thane Club - respondent no.5 is in-charge of the administration of the subject property including swimming pool activities. The parties are bound by the contractual relationship. The learned counsel, on instructions, submits that in case the petitioners would raise any such issue relating to the interpretation of the lease agreements, then the Commissioner, Mumbai Municipal Corporation would deal with the same accordingly.

5. Learned counsel appearing for the Corporation relied upon the affidavits filed on behalf of the Corporation and submits that necessary orders be passed.

6. We have perused the record of the PIL Petition and the connected Writ Petition No. 7747 of 2016, communication made on behalf of the Corporation and the affidavits filed on behalf of the Corporation. We have also perused the agreements for grant of lease of swimming pool cum indoor sport complex on operate and transfer (OT) basis executed on 29/11/2008 between Commissioner of the Municipal Corporation and M/s. Ganeshanand Developers (J.V.). Clause 22 of the said agreement reads as under :-

“22. In the event of any dispute arising out of this indenture or in respect of the interpretation of the terms and conditions hereof the same shall be referred to the arbitration of arbitrators, (to a Sole Arbitrator who will be Hon'ble Commissioner of T.M.C. Whose decisions shall be final and binding upon the parties). The proceedings of arbitration shall be conducted in accordance with the provisions of Arbitration and Conciliation Act, 1996 and the place of arbitration shall be at Thane.”

7. We observe that the petitioners are entitled to file an appropriate comprehensive representation to the Commissioner, Thane Municipal Corporation within two weeks from today. In case such a representation is received, then we direct the Commissioner, Thane

Municipal Corporation to deal with the same in accordance with the agreements executed between the parties and after hearing both the sides. The decision shall be taken by the Commissioner, Thane Municipal Corporation within four weeks from the date of receipt of such representation, without prejudice to the applications/representations received by the Commissioner earlier. A copy of the representation to be submitted by the petitioners shall be served in advance on respondent no.5.

8. All issues on merits are kept open. PIL is disposed of accordingly.

9. Civil Application No. 144 of 2015 does not survive and disposed as such.

(M. S. KARNIK, J.)

(NARESH H. PATIL, J.)