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

WRIT PETITION NO. 910 OF 2010

Mrs.Kavita Milan Shah & Ors. ...Petitioners
vs
The Municipal Corporation of Greater Mumbai & Ors. ...Respondents

Mr.Sharam Jagtiani and Muttahar Khan I/b. Bhairavi Pathak for Petitioner Nos.3, 8(a), 8(b), 9, 15(a), 15(b), 18, 21, 22, 23(a), 23(b).
Mr.B.M. Chatterji, Senior Advocate with Sheetal Metakari for Respondent Nos.1 and 2 - MCGM.

CORAM : S.C.GUPTE, J.

DATE : 16 APRIL 2019

P.C. :

Heard learned Counsel for the parties.

2 This petition challenges an order dated 30 January 2009 and two orders dated 3 February 2009 (Exhibits “B1”, “B2” and “B3” to the petition) and consequential demand notices for payment of property taxes. The controversy concerns the rateable value fixed by the Municipal Corporation in respect of three buildings in which the Petitioners hold premises. The petition pertains to the Assessment Year 2008-09 (1.4.2008 to 31.3.2009), and is filed by individual unit holders and not the society. Around the time the notices of increase in assessment value were purportedly issued by the corporation, the managing committee of the society was not in place, the co-operative authorities having appointed an administrator of the society. This petition was filed sometime in February 2010. There was another petition (Writ Petition No.1126 of 2010) filed sometime later, i.e. in May 2010, by the society against the corporation

challenging its assessment of property taxes payable by the former together with a notice under Section 162(2) of the Mumbai Municipal Corporation Act. This challenge pertained to two Assessment Years, namely, 2008-09 and 2009-10. When this writ petition came up for admission before a Division Bench of this court, the society had received a notice of hearing from the Municipal Commissioner in connection with the complaint filed by them towards property taxes for Assessment Year 2009-10. (By the time the subject notice under Section 162(2) of the Act was received by the society and a complaint against rateable value in respect of such notice could be filed under Section 163 of the Act, the managing committee of the society had been reconstituted and accordingly, it could file the complaint under Section 163 of the Act within time so far as Assessment Year 2009-10 is concerned.) In view of the hearing offered by the corporation before the Assistant Assessor and Collector, the society offered to avail of the opportunity and did not press their petition. The petition was accordingly disposed of by accepting the statement of learned Counsel appearing for the corporation that until the hearing was concluded and orders were passed, no coercive measures would be initiated by the corporation in furtherance of the demand notices. In pursuance of the hearing, the rateable value of the buildings for the Assessment Year 2009-10, was substantially reduced by the authority hearing the complaint under Section 163. That obviously left the Assessment Year 2008-09 outstanding. So far as this assessment year is concerned, the present petition filed by individual members of the society, i.e. the Petitioners herein, was, as noticed above, already pending before this court.

3 Learned Counsel for the Petitioners submits that the

Petitioners have had no opportunity to file a complaint against rateable value fixed for the three buildings for the Assessment Year 2008-09. Learned Counsel submits that on the date when Section 162(2) special notice was purportedly issued by the Municipal Corporation for this particular assessment year, the society had an administrator managing its affairs and its managing committee was not in place. Learned Counsel submits that the notice may have been simply pasted on the property and neither the society nor its members had any special notice as contemplated by Sub-section (2) of Section 162 so as to enable them to file a complaint under Section 163.

