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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1292 OF 2013

M/s. Arasa Hotels Pvt. Ltd.

117-B, Opp. Kalamboli Fire Brigade,

Kalamboli,

Navi Mumbai

....Petitioner

: V E R S U S :

1. The State of Maharashtra
2. The Chief Executive Officer,
M.M.R.I. & S. Market Committee,
408, 409 & 410, Central Facility,
Building, 5th Floor, Fruit/
Vegetable Market, Sector-19,
Turbhe, Vashi,
Navi Mumbai, Dist-Thane.
3. The City And Industrial
Development Corporation
of Maharashtra Ltd.,
a Government Company, duly
registered under the Indian

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Companies Act, 1956, having its
registered office at 'Nirmal',
2nd Floor, Nariman Point,
Mumbai-400 021.

and Ors.

....Respondents

* * * *

For petitioner : Mr. G.S. Bhatt.

For respondent no.1-

State : Mrs. Ashwini A. Purav.

For respondent no.2 : Mr. N.N. Bhadrashete.

For respondent no.3 : Mr. G.S. Hegde i/by. G.S.
Hegde and Associates.

CORAM : S.C. DHARMADHIKARI, &

SANDEEP K. SHINDE, JJ.

Monday, 29th July, 2019.

ORAL JUDGEMENT (Per : S.C. Dharmadhikari, J)

1. Rule. Rule made returnable forthwith.
Respondents waive service. With consent of the
parties, petition is taken up for final hearing.

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2. By this writ petition, under Article 226 of the Constitution of India, the petitioner before us has claimed essentially two reliefs :

“(a) that this Hon’ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, ordering and directing the 2nd Respondent to deal with the Petitioner’s case and further, direct the 2nd Respondent to withdraw the illegal demand notice demanding market fee and D.P.C. dated 21-2-2012 retrospectively, and further to give the benefits of the said Act to the Petitioner which were earlier given to in similar cases and further order dated 31.01.13 passed by Metropolitan Commissioner at Exh-H be quashed and set aside.

b) that this Hon’ble court be pleased to issue a Writ of mandamus and any other appropriate Writ, order or

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direction under Article 226 of the Constitution of India, ordering and directing the 3rd Respondent to give credit to the Petitioner of the service charges the Petitioner paid to the 3rd Respondent towards providing civic amenities and a note to that effect may be directed to be sent by the 3rd Respondent to the 2nd Respondent; ”

3. The facts necessary for passing a final order on this petition are that, the petitioner before us is a Private Limited Company. The first respondent is a State, whereas, the second respondent is the Chief Executive Officer of Mumbai Metropolitan Region Specified Commodities Market governed by The Mumbai Metropolitan Region Specified Commodities Markets (Regulation of Location) Act, 1983 (hereinafter referred to as “the Maharashtra Act, XLII of 1983”). Respondent

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no.3 is the City and Industrial Development Corporation of Maharashtra Ltd (for short "CIDCO").

4. The petitioner is carrying on business of a hotel. It is a lessee of Plot No.117-B allotted to it by the third respondent for the specific purpose of running a hotel.

5. While it is conceded that, the second respondent is deemed to be a "Local Authority" withing the meaning of the said term as defined in the Bombay General Clauses Act, 1904, which is constituted for the specific purpose of regulating the location of market areas and wholesale markets under "Specified Commodities" contemplated by Maharashtra Act, XLII of 1983. The third respondent is a Government Company but is designated as the

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Development Authority for Navi Mumbai under Section 113 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act").

6. It is the case of the petitioner that, by the agreement of lease dated 6th October, 1986 one M/s. Hotel Jaya Sadan of Mumbai agreed to take on lease the plot referred to above situated at Kalamboli Warehousing Complex, Kalamboli from the third respondent. A copy of the lease deed is annexed as Exhibit-A to the petition. By a tripartite agreement dated 8th May, 1990 this plot was purchased by the petitioner from the original allottee/licensee with the consent of the third respondent. The petitioner states that, after constructing the hotel building as per the terms and conditions of the original agreement of lease, the

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third respondent has executed the lease-deed. Since heavy reliance is placed on Clause-4(m) of the said deed, it is hereinafter reproduced :

