IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.39 OF 2019

Shri Prakash Shridhar Gavas : Petitioner.
Versus
The Dist. Dy. Registrar of Co-op.
Societies-2, Konkan Bhavan, CBD Belapur
Navi Mumbai and ors. : Respondents.

ALONG WITH
WRIT PETITION NO.40 OF 2019

Shri Sanjay Chimanlal Mehta : Petitioner.
Versus
The Dist. Dy. Registrar of Co-op.
Societies-2, Konkan Bhavan, CBD Belapur
Navi Mumbai and ors. : Respondents.

ALONG WITH
WRIT PETITION NO.41 OF 2019

Smt. Manisha G Bhati : Petitioner.
Versus
The Dist. Dy. Registrar of Co-op.
Societies-2, Konkan Bhavan, CBD Belapur
Navi Mumbai and ors. : Respondents.

Mr. M S Lad for the Petitioner in all Writ Petitions.
Mr. Y D Patil, AGP for Respondent Nos.1 and 2.
Mr. Abhay D Parab for Respondent No.3.

CORAM : S. S. SHINDE, J
DATE : 20th March 2019

COMMON ORDER

1 The challenge in the above group of Writ Petitions is to the order dated 24/08/2018 passed by the District Deputy Registrar, Cooperative Societies, Navi Mumbai in so far as it directs the Petitioners to pay the difference amount of sewerage tax to the Society. The facts in all the above

Writ Petition are common and a question arises in the Petitions is common, I am disposing of the same by this common order.

2 It is the case of the Petitioners that they are the bonafide members of Respondent No.3 Society holding their respective shops in the building of the Society. It is further the case of the Petitioners that the Society has provided water connection to the members of the residential but not provided water connection to the commercial premises. The Petitioners are regularly paying maintenance to the Society. The Society has filed applications under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (In short "the said Act") before Respondent No.2 – The Deputy Registrar, Co-operative Societies for recovery certificate of the amounts mentioned in the said applications and charged Rs. 21% interest on the grounds of arrears of sinking fund. It is the case of the Petitioners that the said amount is a sewerage tax with interest thereon. It is further the case of the Petitioners that since the Society did not get separate water connection to the commercial premises, the Municipal Corporation charged sewerage taxes to the Petitioners and other shop keepers, and it is the fault of the Society and not the Petitioners.

3 The Society has filed Applications under Section 101 of the said Act for recovery of the amount before Respondent No.2. Respondent No.2 – The Deputy Registrar passed orders on the applications filed by the Society

under Section 101 of the said Act and issued certificates of the amounts mentioned in the said certificates against the Petitioners. Being aggrieved by the said order dated 07/07/2016 passed by Respondent No.2, the Petitioners preferred Revision Applications under Section 154 of the said Act before Respondent No.1 – The District Deputy Registrar of Cooperative Societies. The Petitioners have paid 50% of the amounts mentioned to the Society and obtained a stay to the order dated 07/07/2016. Respondent No.1 by order dated 06/03/2017 allowed the Revision Applications filed by the Petitioners and remanded the matter back to Respondent No.2 for fresh hearing. On remand, Respondent No.2, after considering the material on record, by order dated 19/06/2017 directed the Petitioners to pay the balance 50% to the Society and accordingly issued a recovery certificate.

4 Against the order dated 19/06/2017 passed by Respondent No.2, the Petitioners preferred Revision Applications before Respondent No.1. Respondent No.1, after considering the material on record, came to a conclusion that the Petitioners have paid 50% amount to the Society and the balance amount is the arrears of sewerage taxes. It is recorded by Respondent No.1 in the impugned order that the Municipal Corporation has sent value based property tax statement to the Society in 2013, the sewerage tax levied on the commercial shops by excess rate from 2010, and prior to that, as the Petitioners have directly paid the amount to the Municipal Corporation, the

Society has filed the applications for recovery of difference from the Petitioners between the amount directly paid by the Petitioners to the Corporation and the amount of tax levied by excess rate. It is also recorded that during period from January 2005 to June 2013 shop owners had directly paid the tax to the Corporation and, it is in 2013 the Corporation sent the tax bills of the shops for the period 2010 to June 2013 by new rate to the Society. To avoid penal action of the Corporation that the Society has paid the amount of sewerage tax levied by revised rate from its funds to the Corporation. Respondent No.1 came to a conclusion that the Society is entitled to recover the difference amount from the Petitioners, however, the Society is not entitled to charge interest thereon. It is the said order dated 24/08/2018 passed by Respondent No.1 which is taken exception to by way of the above Writ Petitions.

5 It is the submission of the learned counsel for the Petitioners that the Petitioners have paid the tax for the period 2004 to July 2013 directly to the Corporation. It is further submitted that as discussed in the meeting of the Society dated 02/12/2007 for new water connection, the Petitioners have paid the assessed fees to the Society. The Society has vide its letter dated February 2008 informed that the Petitioners have paid monthly water bill with water connection charges for the period of January 2005 to February 2008, and that it is the responsibility of the Society to apply to the Corporation of new water connection, but that has not processed by the Society, and the said mistake is

of the Society and not the Petitioners. It is therefore submitted that since the excess property tax levied by the Corporation on account of the mistake committed by the Society, the Society's demand for recovery of that amount is illegal.

6 Per contra, the learned counsel appearing for Respondent No.3 supports the impugned order passed by Respondent No.1. The learned counsel for Respondent No.3 submitted that the difference of amount demanded by the Corporation as per the excess rate is liable to be paid by the Petitioners only and not by the Society as the said difference has been paid by the Society from its funds to avoid penal action from Corporation.

7 I have heard the learned counsel for the parties. Perused the material on record. In my view, it is not possible to accept the contention of the Petitioners that as the Society did not get separate water connection to the commercial premises, the Municipal Corporation charged sewerage taxes to the Petitioners and other shop keepers, and it is the fault of the Society and not the Petitioners. As indicated about, the Corporation levied the sewerage tax on the commercial shops by excess rate from 2010 and sent a value based property tax statement to the Society in 2013. It is not in dispute that prior to that the Petitioners have directly paid the amount to the Municipal Corporation. It is not in dispute that it is the Society which has paid the difference amount to the

Corporation from the funds of the Society for avoiding penal action from the Corporation. On refusal from the Petitioners to pay the difference amounts, that the Society has filed applications under Section 101 of the Act against the Petitioners before Respondent No.2 for recovery of amount paid by the Society. Respondent No.2, after perusing the documents on record, has issued recovery certificates in favour of the Society. By the impugned order, Respondent No.1, after considering the material on record, came to a conclusion that the Society has paid the amount of sewerage to the Corporation from its fund to avoid penal action and the Society is entitled to recover the said amount from the Petitioners. It is also held by Respondent No.1 that the Society is not entitled to charge interest on the said amount.

8 Having regard to the facts as afore-stated, I am of the opinion that the Petitioners are liable to pay the amounts mentioned in the recovery certificate to the Society. The findings recorded by Respondent No.1 in the impugned order cannot be said to be perverse. There is no illegality or infirmity found in the impugned order. No case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed. The Petitioners have already paid 50% amounts mentioned in the Certificates. The Petitioners are directed to pay remaining 50% amounts to the Society within a period of two weeks from date.

[S. S. SHINDE , J]