4 Learned Counsel for the Respondent corporation submits that the Petitioners cannot be heard to complain about, or challenge, the determination of rateable value or demand notices issued in pursuance thereof for the Assessment Year 2008-09. Learned Counsel submits that determination of the rateable value and demand notices concerning this particular assessment year were the subject matter of challenge in the society's own petition, as noted above, namely, Writ Petition No.1126 of 2010. Learned Counsel submits that the subject matter of controversy ought to be treated as disposed of in terms of the order passed by the Division Bench on 19 July 2010 in Writ Petition No.1126 of 2010. I am afraid, that is not quite correct. The circumstance in which Writ Petition No.1126 of 2010 was not pressed, has been explained above. There are two important aspects to be noted in this behalf. Firstly, that writ petition was withdrawn in view of a hearing scheduled by the municipal Corporation. It is nobody's case that the subject hearing pertained to Assessment Year 2008-09. It is, in fact, admitted by both parties that the hearing pertained

to Assessment Year 2009-10. Secondly, and more importantly, the society members' challenge to the rateable value fixed for the Assessment Year 2008-09 was already a subject matter of challenge in the present petition, which was simultaneously pending along with Writ petition No.1126 of 2010. The disposal of Writ Petition No.1126 of 2010 in view of the hearing scheduled by the Municipal Corporation, thus, does not come in the way of the Petitioners prosecuting the present writ petition concerning municipal taxation for the Assessment Year 2008-09.

5 Coming now to the merits of the petition, it is important to note that Section 162(2) of the Act contemplates a special notice to be issued in certain cases. Whenever any premises are assessed for the first time or when their rateable value or capital value, as the case may be, is increased, the owner or occupier of the premises, as the case may be, is required to be issued a special written notice under Sub-section (2) of Section 162. It is not in dispute that when this notice is claimed to have been issued for the Assessment Year 2008-09, the society's managing committee was not in place. There is no record produced by the Municipal Corporation to show that this special notice was in fact served on the administrator of the society appointed by co-operative authorities. There is nothing to indicate that the society, since it was represented only by an administrator and not by its executive committee, had any special notice of the assessment proposed. By the time the society had this notice, and by the time it could consider approaching the Municipal Commissioner under Section 163 or this court in a writ petition, the society had already missed the deadline for filing of a complaint under Section 163. The net result of the above narration clearly implies that the society and its occupant

members did not have any special notice under Section 162(2) and had no opportunity to carry the matter before the Commissioner in a complaint under Section 163. The society and its members have a good case to complain of the correctness of the rateable value fixed for the Assessment Year 2008-09, going by what happened to subsequent assessment years where the rateable value has been admittedly substantially reduced by the Municipal Commissioner.

6 In the premises, the Petitioners herein have a legitimate grievance. The Petitioners have demanded justice after they came to know about the assessment proposed by the Municipal Corporation for the Assessment Year 2008-09. In spite of their demand for justice, the corporation has not given them an opportunity to file a complaint against the amount of rateable value entered in the assessment book for the Assessment Year 2008-09 or any hearing in this behalf.

7 Accordingly, Rule is made absolute and the petition is allowed by quashing and setting aside the impugned orders, namely, order dated 30 January 2009 and two orders dated 3 February 2009 (Exhibits "B1", "B2" and "B3" to the petition), and consequential demand for payment of taxes made by the Municipal Corporation through Assessor and Collector, A-Ward. The Corporation is directed to permit the Petitioners, now through their society, to file a formal complaint under Section 163 of the Mumbai Municipal Corporation Act within a period of two weeks from today. After receipt of this complaint, the Assessor and Collector, A-Ward, shall give hearing to the Petitioner society and decide the complaint on merits. Till the complaint is heard and decided, no coercive steps shall be taken against

the Petitioners or their society, in respect of taxes/notices for Assessment Year 2008-09. The Assessor and Collector shall hear the society on the Tabular Ward Reports, annexed as Exhibits “B1”, “B2” and “B3” to the petition, and determine the issue of rateable value accordingly.

8 Learned Counsel for the Respondent corporation seeks stay of this order. On his application, the order is stayed for a period of eight weeks from today. Needless to add, the two weeks' period for the Petitioner society to file a complaint under Section 163 of the Act shall commence at the expiry of this eight weeks' period, and the restraint against the Respondent corporation in respect of coercive steps ordered as above shall continue throughout the period of this stay and thereafter as indicated above.

(S.C. GUPTE, J.)