"COVENANTS BY THE LESSEEE :

4. The Lessee with intent to bind all persons into whomsoever hands the demised premises may come doth hereby covenant with the Lessor as follows :

PAYMENT OF SERVICE CHARGES :

(m) To make on the efflux of 3 years (three years) from 6th October, 1986 or from the date of obtaining a Completion & Occupancy Certificate from the Lessor whichever is earlier to the Lesser a yearly payment at such rate as may be determined from time to time by the Lessor as its contribution to the cost of establishing and maintaining civic amenities such as roads, water, drainage, conservancy for the demised premises regardless to the extent of

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benefit derived by him/them/it from such amenities. Provided that no payment shall be made one year after such civil amenities have been transferred to a Local Authority constituted under any law for the time being in force. The payment shall be paid on the first day of April in each year or within 30 days therefrom."

7. The claim is that, service charges have been paid and are continuously paid to the third respondent. However, there is a market fee which is demanded, and that, demand notice was challenged but the Chief Executive Officer rejected the Appeal in that behalf on 9th August, 2012 by the order at Exhibit-F.

8. The petitioner thereafter filed Second Appeal under Section 59(2) of Maharashtra Act XLII of 1983. The Metropolitan Commissioner then

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dismissed that Appeal by order dated 21st January, 2013.

9. Pursuant to that, the Tahsildar, Panvel is threatening to recover the amounts as arrears of land revenue.

10. The petitioner says that, it is not a registered trader, dealing in specified commodity as per the Schedule of the Maharashtra Act XLII of 1983. It is a lessee of CIDCO and under a lease from CIDCO, it is running a hotel. It is running that business on a piece of land specifically allotted to it by CIDCO under a lease. It is in these circumstances and aggrieved by the attempts of the second respondent to recover what is styled as "Market Fees", that this Writ Petition is filed.

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11. Mr. Bhatt, learned Counsel appearing on behalf of the petitioner took us through the Writ Petition and Annexures and specifically the agreement to lease, the scheme of Maharashtra Act XLII of 1983 and contended that, once the petitioner is not a trader then the whole of the Act namely, Maharashtra Act, XLII of 1983 is inapplicable to it. The petitioner's rights are controlled and governed by the agreement with CIDCO and to which it is paying service charges. In the garb of rendering identical services, the Market Committee cannot demand from the petitioner, market fee. In any event and without prejudice there is no *quid pro quo*. They are not services rendered to the petitioner by the Market Committee. In these circumstances, the levy is illegal and cannot be

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sustained. Mr. Bhatt, therefore submits that the petition be allowed.

12. The contest is really between the petitioner and respondent no.2. The second respondent Committee has filed an Affidavit justifying the levy and in that affidavit it has pointed out its role. It is saying very clearly that the Mumbai City has been de-congested. For shifting trading/business activity in respect of iron and steel articles, so also, other notified ones, the first respondent-State acquired and vested in the third respondent, huge land situate at Village-Kalamboli and various nearby villages in Navi Mumbai. It is the third respondent who subdivided the land into various plots and entered into Agreement of lease, so also, executed lease-deed in

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favour of persons not only those dealing with the said notified goods but engaged in various businesses which are related to the trading of wholesale commodities. The emphasis is that, for running the market activities, amenities like restaurant, petrol pump, bank etc. are required. The petitioner has obtained lease of the land situated in the market yard and has constructed the structure thereon. Consistent with the above stand, Mr. Bhadrashete, learned Counsel appearing for the second respondent, would submit that the Market Committee has been established and is deemed to be a "Local Authority". Its powers are governed by Section 3(1) of the Maharashtra Act XLII of 1983. It has also been delegated the powers enabling the MMRDA to levy, assess and recover, as per the schedule, the fees for services rendered within the

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market yard.

