IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3709 OF 2017

Bhoomi Symphony Co-operative
Housing Society Limited. .. Petitioner
Vs
The City and Industrial Development
Corporation of Maharashtra Limited & Ors. .. Respondents
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Shri R.D.Soni i/b M/s. Ram & Co for the Petitioner.
Shri Sarthak Diwan i/b Shri A.M. Kulkarni for the Respondent No.1.
Shri Sandeep V. Marne for the Respondent Nos.2 to 4.
Shri A.A. Alaspurkar, AGP for the Respondent No.5.
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CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ

DATED : 1ST JULY 2017

P.C.

1. Heard learned counsel appearing for the Petitioner, the learned counsel appearing for the first Respondent and the learned counsel appearing for the second to fourth Respondent. The learned AGP represents the fifth Respondent-State.

2. The challenge is to the order/letter dated 9th February 2017 issued by the Navi Mumbai Municipal Corporation (for short “the said Corporation”). An Appeal purporting to be an Appeal under Section 406 read with Rule 16 of the Taxation Rules (for short “the Taxation Rules”) under Chapter VIII of the Schedule D to the Maharashtra

Municipal Corporation Act, 1949 (for short "the said Act") was filed by the Petitioner. We have perused the said Appeal. What is challenged in the said Appeal is a demand for property taxes made under a Bill.

3. Under Section 406 of the said Act, an Appeal is maintainable before a Judge for challenging the demand of the property taxes. The word "Judge" is defined in Sub-section (29) of Section 2 of the said Act to mean the Civil Judge (Senior Division), or in case of City of Pune, the Judge of the Court of Small Causes.

4. The Appeal preferred by the Petitioner refers to Rule 16 of the Taxation Rules which does not provide for preferring any Appeal. The learned counsel appearing for the Petitioner submits that the Municipal Commissioner heard the Petitioner by entertaining the Appeal and in fact, by filing a reply, the Municipal Corporation has justified the impugned order/letter dated 9th February 2017 by which the decision on the Appeal is communicated to the Petitioner.

5. An Appeal is always creation of a statute. In the present case, the Commissioner of the Municipal Corporation of the said Corporation was not vested with the appellate power under any statute including the said Act. Therefore, even assuming that the Appeal is entertained, it is not necessary for us to entertain this Petition under

Article 226 of the Constitution of India for challenging the order passed on the Appeal. Assuming that the order passed on the Appeal is illegal, by setting aside the illegal order, a Writ Court while exercising the jurisdiction under Article 226 of the Constitution of India, cannot restore the Appeal which was incompetent and not maintainable.

6. Therefore, there is no reason to entertain this Petition. The Petitioner will have to adopt appropriate remedy in accordance with law against the impugned demand of property taxes. If such a remedy is adopted, we make it clear that the order/letter dated 9th February 2017 which is impugned in this Petition cannot be relied upon as the order is purportedly passed on an Appeal which was not maintainable.

7. By granting liberty to the Petitioner to adopt appropriate remedy in accordance with law, the Petition is disposed of subject to the observations made above.

8. All contentions on merits are kept open.

(SMT.VIBHA KANKANWADI, J) (A.S. OKA, J)