IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10589 OF 2018

Newfound Properties & Leasing Pvt. Ltd. & Anr. ...Petitioners
Vs.
Navi Mumbai Municipal Corporation & Ors. ...Respondents

WITH
WRIT PETITION NO.10591 OF 2018

Gigaplex Estate Private Ltd. & Anr. ...Petitioners
Vs.
Navi Mumbai Municipal Corporation & Ors. ...Respondents

WITH
WRIT PETITION NO.10592 OF 2018

Mindspace Business Parks Private Ltd. & Anr. ...Petitioners
Vs.
Navi Mumbai Municipal Corporation & Ors. ...Respondents

Mr.Milind Sathe, Senior Advocate, with Mr.Bhushan Deshmukh, Ms.Hemlata Jain, Mr.A.Motwani and Mr.Biswadeep Chakravarty i/b. Mahernosh Humranwala for Petitioners in all petitions.

Mr.Sandeep Marne for Respondent Nos.1 to 5 in WP No.10591/18 and WP No.10592/18 & Respondent Nos.1 to 6 in WP No.10589/18.

Ms.Khushbu Marwadi i/b. Jay & Co. for Respondent No.6 in WP No.10591/18 & WP No.10592/18 and for Respondent No.7 in WP No.10589/18.

CORAM : NARESH H. PATIL, ACTING C.J.
& G.S. KULKARNI, J.

DATE: 25th OCTOBER, 2018.

P.C.

1. Heard the learned Counsel for the parties.

2. These three petitions raise a common challenge, which is to the notices issued by the respondent No.1-Navi Mumbai Municipal Corporation (for short, "**Municipal Corporation**") for recovery of arrears of the property tax penalties.

3. The case of the petitioners is that they have been regularly paying the property tax. However, these bills are belatedly received by the petitioners from the Municipal Corporation and therefore, obviously payment of these bills is beyond stipulated period under the rules. It is submitted that such delay on the part of the Corporation is happening for many years and the Corporation therefore in every bill is adding penalty/ belated payment charges which the petitioners from time to time had disputed.

4. The learned Senior Counsel for the petitioners illustratively would bring to our notice the facts in the case of Newfound Properties & Leasing Pvt. Ltd. (W.P. No.10589/18) to contend that the principal amount of the property tax was paid by the petitioners from time to time. The learned Senior Counsel has referred to the property tax bills for the year 2010-2011 where a total amount of Rs.26,73,294/- has been demanded by bifurcating into Rs.24,56,536 + 2,16,758/- being the arrears of the property taxes. The bill contains instructions to the assessee, informs that in respect of the bill amounts, an Appeal under Section 406 of the Maharashtra Municipal Corporations Act, 1949 (for short, "MMC Act"] can be preferred within a period of 15 days from the date of service of the bill. We are shown similar bills for the subsequent period which also indicate the bifurcation of the arrears/penalty and the principal amount of the tax.

5. It is an admitted position that these are arrears of penalty for last several years and which is part of the bills as raised by the Municipal Corporation from time to time and received by the petitioners. The petitioners however neither paid the said amounts nor filed statutory appeals under Section 406 of the MMC Act disputing the demand of taxes. Last such bill showing arrears of the tax is dated 5th May 2016 (page 208

of the petition) wherein arrears of Rs.27,81,299/- are demanded.

6. As there was persistent default on the part of the petitioners, the Municipal Corporation has issued the impugned notice dated 10th January 2017 demanding the property tax bill, outstanding amount stated to be Rs.33,82,205/- in the said case. Similar notices are issued in respect of other two petitioners.

7. The petitioners (in Writ Petition No.10589 of 2018) being aggrieved by the demand notices issued by the respondent-Municipal Corporation for recovery of the penalty amount on property taxes are before the Court seeking the following substantive reliefs:-

> "(a) That this Hon'ble Court be pleased to issue a Writ of Certiorari or writ in the nature of Certiorari or any order, writ or direction under Article 226 of the Constitution of India calling for the records and proceedings pertaining to (i) issuance of the property tax bills for the period from 1st October, 2008 to 30th September, 2018 received by the Petitioners to the extent that it shows arrears of property tax, and (ii) the notices dated 16-02-2016, 10-01-2017 and 26-07-2017 threatening to attach and sale the Petitioners' properties and rent from the Petitioners' immovable properties for non-payment of alleged arrears of property tax and after examining the validity, legality and propriety thereof, the same be quashed and set aside."