13. Since Mr. Bhadrashete, places reliance upon sub-paras (d) to (f) of this Affidavit, we reproduce the same hereinbelow :

“(d) I say that the area forming part of said market yard is approximately of 800 Acres or so. It comprises of about 2039 plots of different sizes. There are about 57 internal roads, each one of the plot is connected to one or the other road, the length of said internal road is about 19046 meters i.e. roughly about 19 km. In length, that apart there are peripheral roads. There are about 115 plots provided for common amenities including plots reserved for parking and Taxi Auto stand, plots for constructing security towers, plots reserved for garden, plots reserved for toilet blocks, plots reserved for

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water fountain etc. There are about 41 plots reserved for commercial activities related to the specified trade like restaurant, petrol pump, bank, mathadi bhavan, hotel etc. and other commercial activities. It is pertinent to note that all those plots are situated in the notified area of the market yard and are enjoying all the common amenities provided in the market yard.

(e) As per Section 32 of the said Act, the Market Committee is entrusted with the responsibility to provide common amenities in the market yard and more precisely the power and duties of Market Committee is as follows :

1) construct, maintain and manage the market yard including any buildings or structures;

2) provide, maintain and manage any instruments or implements

requirements in such yard;

3) acquire, hold and dispose off any movable or immovable property;

4) grant, renew, refuse, suspend or cancel Licenses to carry on specified trade in the market yard;

5) regulate the entry of persons and vehicular traffic in the market yard;

6) collect or maintain, disseminate and supply information in respect of production, sale, storage, processing, prices and movement of commodities.

7) provide for the Licenses and other persons visiting the market, common services including transport, storage, grading, weighing, restaurants, petrol pumps, and temporary accommodations for persons visiting the market.

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8) enforce the provisions of this Act and Rules Regulations, Bye-laws and conditions of the Licences granted this Act;

9) perform such other functions and duties as may, from time to time, be necessary or expedient for the purpose of maintaining or managing the market.

f) I say that u/s.69 of the said Act the committee has power to make it's by-laws, subject to previous sanction of State Govt. as provided therein. I say that the committee made it's by-laws and submitted for it's approval to the Respondent No.1 herein and in response thereto by it's communication dated 25.4.1995 Urban Development Dept. communicated to the Respondent No.2 herein informing inter-alia, that the by-laws sent for approval by the respondent no.2 are approved by the Govt. except by-law No. 32 which should read as mentioned therein. In the said communication

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dated 25.4.1995 the Govt. has quoted By-law No.32 (i) and (ii). In view of the said communication dated 25.4.1995, I most respectfully say and submit that the By-laws made by the Committee except By-law No.32 has been approved by the State Govt. thereby substituting the committee's By-law No.32 by a By-law No.32(i) and (ii) mentioned in the said communication dated 25.4.1995, thus, the By-law of the Respondent No.2 needs to be read and acted accordingly. I annex herewith communication dated 25.4.1995 containing approved By-law No.32(i) and (ii) alongwith"

14. Mr. Bhadrashete, then submits that, in terms of Section 34 of the Maharashtra Act No. XLII of 1983, the Committee is competent to levy and collect fees in the manner and at the rates laid down in the by-laws. It is stated that the rates can be prescribed for such fees subject to the provisions

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of sub-section (2) of Section 34 for stalls, offices, shops, Godowns etc. and open spaces in the market yard.

15. Thus, Mr. Bhadrashete's emphasis is on the services provided in the market area and within the market yard, whereas, Mr. Hegde, learned Counsel appearing for the third respondent, says that as a New Town Planning Authority or Development Authority, services are rendered by third respondent and for such services rendered, it is levying the charges, distinct from that of the Market Committee, for the services rendered in its capacity as a Development Authority.

16. After a careful perusal of this relevant material, we are of the firm opinion that, there is no merit in the contentions of the petitioner.

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17. Maharashtra Act, XLII of 1983 is an Act to regulate location of market areas and wholesale markets in respect of the specified commodities in the Mumbai Metropolitan Region and to establish Market Committees to manage and control different market areas for different commodities and to provide for matters connected therewith or supplemental or incidental thereto. The Preamble to this Act reads thus :-

“WHEREAS, [the Mumbai Metropolitan Region Development Authority] has been established under [the Mumbai Metropolitan Region Development Authority Act, 1974] for the purpose of planning, co-ordinating and supervising the proper, orderly and rapid development of the areas in the Bombay Metropolitan Region;

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AND WHEREAS, with the fast growth of population and commercial activities, the congestion and consequent traffic, accommodation and other problems in [Brihan Mumbai] and particularly in [South Mumbai] have been increasing enormously and therefore the State Government has accepted the policy to decongest the old island City and to shift as many commercial activities as possible to place outside [South Mumbai] for achieving the objectives for which the Metropolitan Authority is established.

