**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2338 OF 2017**

State Bank of India .. Petitioner
v/s.
Navi Mumbai Municipal Corporation & Ors. .. Respondents

Mr. Anil Sakhare, Senior Counsel a/w Mr. Vivek Sawant, Ms. Sushila Vichare for the petitioner
Mr. Sandeep Marne a/w Mr. Vishal Shirke for the respondent Corporation

**CORAM : M.S. SANKLECHA &**
**S.C. GUPTE, J.J.**

**DATED : 30th MARCH, 2017.**

**P.C.**

1. This petition under Article 226 of the Constitution of India challenges the notice dated 3rd August, 2016 (Exh.H to the petition). The impugned notice titled as Final Notice calls upon the petitioner to pay the property tax dues, aggregating to Rs.70.87 lakhs within the next two days, failing which coercive proceedings under the Maharashta Municipal Corporations Act, 1949 (the Act) and Rules framed thereunder would be adopted.

2. The petitioner's grievance is that the impugned notice has been issued to them without having disposed of the petitioner's objections to the special notice dated 5th February, 2016. The special notice was

issued under Rule 15(2) of Chapter VIII of the Schedule D to the Act being the Rules framed under Section 453 of the Act. The petitioner had objected to the above special notice by its communication dated 15th February, 2016 and the same is still awaiting disposal. Further, no hearing has been granted to the petitioner before issuing of the impugned final notice dated 3rd August, 2016. Thus, it is submitted that the impugned notice is bad in law and be quashed and set aside.

3. Mr. Marne, learned Counsel appearing for the Corporation in support of the impugned final notice submits as under :-

(a) that the complaint filed by the petitioner does not meet the requirements of a complaint as provided under Rule 16(2) of the Rules i.e. it does not specifically set out the ground / basis of the complaint to the valuation. Thus, there is no complaint which is filed and / or pending; and

(b) The setting aside of the impugned order and restoring the issue to the Corporation to dispose of the objections raised by the petitioners would be an empty formality. This for the reason that the petitioner has, in its objection dated 15th February, 2016, itself accepted the quantum of rent paid by the petitioners to the landlord. In the above view, it would now be an issue of simple arithmetical computation to levy the property tax.

Therefore, it is submitted that the petition be dismissed.

4. We note that the Rules, i.e. Schedule D, Chapter VIII thereof, have been framed under Section 453 of the Act and are to be considered to be a part of the Act. These Rules themselves provide the manner of fixing the property taxes and it statutorily provides for following the principles of natural justice, i.e. special notice, hearing and its disposal. This in as much as the assessee is entitled to receive a special notice under Rule 15(2) of the Rules from the Corporation as and when there is a change / revision in the property taxes and / or when the property taxes is levied for the first time. The assessee, thereafter in terms of Rule 16(2) of the Rules has an opportunity to file a complaint in respect of the proposed revision and / or levy of property taxes for the first time. This objection has to be heard personally by the Corporation in terms of Rule 18 of the Rules and then disposed off.

5. In the present case, the Corporation has failed to follow the mandatory provisions of the statutory Rules. Even if, according to the Corporation, the complaint as filed does not meet the requirements of

complaint, inasmuch as it does not set out the grounds on which the valuation is being challenged, would not by itself entitle the Corporation to ignore the statutory provisions which provide for hearing to the assessee. The object of the hearing is that in case the complaint is being misunderstood, the parties get an opportunity to clear the misunderstanding. Moreover, in the facts of this case, on receipt of the complaint, the respondent Corporation did not even respond to the petitioner pointing out the defects, if any, as perceived by the Corporation in the complaint. Thus, the statutory Rules cannot be discarded merely on the basis of the understanding of the Corporation. The complainant or the so called complaint (according to the Corporation) cannot just be ignored. It has to be dealt with by passing an order after hearing, that it is not a complaint.

6. So far empty formality theory is concerned, the Rules provide for hearing of the complainant and passing an order thereon. It is not possible to know what would be result of the hearing which was to be given to the petitioner and the view which the Corporation may take on the complaint after the hearing. If it was only a simple case of arithmetical computation, then the Rules would have excluded this category from the rigors of the Rules. This not being so provided, it is

not open to ignore the same on the basis of the theory of empty formality. It is impossible to forecast the result of a personal hearing being granted to the petitioner.

7. In the above view, the impugned notice dated 3rd August, 2016 is quashed and set aside. However, the issue is restored to the Assessor and Collector (respondent no.3) of the respondent no.1 Corporation. The respondent no.3, i.e. Assessor and Collector, should dispose of the petitioner's complaint dated 15th February, 2016 to the Special Notice dated 5th February, 2016 issued by the Corporation in accordance with Rules framed under the Act.

8. The Writ Petition is disposed of in the above terms. No order as to costs.

**(S.C. GUPTE, J.)** **(M.S. SANKLECHA, J.)**