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

WRIT PETITION (L) NO. 275 OF 2016

Ajcon Global Services Ltd. .. Petitioner

v/s.

Municipal Corporation of Greater
Mumbai & Ors. .. Respondents

Mr. Sandeep Jalan for the petitioner
Mr. H.C. Pimpale for the respondent nos. 1 and 2

CORAM : M.S. SANKLECHA &
B.P. COLABAWALLA, J.J.

DATED : 25th FEBRUARY, 2016.

P.C.

1. Rule. Respondents waive service. Rule is made returnable forthwith. At the request of Counsel, Petition heard finally.

2. This petition under Article 226 of the Constitution of India takes exception to the auction Notice dated 29th October, 2015 issued by the respondent no.2 i.e. Assessor and Collector of the Mumbai Municipal Corporation (Corporation) to the extent it seeks to auction petitioner's premises in respondent no.3 co-operative Society.

3. The grievance of the petitioner is that on 13th May 2014, a

Special Notice under Section 162(2) of the Mumbai Municipal Corporation Act (the Act) for the Assessment Year 2010-11 was issued to the respondent no.3 Co-operative Society of which he is a member. The petitioner by his letters dated 5th March, 2015, 13th March, 2015 and 25th July, 2015 had filed his complaint / representation objecting to the revision in the property taxes as proposed in the notice dated 13th May, 2014.

4. However, the respondent no.2 i.e. jurisdictional Assessor and Collector of the Corporation, without granting any personal hearing to the petitioner or without even passing any order on the objections filed to the Notice dated 13th May, 2014, issued a Notice dated 29th October, 2015 for auctioning the society's premises. The petitioner in turn was served by the respondent no.3 co-operative Society, with auction notice dated 29th October, 2015. It is pertinent to note that the bills in respect of the respondent no.3 Co-operative society were issued to it along with Special Notice under Section 162(2) of the Act.

5. It is an undisputed position that no order has been passed consequent to the petitioner's objections to the extent of its property in the Co-operative society to the Notice dated 13th May, 2014 under

Section 162(2) of the Act. In terms of Section 165 of the Act, the Corporation is obliged to give a personal hearing to the Assessee before disposing of the Assessee's complaint to the Special Notice issued under Section 162(2) of the Act.

6. In view of the above, the impugned auction notice dated 29th October, 2015 to the extent it relates to the petitioner's property is set aside and the issue is restored to the jurisdictional Assessor and Collector of the Corporation to pass a final order after following the principles of natural justice.

7. It is clarified that at the time of issuing the petitioner a fresh notice for personal hearing, the Corporation would indicate its *prima facie* view as to why the contentions raised by the petitioner in its objections to the complaint to the Notice dated 13th May, 2014 are not acceptable. This would enable the petitioner to meet the view / objections of the Corporation and would enable passing of speaking order.

8. In the above view, the impugned auction Notice dated 29th October, 2015 is quashed and set aside to the extent it relates to the

petitioner's premises. The impugned bills which have been issued along with the Notice under Section 162(2) of the Act are also set aside to the extent it relates to the petitioner's premises.

9. Needless to state that the jurisdictional Assessor and Collector would pass a reasoned order after giving personal hearing to the petitioner while disposing of the petitioner's complaint to the Special Notice dated 13th May, 2014 issued under Section 162(2) of the Act to the extent of the petitioner's interest in respondent no.3 society.

10. Accordingly, Rule is made absolute in the aforesaid terms. No order as to costs.

(B.P. COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**