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

WRIT PETITION NO.1694 OF 2003

1. BSES Limited, a Company registered under the Companies Act, 1913, having its Registered Office at BSES House, Santacruz (East), Mumbai-400 055.

2. Pankaj S. Pandya of Mumbai, Indian Inhabitant, residing at Receiving Station, Bandra (W), Mumbai-400 050. .... Petitioners

- Versus -

1. State of Maharashtra

2. The Collector of Mumbai, having his office at Old Customs House, Shahid Bhagat Singh Road, Mumbai-400 001.

3. The Registrar of Assurances, having his office at Old Customs House, Shahid Bhagat Singh Road, Mumbai-400 001.

4. The Sub-Registrar of Assurances, having his office at Old Customs House, Shahid Bhagat Singh Road, Mumbai-400 001.

5. The Tahsildar (Land Revenue Recovery), having his office at C/o Office of the Collector,

Old Custom House,
Mumbai-400 023.

6. Madhukar Laherchand Parikh,
Administrator, residing at
5th Floor, Nagin Mahal,
82 Veer Nariman Road,
Mumbai-400 020.

7. Nitin Nathalal Parikh,
Administrator and Trustee,
residing at 10th Floor,
Varsha 19, 69-B, Napeansea
Road, Mumbai-400 006. .... Respondents

Mr. D.J. Kakalia with Mr. Paresh Patkar i/by Mulla &
Mulla & Cragie Blunt & Caroe for the Petitioners.
Ms Devyani Wanjara i/by B.R. Oza & Co. for Respondent
Nos.6 & 7.

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

DATE : JANUARY 15, 2018

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

1. This petition under Article 226 of the Constitution of India challenges Notices of Demand issued under Section 267 of the Maharashtra Land Revenue Code, 1966, copies of which are at Exhibits "F" and "I", and Letters of Demand dated 25-4-2003

and 10-6-2002, copies of which are at Exhibits "E" and "D" to this petition. The petitioner No.1 before us at the relevant time carried on business *inter alia* of generating and distribution of electric energy and was distributing such energy to its consumers in the Mumbai Suburban District.

2. The respondents to this petition are the State of Maharashtra and functionaries under the Maharashtra Land Revenue Code, 1966, the Maharashtra Stamp Act, 1958 and the Registration Act, 1908.

3. The petitioners challenge the demand by way of transfer charges and threatened action of attachment of their properties. The scheme or policy of transfer charges is enunciated in Government Resolution dated 23-11-2001 which the petitioners claim to be inapplicable to them. They also challenge the legality and validity of this Government Resolution and pray that it be declared *ultra vires* the parent Act as also Articles 14 and 21 of the Constitution of India.

4. A writ petition involving identical challenge filed in this Court being *Original Side Writ Petition No.713 of 2001* ***{Mr. Aspi Chinoy & Another vs. The State of Maharashtra & Others}*** was heard by a Division Bench of this Court and on 29-9-2009 it allowed it. The Division Bench declared that the State Government does not have a right to ask petitioner No.1 therein to seek its previous approval before entering into any transaction transferring immovable property. It further declared that the State has no power to demand any premium before transferring the Flat. The writ petition was allowed in these terms.

5. It is conceded by the State of Maharashtra that the controversy may be identical to this petition and others involving similar challenge and disposed of by following the above Judgment but the State of Maharashtra has challenged it in the Hon'ble Supreme Court and that challenge is pending.

6. On the earlier occasion and even today we repeatedly questioned the State's Advocate whether the

Judgment and Order of the Division Bench has been stayed by the Hon'ble Supreme Court and the reply was in negative. On the specious plea that the challenge is pending in the Hon'ble Supreme Court, we cannot ignore and brush aside a binding Judgment of this Court as that would be judicial indiscipline, particularly when the issues are concluded by the Division Bench Judgment.

7. In view thereof, following the above Division Bench Judgment we allow this petition with similar order and directions. Rule is made absolute accordingly. There would be no order as to costs.

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