8. The substantive reliefs in the other cases are also identical.

9. The Municipal Corporation has appeared and filed a reply affidavit. The first objection as raised on behalf of the Municipal Corporation is on the maintainability of the petition on the ground that the petitioners have an alternative remedy of filing appeal under Section 406 of the MMC Act. It is stated that the petitioners do not wish to avail the said remedy to avoid the mandatory pre-deposit of the amount as a precondition for entertaining appeal under Section 406 of MMC Act. Secondly, it is contended that the petitions involve disputed questions of the facts. The Municipal Corporation has contended that the petitioners have raised issues in regard to the exact date of service of bills and liability incurred by the petitioners towards penalty due to late payment of taxes as demanded by the Municipal Corporation, as per the rules. The affidavit disputes the dates claimed by the petitioners on which the bills were allegedly served on them.

10. It is submitted that the factual dispute as urged on behalf of the petitioners, that the bill was belatedly issued by the Municipal Corporation cannot be adjudicated in the present proceedings. The Municipal Corporation contends that the petitioners have admitted that there are the disputes relating to the year 2008 onwards as the alleged grievance of the

petitioners dates back from the bill issued in respect of the period 1st October 2008 to 31st March 2009. It is stated that these bills which were issued from time to time clearly contained a clause that the petitioners can dispute the amounts which are raised in the said bill by filing a statutory appeal. It is contended that the grievance of the petitioners itself is time barred and cannot be revived by the petitioners by filing the present petitions. It is further contended that apart from the fact that the statutory remedy of filing appeals in respect of each bill from the year 2008 onwards although are already time barred, the averments as made in the petition would also show that even though varying amount of penalties were levied in several cycles in last so many years, the petitioners have not disputed the said penalties even once. Even when demand was raised by the Municipal Corporation, the petitioners attempted to file a reply which was in the year 2016. It is thus contended that during the period from October 2008 till October 2016 i.e. for about 10 years, the petitioners had maintained silence and acquiesced in the said levy of penalties from time to time. It is contended that the petitioners cannot be permitted to now raise the said dispute by filing the petitions in the year 2018. It would be relevant to refer to paragraph 5 and 6 of the reply affidavit of the Municipal Corporation (Writ Petition No.10589 of

2018) which reads thus:-

> "5. I further say that the entire issue raised by the Petitioner in the present petition revolves around the dispute of exact date of service of various bills of property tax on the Petitioner. The Petitioner is claiming that under the provisions of Rule 41 of the Taxation Rules in Chapter VIII Schedule D to the Maharashtra Municipal Corporations Act, the penalty becomes leviable only after the expiry of period of three months from the date of service of bill. By way of petition filed in the year 2018, the Petitioner is claiming that it has received the property tax bills late by claiming various alleged dates of their service. The Municipal Corporation is not in a position to verify the correctness of the said claims at this belated point of time. Various dates claimed by the Petitioner as the dates of service of bills are not admitted by the Municipal Corporation. In view of existence of such disputes, it is not safe to accept correctness of the claims made by the Petitioner. Therefore the present petition need not be entertained and deserves to be dismissed."
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> 6. I further say that in view of what is stated hereinabove, it is not necessary to deal with each and every contention raised by the petitioner in various paragraphs of the petition. The dates claimed by the Petitioner as dates of service of various bills are not admitted by the present Respondents. The Property Tax bills in respect of each half yearly cycles are printed by the Municipal Corporation and are distributed to the concerned without any delay. Therefore, it is not correct to say that various bills were served on the petitioner belatedly. Even otherwise, the amount of property tax of the Petitioner has been static at Rs.24,56,536/- for each half yearly bill cycle. The petitioner was fully aware that it is required to pay the said amount of Rs.24,56,536/- within a period of three months from 1st of April and 1st of October every year. Therefore, the alleged defence of late receipt of property tax bills raised by the petitioner is completely baseless. If the petitioner was to pay insignificant amount of penalties from time to time, the same would not have increased further. The petitioner neither disputed penalty amounts during 2008 to 2016 nor paid the said penalty amounts. The petitioner itself is responsible for the resultant higher amount of penalty over a period of time."

