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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.784 OF 2017

Scindia Employees CHS Ltd. & Anr. ...Petitioners
vs.
Municipal Corporation of
Greater Mumbai & Ors. ...Respondents

Mr.M.M.Vashi, Senior Counsel and Ms Prachi Khandge
i/b M.P.Vashi & Associates for the Petitioner
Mr.A.Y.Sakhare, Senior Advocate with Ms Kejali
Mastakar for the Respondent-MMC.

CORAM : A.S.OKA, &
RIYAZ.I.CHAGLA,JJ.
DATE : JUNE 11, 2018

P.C.:

1 On last Monday 4th June 2018, parties were put to notice that the petition will be heard and disposed of finally at the stage of admission.

2 The challenge in this petition under Article 226 of the Constitution of India is to the notices dated 8th March 2017, 10th March 2017 and 14th march 2017. The first notice dated 8th March 2017 alleges that in violation of the conditions imposed while granting Occupation Certificate to the petitioner, they have used the land forming a part of Development Plan Road unauthorisedly from the year 1970. The total amount of Rs.68,62,746/- was demanded by way of sewerage taxes as well as water charges at the double the normal rate for water consumed through the existing water connection. The

show cause notice records that the water connection was granted to the petitioner under section 169 of the Mumbai Municipal Corporation Act, 1888 (for short 'the said Act') on 21st April 1970. The second impugned notice dated 10th March 1917 directs the petitioner to construct the compound wall in front of its building with the Development Plan Road. The last impugned notice dated 14th March 2017 records that as per the conditions imposed in IOD granted in the year 1965-66, the petitioner utilised benefit of FSI of the Development Plan Road having width of 18.30 meters. The said order records that the possession of the set back land was taken over by the Mumbai Municipal Corporation on 8th March 2017. By the said notice, an amount of Rs.3,17,25,445/- was demanded from the petitioner on account of pro-rata charges for development of the Development Plan Road having width of 18.30 meters, for the street lights, sewerage line, ground rent from the year 1970, cost of demolition of compound wall, security etc. It was stated that as the petitioner did not hand over the possession of the land, the demand was made as for a period of 45 years, they have deprived the public of their rights. It is stated that it is a clear violation for which penalty will be calculated and will be demanded later.

3 We may note here that as far as the action of demolition of compound wall and taking over the set back land is concerned, a civil suit was filed by the petitioner which has been decreed on 31st August

2010 by the Civil Court ordering the Municipal Corporation to re-construct the southern wall. First Appeal preferred by the first respondent- Mumbai Municipal Corporation before the learned Single Judge against the said decree is pending. There is an interim order passed by the learned Single Judge. For the alleged breach of the interim order, the petitioner has filed a petition seeking an action under the Contempt of Courts Act, 1971 which is pending before the learned Single Judge.

4 The first and third impugned notices demand certain amounts from the petitioner. As far as second impugned notice dated 10th March 2017 is concerned, though the word "directed" has been used in the said notice, all that the said notice means is that the first respondent-Corporation has suggested that the petitioner should construct a compound wall in front of the building and along the Development Plan road to avoid any mishap due to vehicular traffic. What is stated in the second notice dated 10th March 2017 cannot be treated as a direction and is merely a suggestion to the petitioner to construct a wall to avoid any mishap. In any event, the issue of the construction of wall is pending before the learned Single Judge. Therefore, it is not necessary for us to deal with the second impugned notice.

5 By the first impugned notice, a demand is made for water charges at double the usual rate for the water consumed since 1970 till the date of notice.

The notice itself records that the water connection was granted to the petitioner on 21st April 1970 under sections 169 of the said Act of 1888. No provision of law is mentioned in the show cause notice which enables the first respondent-corporation to recover the water charges for the water which is already consumed at the double the rate of regular rate only on the ground that the petitioner has not complied with the condition in Occupation Certificate of handing over a part of the land forming Development Plan Road. Secondly, the sewerage tax is demanded. Here also, no provision of law is mentioned in the notice in support of the demand for sewerage tax. The demand is only on the ground of the failure of the petitioner to hand over the possession of the portion of Development Plan Road. As far as the third impugned notice is concerned, the following demands have been made:

- "1. Pro rata charges for the development of 18.30 mtr D.P.Road = 1,47,23,987/-.
2. Pro rata charges for the street lights = 13,81,623/-;
3. Pro rata charges for the laying sewerage line = 20,00,000/-;
4. Ground rent for 45 years from 1970 i.e from date of OC = Rs.1,24,99,380/-;
5. Cost of demolition of compound walls, security chowky et = Rs.11,20,455/-;
6. As per IOD conditions and O C Conditions, it was your duty to hand over the road free from compound wall area and on

which your security chowky is constructed for the free of cost, whereas you have consumed the complete FSI and taken benefit in 1970. But in spite of 45 years you have not come forward nor taken any steps to hand over the legal benefit of public and deprived public from their rights. It is clearly violation of FSI for which penalty will be calculated and will be sent later."

6 Even the third notice does not record the provision of law under which said huge demands were made.

7 The learned senior counsel for the first respondent-Corporation has placed on record a decision of the Deputy Municipal Commissioner, Zone-III which records that on the monetary demands, hearing will be given to the petitioner by the Assistant Commissioner of K/East Ward.

8 We must note here that the demands made by the first and third impugned notices are in terms of the money. In the third impugned notice, a threat is given to impose penalty for not allowing the members of the public to beneficially use the road.

9 In absence of a reference to any specific statutory provisions of law in first and third impugned notices, the first respondent cannot be permitted to raise demands which have been raised by the said notices by merely issuing notices. No show

cause notice was issued to the petitioners. The first respondent will have to follow due process of law before demanding the amounts which have been demanded by the first and third impugned notices.

10 As stated above, the Municipal Corporation has offered to give hearing to the petitioner. Today, we are not called upon to decide as to what due process of law should be followed by the Mumbai Municipal Corporation. It is for the said Mumbai Municipal Corporation to decide as to what due process of law it should follow.

11 Accordingly, we dispose of the petition by passing the following order:

(I) We clarify that we have made no adjudication about the controversy involved in the pending First Appeal No.1627 of 2010 and the Contempt Petition No.230 of 2017;

(II) We restrain the first respondent-Corporation from recovering any amount on the basis of the first impugned notice dated 8th march 2017 and the third impugned notice dated 14th March 2017 without following due process of law. It is for the said Corporation to decide what due process of law it wants to follow;

(III) As regards second impugned notice dated 10th March 2017, for the reasons which we have recorded above, it is not necessary to interfere

(IV) We make it clear that we have made no final adjudication on the question as to whether the first

respondent is entitled to recover the amounts which are sought to be recovered on the basis of the first and third notices and all questions in that behalf are kept open;

(V) Writ petition is disposed of on above terms.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)