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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2764 OF 2017

Rakesh Jain And Ors.	..	Petitioners
V/s.		
The Municipal Corporation for		
Navi Mumbai & Ors.	..	Respondents.

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Mr. Sanjiv Sawant, a/w. Mr. Nishigandh M. Patil and Mr. Balvendra Singh, i/b. Nishigandh M. Patil, for the Petitioners.

Mr. Ankit Lohia, a/w. Ms. Swapna Roopavate and Ms. Deepa Bisht, i/b. Tushar A. Goradia, for Respondent No.3.

Mr. Sandeep Marne, a/w. Mr. Vishal Shirke, for Respondent Corporation.

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

DATE : 29 MARCH, 2017.

P.C.:

. This petition is filed by the members of an Adhoc Managing Committee, on behalf of members, who purchased flats in Blue Bay Building (said Building) and are residents therein challenging a final demand notice dated 6 January 2017 issued by Respondent No.1 Corporation. The impugned final notice dated 6 January 2017, which has been served upon the Petitioners, called upon the Developer/Builder (Respondent No.3 in this petition), who constructed the said Building to pay the outstanding property tax aggregating to Rs.1.97 crores within two days of the receipt of the notice. The impugned notice further stated that failure to pay the aforesaid amount, would result in issuance of warrant of attachment as well as disconnection of water supply to the

said Building. This would affect the occupants of the said Building. Therefore this petition.

2. The petition was heard for some time and neither the Petitioners nor Respondent No.3 disputed the fact that the legitimate dues of the Corporation has to be paid. However, they contend that the demand of Rs.1.97 crores, as raised in the impugned notice, is not correct. We, therefore, suggested to the Petitioners and Respondent No.3 that between the two they pay the amounts to the Corporation, as demanded, subject to the final decision of Corporation, of who is responsible to pay and the amount payable in the aggregate on representation filed by the parties. At this, the Petitioners undertook to pay the property tax bills (inclusive of interest) in respect of the said property from the date they were given possession of their respective flats. Respondent No.3, the Builder, is agreeable to pay the property tax, inclusive of taxes, which are payable till the handing over of the possession to the Petitioners. This, of course, is without prejudice to their rights and contentions in respect of property tax as well as interest thereon payable by each of them. The exact amounts payable by each of them would be decided by the Corporation on the Petitioners and Respondent No.3 filing an appropriate representation with the Corporation within one week from today.

3. Respondent No.3 as well as the Petitioners, without prejudice to their rights and contentions, which they would urge before the Corporation, have undertaken to this Court to make the following payments, along with the dates thereof to the Corporation :-

Date of payments	Payments to be made by the Petitioners	Payments to be made by Respondent No.3	Aggregate Payments (2+3)	Impugned demands
(1)	(2)	(3)	(4)	(5)
05/4/2017	25,00,000/-	50,00,000/-	75,00,000/-	1,97,86,769/-
15/4/2017	25,00,000/-	50,00,000/-	75,00,000/-	
30/4/2017	20,00,000/-	27,00,000/-	47,00,000/-	
Total ...	70,00,000/-	1,27,00,000/-	1,97,00,000/-	
		Balance still payable		86,769/-

4. On the Petitioners and Respondent No.3 making the initial payment, as undertaken by them on 5 April 2017, the Corporation would decide the representation on its own merits, after following principles of natural justice. Needless to state that if the Petitioners and Respondent No.3 do not deposit the payment of Rs.25 lakhs and Rs.50 lakhs on or before 5 April 2017, the Corporation would be free to proceed against the said property, the Petitioners and Respondent No.3 in accordance with law. However, if payments are made as undertaken hereinabove on scheduled dates, the Respondent Corporation will not initiate any coercive proceedings to recover the property taxes raised in the impugned notice till the disposal of the representation filed by the the Petitioners and Respondent No.3 and for a further period of two weeks from the date of communication of the order passed on the representation.

5. This order is passed without prejudice to the rights and contentions of the parties. Respondent No.3 as well as the Petitioners

state that they will file a fresh undertaking in the form of an affidavit undertaking to pay the amounts, as listed herein above, within a period of one week from today. A copy of the undertaking will be forwarded to the Respondent Corporation simultaneously.

6. The balance amount of Rs.86,769/- shall be paid by the Petitioners and Respondent No.3 in accordance with their respective share as determined by the Respondent Corporation while disposing of the representation. The aforesaid amount as determined will be paid by them as determined within one week of the communication of the order on representation. It is made clear that in case the aforesaid payment is not made within the above period, the stay of two weeks of the order passed by the Corporation on the representation will stand immediately vacated.

7. The petition is disposed of accordingly.

(S.C. GUPTE,J.)

(M.S.SANKLECHA,J.)