**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9305 OF 2019

Exim Trans Trade (I) Ltd., … Petitioner.

V/s.

The District Deputy Registrar
Co-operative Societies (2),
Navi Mumbai – 400614 & Ors. … Respondents.

Ms. Sirat Khan, Advocate i/by Kamlesh Tiwari for Petitioner.
Mr. Nelson Rajan, AGP for the State-Respondent Nos.1 & 2.
Ms. Seema Chopda, Advocate i/by Ms. Ishwari Sanjay Sabadra for Respondent No.3.

CORAM : UJJAL BHUYAN, J.

DATE : DECEMBER 05, 2019.

PC :

1 Heard Ms. Sirat Khan, learned counsel for the Petitioner; Mr. Nelso Rajan, learned AGP for Respondent Nos.1 & 2; and Ms. Seema Chopda, learned counsel for Respondent No. 3.

2 By filing this Petition under Article 227 of the Constitution of India, Petitioner has assailed legality and correctness of the order dated 06.05.2019 passed by Respondent No.1 in Recovery Application No. 22 of

2018, as confirmed by Respondent No.2 vide order dated 31.07.2019 by dismissing the Revision Application No. 23 of 2019 filed by the Petitioner.

3 According to the Petitioner, it has purchased a commercial premise in the precincts of Respondent No. 3 from M/s. Vinotak Investment Pvt. Ltd., by way of an agreement dated 03.12.2005 and since then it is in occupation of the same. Respondent No. 3 is a co-operative housing society registered under the Maharashtra Co-operative Societies Act, 1960 (briefly, “the Act”, hereinafter).

4 It is the grievance of the Respondents that Petitioner had not paid maintenance dues, conveyance charges, property taxes etc., to Respondent No. 3 and therefore, an application was filed under section 101 of the Act for recovery of the outstanding dues. Deputy Registrar of Co-operative Societies (T-Ward), Mumbai registered the application as Recovery Application No. 22 of 2018 and passed order dated 06.05.2019, issuing recovery certificate.

5 This came to be challenged by the Petitioner by filing Revision Application under Section 154 of the Act before the District Deputy Registrar of Co-operative Societies (2), Eastern Suburbs, Mumbai. Revisional

Authority after due consideration dismissed the Revision Application vide order dated 31.07.2019, by confirming the recovery certificate.

6 Aggrieved, present Writ Petition has been filed.

7 Learned counsel for the Petitioner while assailing the two impugned orders, has contended that the Petitioner was not required to pay the enhanced municipal taxes in terms of the judgment of a Division Bench of this Court dated 24.04.2019 passed in Writ Petition No. 2592 of 2013 (Property Owners Association vs. State of Maharashtra). Therefore, the recovery certificate is liable to be set aside.

8 On the other hand, learned counsel for the Respondents more particularly Respondent No.3 submits that reliance placed by learned counsel for the Petitioner on the Judgment in Property Owners Association (supra), is totally misplaced, as the said judgment in no way absolves the Petitioner from payment of municipal taxes. Further contention is that two authorities below have come to a definite finding of fact that Petitioner had defaulted in payment of dues of Respondent No. 3 and therefore, recovery certificate

was rightly issued. No case for interference is made out.

9 Submissions made by learned for the parties have been considered.

10 In so far the decision in Property Owners Association (supra) is concerned, the Division Bench held that there cannot be retrospective application of the Capital Value Rules of 2010 from 01.04.2010 and that those became applicable from 20.03.2012. It is, therefore, not understood as to how the said judgment can be said to be of any assistance to the Petitioner.

11 District Deputy Registrar of Co-operative Societies while rejecting the revision application filed by the Petitioner held as under :

> “Observations and Conclusions of the District Deputy Registrar, Co-operative Societies (2), Eastern Suburbans, Mumbai -
>
> I have gone through the revision application and the submissions of applicant and the respondent society. My observations and conclusions are as below :
>
> 1. The Managing Committee of Society had given demand Notices 3 times to Applicant. Even then the Applicant has not paid his full outstanding dues to Society.

2. The Respondent Society has given outstanding bills regularly to Applicant. But, however, Applicant has not paid said amount due to the society and hence, he became defaulter. The applicant is liable to pay service charges and property tax as demanded by the society as the applicant is availing all the facilities provided by the Society like other members. The applicant cannot avoid such payments for their some other reasons.

3. The statement of account of the applicant submitted by the society includes monthly maintenance charges.

4. Applicant has filed suit against the society in Hon'ble Co-operative Court. But the society has brought to our notice that the applicant has challenged the resolution asked by the society in its Special General Body Meeting dated 09.03.2019 and there are no stay/ interim orders of Hon'ble Co-operative Court.

5. In this matter the notice has been issued by The Deputy Registrar, Co-operative Societies. T-Ward, Mumbai to the applicant and the applicant has been given ample of opportunities to file his stay in the interest of justice.

6. The Deputy Registrar, Co-operative Societies, T Ward, Mumbai has observed that the applicant has defaulted payment of property tax, water tax, parking charges, insurance charges, education fund and maintenance charges. And hence on 06.05.2019 he has issued recovery certificate u/s. 101 Maharashtra Co-operative Societies Act, 1960 against the applicant to recover the outstanding dues from the applicant.

The Recovery certificate issued by Deputy Registrar, Co-operative Societies, T-Ward, Mumbai is fit and proper. Therefore, revision application filed by the applicant is liable to be dismissed as it is not tenable.

Hence, I proceed to pass the order as below -

<u>Order</u>

1. The Revision Application filed by the Applicant is hereby dismissed.
2. The Recovery Certificate issued by Respondent No. 2 dated 06.05.2019 is confirmed.
3. No orders as to costs."

12 Thus from the above, it is evident that contention of Respondent No. 3 that Petitioner has not paid the dues including service charges, property tax etc.. was accepted by the Deputy Registrar while issuing the recovery certificate. Revisional Authority upon thorough consideration of the matter came to the conclusion that recovery certificate issued by the Deputy Registrar on 06.05.2019 was just, fit and proper because Petitioner had defaulted in payment of property tax, water tax, parking charges, insurance charges, education fund and maintenance charges.

13 This is a finding of fact by the Deputy Registrar, which has been confirmed by the Revisional

Authority in revision. No case for interference by this court in exercise of its jurisdiction under Article 227 of the Constitution of India is made out by the Petitioner.

14 There is no merit in the writ petition.

15 Writ Petition is dismissed.

(UJJAL BHUYAN, J.)

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