11. Similar contentions are urged in the affidavits in reply which are filed in the connected writ petitions.

12. Having heard the learned Counsel for the parties and having perused the record of these petitions, we find much substance in the contentions as urged on behalf of the respondents. It is quite clear to us that the petitioners are pursuing a stale claim in these writ petitions and claims which the petitioners at the appropriate time could have agitated in a statutory appeal which was available to the petitioners under Section 406 of the MMC Act, by disputing the demand as raised in the property tax bills received by them. There was no bar for the petitioners to dispute the penalty amounts being claimed by the Municipal Corporation.

13. It is not in dispute that the property tax bills were issued by the Municipal Corporation from time to time and for last almost about 10 years, wherever the bills were not paid in time, the respondent/ Corporation had shown the arrears in the bills, which is the amount towards penalty, due to late payment of the principal amount of the property taxes. There are taxation rules appended to the MMC Act

prescribed under Schedule D. Rule 41 thereunder empowers the Municipal Corporation to levy a penalty on unpaid amount of bill. Rule 41 reads thus:-

> "41. **Levy of penalty on unpaid amount of bill**.
> (1) The amount of first half-yearly tax as specified in the bill which has been served as aforesaid shall be paid within three months from the date of service of the bill and of the second half-yearly tax as specified in the bill shall be paid before the 31st December of each year; and if a person liable to pay tax does not pay the same as required as aforesaid, then he shall be liable to pay by way of penalty in addition to the amount of such tax or part thereof which has remained unpaid, a sum equal to two per cent of such tax for each month or part thereof after the last date by which he should have paid such tax and shall continue to be liable to pay such penalty until the full amount as per the bill is paid:
>
> Provided that, any property tax for which a bill is served under this Act before the date of commencement of the Bombay Provincial Municipal Corporations, the City of Nagpur Corporation, the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships, the Maharashtra (Urban Areas) Protection and Preservation of Trees and the Maharashtra Tax on Buildings (with larger Residential Premises) (Re-enacted) (Amendment) Act, 2009 (hereinafter referred to as "the Amendment Act of 2009") has remained unpaid in full or in part, a person who has not paid such tax shall be liable to penalty as provided under this section, on and from the date of commencement of the said Amendment Act of 2009.
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> (2) If the other taxes or dues claimed in the bill are not paid by the date specified in the bill, the provisions of sub-section (1) shall *mutatis mutandis* apply to the amount which has so remained unpaid."

14. The Municipal Corporation acting under Rule 41 (supra) had raised the demands of arrears of the penalty amounts. The petitioners however

on their own volition paid the principal amounts of the tax and failed to honour the bills in regard to the amounts of penalty/arrears being shown in the bills by the Municipal Corporation. Despite a clear clause conferring an opportunity to the petitioners to prefer an appeal to dispute the specific bills, the petitioners did not avail the said opportunity.

15. In the above circumstances, surely in exercise of jurisdiction under Article 226 of the Constitution, we cannot grant any relief to the petitioners. Even the submission as urged on behalf of the petitioners that an opportunity be granted to the petitioners to make a representation and the representation be decided by the Municipal Corporation by a speaking order also cannot be accepted. The Supreme Court in the decision in **C. Jacob Vs. Director of Geology & Mining & Anr.**[1] has laid down detailed guidelines to be considered by the Court when the Court is called upon to issue directions to the authorities to consider a representation. Their Lordships in para 10 of the decision held as under:-

> "10. We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for `consideration'. If the representation is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing `consideration' of such claims."

1 AIR 2009 SC 264

16. Adverting the above position in law, we cannot come to the aid of the petitioners.

17. Resultantly, we see no merit in the writ petitions. We accordingly dismiss the petitions. No costs.

G.S. KULKARNI **ACTING CHIEF JUSTICE**