AND WHEREAS, with a view to relieving some of the congestion, steps are being taken under the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, to shift wholesale markets for some of the agricultural produce like onions and potatoes to [Navi Mumbai];

AND WHEREAS, necessity is increasingly felt to local or relocate wholesale markets for some of the non-

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agricultural products also like textile and iron and steel immediately and for other commodities as soon as possible;

AND WHEREAS, at present there is no provision of law available to enable the State Government, the Metropolitan Authority or any local authority to take any appropriate steps for establishing or shifting such markets to other localities;

AND WHEREAS, it is therefore, necessary to enact a law immediately to regulate the location of market areas and wholesale markets in respect of commodities specified, from time to time, under such law and establish market committees to manage and control different markets established for different commodities in different market areas and to provide for matters connected therewith or supplemental or incidental thereto; it is hereby enacted in the Thirty-fourth year of the Republic of India as follows "

18. Chapter-I contains the preliminary

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provisions including some relevant definitions. The term "Chief Executive Officer" is defined in section (2) Clause-3 to mean the Chief Executive Officer of the Market Committee concerned. "By-laws" are defined to mean by-laws made by a Market Committee under the Act. The word "commodity" or specified commodity" means any commodity for the time being specified in the schedule. The "market" means any principal market established in any market area for any specified commodity and includes a subsidiary market. (See Section (2) Clause 6) and "market area" is defined in Clause-7 to mean any area declared under section 3 as market area for any specified commodity. The term "market yard" means any area declared under Section 3 to be a market yard of any market and includes a sub-market yard. The other definitions and expressions need

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not be considered in further details for Chapter-II of this Act is titled as "Declaration of Market Area And Market Yards And Prohibition of Carrying Trade At Unauthorised Places". Chapter-III is titled as "Constitution of Market Committees" whereunder Section 8 falls. That section reads as under :

"8.(1) For every market area, there shall be a market committee. Every market committee shall be a body corporate by the name of "The (name of area and commodities) Market Committee" as may be decided by the Metropolitan Authority. Every committee shall have perpetual succession and a common seal, and may by its corporate name sue and be sued and shall be competent to contract and to acquired, hold and dispose off property, both movable and immovable, and to do all other things necessary for the purposes of this Act.

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(2) The market committee shall be deemed to be a local authority within the meaning of the term "local authority" as defined in the Bombay General Clauses Act, 1904."

19. A perusal of the same would indicate that for every market area, there will be a Market Committee. It has the power to acquire, hold and dispose of property, both movable and immovable and shall be competent to contract as well. Chapter-III enables setting up of Market Committee whereas Chapter-IV sets out its powers and duties. Chapter-V is titled as "Market Funds, Finance Accounts and Audit Etc". By Chapter-VI, "Acquisition of Land" is possible by taking recourse to the power of acquisition.

20. What is material for us and for this

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petition is Section 34 of this Act and that follows Sections 32 and 33. Power and Duties of Market Committee in turn enables it to construct, maintain and manage the market yard including any building or structure. It enables it to acquire, hold and dispose of any movable or immovable property. It not only means permitting carrying on a specified trade in a market yard but importantly provide for the licensees and other persons visiting the market, common services including transport, storage, grading, weighing, restaurants, petrol pumps, and temporary accommodation for persons visiting the market. Therefore, setting up a hotel within a market area/market yard is pursuant to a power vesting in the Committee and is equally its duty as well. One cannot imagine a market yard without basic and ancillary amenities and services.

