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

WRIT PETITION NO.852 OF 2010

M/s Nahalchand Laloochand Private Limited ... Petitioner
Versus
State of Maharashtra And Others ... Respondents

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Mr. Rajesh N. Kachare for the Petitioner.
Ms. Geeta Shastri, Additional Government Pleader for the Respondents-State.

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CORAM : S.C.GUPTE, J.

DATE : 9 APRIL 2018

P.C. :

. Heard learned Counsel for the Petitioner and learned Additional Government Pleader for the State.

2 This petition challenges an order passed by the Collector, Mumbai Suburban District on 15 October 2003. By the impugned order, the Collector, whilst using powers delegated to him under the Maharashtra Land Revenue Code, 1966 ("Code") for regularizing non-agricultural usage of land, directed the grantee, i.e. the Petitioner herein, to pay non-agricultural assessment in respect of land at the rate of six times the original assessment applicable between 1979 and 1991 as also conversion tax as per law. Relying on Sub-section (2C) of Section 113 of the Code, it is submitted that the rate of non-agricultural assessment for the guaranteed

period commencing from 01.08.2001, shall not exceed three times the non-agricultural assessment rate of 1991 for the cases which are already assessed for non-agricultural purposes. It is submitted that by an order dated 18 January 2001, the Sub-Divisional Officer of Mumbai Suburban District had already levied non-agricultural assessment and fined the Petitioner herein under Section 45 of the Code. The assessment levied in the year was at the rate of Rupees 20 per 100 sq.mtr. It is submitted that a notice of demand was raised by the Circle Officer for payment of land revenue at three times this rate. It is submitted that the land revenue demanded was paid by the Petitioner on the basis of this demand. It is submitted that having regard to the provisions of Section 113(2C), it is not permissible to levy non-agricultural assessment at a rate more than three times the non-agricultural assessment of 1991 for the guaranteed period of five years commencing from 01 August 2001.

3 It is pertinent to note that the rate of Rupees 20 per 100 sq.mtr. was fixed for the initial period of 01 August 1979 to 31 July 1991. It is also pertinent to note that this rate was not revised in August 1991 or even thereafter in 1996. In the premises, by a Government Resolution ("”GR”) dated 27 September 2001, the Government directed levy of assessment for land to be assessed for non-agricultural use at the rate of not more than six times the rate of assessment of the year 1991. It appears that the original demand notice on the basis of this GR was wrongly issued on 23 October 2001 for three times this rate. It was subsequently corrected in response to the Petitioner's application for regularizing the non-agricultural use of the subject land. By the impugned order, the Collector, accordingly, assessed the land for non-agricultural use at the rate of Rupees 120 per 100 sq.mtr.

per annum (i.e. six times the rate in 1991) and cancelled the assessment order of 18 January 2001, on the basis of which the notice of demand was raised on 23 October 2001.

4 Learned Counsel for the Petitioner submits that his case was already assessed for non-agricultural use and hence the assessment could not exceed three times the non-agricultural assessment rate of 1991. It is pertinent to note that what the Collector did on 18 January 2001, was not to assess the land for non-agricultural use but to determine the penalty amount payable by the Petitioner for contravention of law. (The Petitioner admittedly converted the land to non-agricultural use without obtaining permission under Section 44 of the Code.) The measure of penalty in case of breach of law is non-agricultural assessment on the land leviable with reference to the altered use together with such fine as may be payable subject to rules made in this behalf. If such assessment is ordered, it cannot be said that the land itself has been subjected to non-agricultural assessment. After the application for regularization was made, the land was assessed for non-agricultural assessment for the first time after the GR of 27 September 2001, when the impugned order was passed by the Collector, Mumbai Suburban District on 15 October 2003. In the premises, the assessment is covered by clause (b) of Sub-Section (2C) of Section 113 and not clause (a) of Sub-section (2C) of Section 113. Clause (b) permits rate of assessment upto six times the non-agricultural assessment rate of 1991 in municipal areas. It is indeed on the basis of this provision of law that the Government has passed GR on 27 September 2001 and the rate at which the land in the present case assessed is, therefore, in accordance with law. The assessment made and fixed on 18 January 2001 was,

accordingly, liable to be treated as cancelled and a proper assessment was to be made in accordance with Section 113 (2C) read with the GR of 27 September 2001. That is precisely what the impugned order did.

5 In the premises, the impugned order is in accordance with law and cannot be faulted in any manner. There is, accordingly, no merit in the writ petition. The writ petition is dismissed. No order as to costs.

(S.C. GUPTE, J.)