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

WRIT PETITION NO.255 OF 1999

1. Texport Industries Ltd.,
   a Company duly incorporated under
   the provisions of the Companies
   Act, 1956, having its office at
   Laxmi Woolen Mills Compound,
   Dr. E. Moses Road, Mahalaxmi,
   Mumbai – 400 093.

2. P. Muktheshwar
   of Mumbai, Indian Inhabitant,
   the Administrative Manager of
   the 1st Petitioner abovenamed,
   residing at B/2, 2nd Floor,
   Manav Kalyan Society,
   Bangur Nagar, Goregaon,
   Mumbai – 400 093. .... Petitioners

- Versus -

1. Naib Tahsildar, Andheri,
   an Officer appointed under the
   provisions of the Maharashtra Land
   Revenue Code and discharging his
   functions under the said Act and
   having his office at Dadabhai
   Navroji Road, Andheri (West),
   Mumbai.

2. Gujarat Industrial Development
   Corporation, a statutory Corporation
   and an Undertaking of the State of
   Gujarat having its office at
   Plot No.C-5/101, 1st Floor,

Char Rasta, G.I.D.C. Vapi,
District Valsad, Gujarat.

3. The State of Maharashtra
through the Collector, Mumbai
Suburban District. .... Respondents

Mr. Chetan Kapadia with Mr. Rahul Sarda & Ms Anisha Nair i/by India Law for the Petitioners.

Mr. A.L. Patki, Addl. Government Pleader, for Respondent Nos.1 & 3.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : JANUARY 19, 2018

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.)**:**

1. The petition challenges the measures initiated by the State of Maharashtra, namely, the proceedings for recovery and the orders at Annexures "G", "H" & "I" to the petition. The petitioners seeking to quash and set aside the same also pray for issuance of writ of mandamus directing the respondents, particularly the officials of the Government of Maharashtra not to act in furtherance of these orders.

2. The second respondent to this petition is the Gujarat Industrial Development Corporation (GIDC). It is a statutory Corporation and an Undertaking of the State of Gujarat. The petitioners state that the second respondent allotted a plot of land in District Valsad, Gujarat, to the petitioners under an Agreement for allotment. After inviting the attention of the Court to the terms and conditions of this Agreement, it is stated that a sum of Rs.78,336/- was paid on execution of this Agreement and the balance amount was paid in accordance with the said Agreement.

3. Then, relying on some of the clauses of this Agreement, it is claimed by the petitioners that the Agreement obliges them to commence and carry out a construction activity. That is to be carried out within a time schedule. However, there is a discretion to extend the time and that is how the dispute started between the parties. Firstly, the petitioners addressed a communication requesting extension of time. Thereafter, the complaint is that, the second respondent as a precondition for considering this application sought to recover a sum of

Rs.9,64,500/-. That the petitioners understood as a penalty. Therefore, correspondence commenced on the point of not charging any such penalty and in the huge sum of Rs.9,64,500/-. Disagreeing with the petitioners, the second respondent relied on its power of resumption of the land and addressed a Notice to take possession. The second respondent exercised the right of resumption of possession and termination of the Agreement but yet persisted with its demand of Rs.9,71,429/- (penalty for non-utilisation of the land). It is this demand which the second respondent was seeking to enforce and this sum was to be recovered, according to the second respondent, as arrears of land revenue. As the petitioners are based in Maharashtra, the authorities under the Maharashtra Land Revenue Code, 1966, namely, the State of Maharashtra through the Collector, Mumbai Suburban District and the first respondent-Tahsildar were requested to recover this amount and make it over to the second respondent-GIDC.

4. That led to the institution of this petition and it is common ground that the petition was moved for urgent reliefs

by the petitioners before a Division Bench of this Court on 24-3-1999. On that day, the second respondent sought time but prior thereto there was an ad-interim order restraining the respondents from recovering the amount by coercive means. In other words, from acting in furtherance of these Notices of demand.