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Therefore, by Section 33 the Committee can grant licenses. This is subject to the rules, if any, made by the State Government and the grant is governed by the by-laws. If licenses have to be granted so as to carry out and effectively perform the duties endowed on this Committee, then, naturally it is enabled to levy fees and that is precisely permitted by Section 34. All that it says is that, subject to the provisions of sub-section (2) of Section 35, the fees can be levied and can be collected. Now sub-section (2) of Section 35 is referred in Section 34 for the simple reason that, by Section 35 transfer of immovable property of Committee is possible. Now that is possible by way of sale, lease, exchange, mortgage or otherwise. Therefore, it is possible for the Market Committee to dispose of the property styled as immovable property and to levy and charge

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such fees as are permissible within the framework of the Act. It is for convenience of the traders and others that civic amenities are provided by the Committee. They are also meant for those visiting the market. Hence, it has allowed the petitioner to set up a hotel. Once the hotel is within the market area/market yard notified under Section 3 and there is no dispute about the services provided such as road, drainage, etc., then, we are unable to agree with Mr. Bhatt, that the Committee lacked the power to levy, assess and recover the fees contemplated by law. They are levied for the services rendered and covered by law itself.

21. It is common ground that, CIDCO, in terms of the agreement to lease executed by it has power to dispose of the lands within its limits. It has also

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a power to grant license and that is precisely why the agreement has been executed by it with Jayant V. Shetty and Sadanand V. Shetty of Bombay to carry on business in the name and style, M/s. Hotel Jaya Sadan of Mumbai. Now, when that agreement to lease is executed, on completion of three years, from the date of complying with the agreement or from the date of obtaining the completion/occupancy certificate from CIDCO whichever is earlier, the licensee has to make payment to the Corporation yearly. That is at the rate determined and notified from time to time by the Corporation for the cost of establishing and maintaining the civic amenities such as road, drainage for the said land regardless of the extent of benefit derived by the licensee from such amenities. No payment shall be made one year after such civic amenities have been

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transferred to a local authority constituted under any other law for the time being in force.

22. If Clause (m) of the agreement is referred, it says that, any sum payable to the Corporation by the licensee, if not paid, CIDCO can recover it as arrears of land revenue. Now, for the land which is within the area of operation of CIDCO and to enable it to handover the same to be used by the Market Committee for fulfillment of the objects of the Maharashtra Act XLII of 1983, certain civic amenities have already to be in place. There are roads, water, drainage, conservancy services etc. meant for all the lands within CIDCO limits. Now upto the limit of the market yard, such civic amenities are ofcourse provided by the third respondent. It is within the market area and market

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yard that some of these services are rendered by the second respondent. There are internal roads and drainage etc. These services provided by the Market Committee are distinct from those rendered to the general public and to the specific licensees by the third respondent. They are civic amenities. They are fundamental for the municipal and local governance. The Market Committees provide the amenities within the market yard which may cover some of the civic amenities but not all provided by CIDCO. These are provided in the market area and yard.

23. To our mind, there is no duplication. There is no substance in the complaint that, this is a double levy. There is co-relation and direct link with the services rendered by two statutory

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authorities. To our mind, therefore, the levy is within their powers and cannot be termed as illegal, much less, unconstitutional. That a hotel is not a specified trade, much less, in a specified commodity is an argument in desperation for traders to deal in specified commodities, there has to be a market and that market is set up by the second respondent. Within that market, the amenities referred to in Section 32 have to be provided and for provision of that, there is enough power. This is a power coupled with a duty and those visiting the market must have petrol pumps, hotels, restaurants, shops etc. These are ancillary to the trade and infact facilitate it. They are in a way essential as well. They assist in the trade being carried out properly and efficiently, so also, smoothly. In the circumstances, we do not think that there is any

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recovery which is beyond the powers of the Statutory Authorities. We see no merit in the writ petition. It is dismissed. There would be no order as to costs.

24. The interim order is vacated.

25. At this stage, Mr. Bhatt prays that the interim order passed on this petition and which is continuing till date, be continued for a period of four weeks to enable the petitioner to challenge this judgment in a higher court or consider its position otherwise.

26. This request is opposed by Mr. Bhadrashete who says that by now about Rs.12,00,000/- have to be recovered.

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27. Once we find that, Mr. Bhatt has no instructions even to make a statement about substantial payment without prejudice, then, we do not think, that a statutory authority should be deprived of its legitimate charges and fees by continuation of the interim order, more so, when the petition is dismissed. The request of Mr. Bhatt is therefore refused.

28. Rule is discharged.

(SANDEEP K. SHINDE J.)

(S.C. DHARMADHIKARI, J.)