5. The petition is thus pending. While it is true that the first and the third respondents have filed their affidavits-in-reply to this petition, what we have also before us is an affidavit which is filed by the second respondent. The second respondent does not dispute that the possession is resumed and the petitioners are no longer in possession of the property. However, the second respondent justifies the recovery measures and its request to the State of Maharashtra and the Collector, Mumbai Suburban District to enforce the demand.

6. The petitioners have filed a rejoinder affidavit. Thus, a writ petition filed in the year 1998/1999 after its admission reached hearing and final disposal.

7. On prior two occasions we find that the second respondent and its Advocate were absent. The petitioners filed an additional affidavit in this Court and in which the petitioners state as under:-

> "4. I say that pending the above petition, the *Respondent No.2 realised their error in raising the demand of Rs.9,71,429/-. The Respondent No.2, vide a letter dated 14th March, 2000, have addressed a pre-audited Recovery order claiming a revised sum or Rs.1,52,106/- from the Petitioner by referring to a circular bearing No. O&M/CIR/VASU/JAMIN/ MAHESU/35/99 dated 28th June, 1999. Thus, the Respondent No.2 admits that its earlier demand by letter dated 14th September 1998 for an amount of Rs.9,71,429/- and orders based thereon i.e. the impugned orders dated 13th November, 1998 and 24th November, 1998 which are impugned herein are unlawful, illegal and given a go-by by the Respondent No.2 itself by substituting the earlier demand of Rs.9,71,429/- for a demand of Rs.1,52,106/-. A copy of the said letter dated 14th March, 2000 issued by the Respondent No.2 is herewith annexed and marked as* ***Exhibit-A****.*
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> *5. I say that since the present petition was pending, the Petitioner responded to the said letter to the respondent No.2 through their Advocates' letter dated 23rd March, 2000, giving reference to the present pending petition and the orders passed therein and denying their liability under the alleged demand. I submit that for the reasons set out extensively in the Writ Petition, the substituted demand of Rs.1,52,106/- raised by letter dated 14th March 2000 is illegal and unlawful and the Petitioner challenges the same and submits that the letter dated 14th March 2000 determining the sum of*

> *Rs.1,51,106/- annexed as Exhibit A hereto be quashed and set aside."*

8. On such a petition, on the earlier occasion, we heard Mr. Kapadia, learned Advocate appearing for the petitioners at some length and Mr. Patki, learned Addl. Government Pleader, appearing for respondent Nos.1 and 3. With their assistance, we perused the petition and this additional affidavit so also the prior affidavits placed on record. We called upon Mr. Kapadia to produce proof of remittance of this amount and which is termed as a revised demand. Mr. Kapadia made a statement that in the event that amount is not paid, it will be duly paid and proof of such payment will be produced.

9. Today, Mr. Kapadia tenders a compilation of documents which is taken on record and marked "X" for identification. That shows compliance with the statements which we have reproduced above.

10. As we have held and observed above, the second respondent has not responded to any of these statements nor are they present in Court. All that they are requesting the

petitioners' Advocate or the petitioners themselves is to accommodate them. They say that their records are fairly old and now after two decades they are unable to trace them out. They are also not aware of the fact that they have reduced or revised the figure which they are seeking in terms of the demand Notices. We do not think that we should keep this petition pending merely because the second respondent, a statutory Corporation, has its own practical difficulties or is unable to trace the record. It should have at least remained present before the Court or instructed its Advocate to do so as they were made aware that the petition is pending for hearing and final disposal and listed today. If they can correspond with the petitioners, we see no reason why their representative cannot attend the Court if at all they were interested in seeking to recover something more than the revised demand or interest or any penalty from the petitioners. They have not remained present. We accept the stand of the petitioners as reflected from the additional affidavit and the compilation of documents. Since the second respondent is the only contesting respondent and its conduct being as noted above, we quash the demand Notices in the original sum and hold that the demand Notices stand satisfied after the revision effected by the second respondent and its acceptance of the Demand Draft forwarded by the petitioners in the revised sum. Rule is made absolutely accordingly. There will be no order as to costs.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)