IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10566 OF 2019

Exim Logistics ..Petitioner
V/s.
The District Deputy Registrar,
Co-operative Societies, Mumbai & Ors. ..Respondents

Mr.Surel S. Shah i/b Mr.Kamlesh Tiwari for the Petitioner.
Mr.A.R. Metkari, AGP for Respondent Nos.1 and 2-State.
Ms.Seema K. Chopda for Respondent No.3.

CORAM : C.V. BHADANG, J.
DATE : 06th FEBRUARY 2020

P.C.

1. The challenge in this petition is to the order dated 31st July 2019, passed by the respondent No.2 in Revision Application No.22 of 2019. By the impugned order the respondent No.2 while dismissing the Revision Application filed by the petitioner, has confirmed the order dated 31st July 2019 passed by the respondent No.1, in Recovery Application No.21 of 2018 granting a Recovery Certificate in favour of the respondent No.3-Society.

2. In the year 2005 the petitioner purchased office premises in the Maxima Building and was put in possession of the said premises. It appears that the society of the flat purchasers and other tenements in the building was formed and was registered in

the year 2013, which is the respondent No.3 herein. The petitioner claims that prior to the formation of the society the maintenance charges and the property tax was being paid to the builder.

3. It appears that the Municipal Corporation of Greater Mumbai (MCGM) reassessed and remeasured the property of the respondent No.3 in the year 2014 and levied the revised property tax on the basis of the capital value of the premises, retrospectively from the year 2010-11. It further appears that the MCGM raised a revised demand on the respondent No.3-society vide its bill dated 09th March 2015 in respect of the property of the respondent No.3 w.e.f. 2010-11 onwards. In short on the basis of the revised demand by the MCGM, the respondent No.3 is claiming the differential amount of the property tax/maintenance from the petitioner.

4. On 27th September 2018 the respondent No.3 filed an application under Section 101 of the Maharashtra Co-operative Societies Act ('Act' for short) before the learned Deputy Registrar of the Co-operative Societies for recovery of an amount of Rs.6,75,577/- against the petitioner, claiming that the petitioner was in possession of two units/tenements.

5. The petitioner resisted the said application on the ground that the amount of the property tax/maintenance has already been paid to the builder and thus no dues are recoverable from the petitioner. It was further contended that the MCGM cannot revise the property tax retrospectively from the year 2010-11. It was next contended that in any event the petitioner was in possession of a single unit/tenement and not two units as claimed. It was contended that the society had resolved to take action for recovery of the alleged arrears from the partner of the petitioner and not the petitioner itself which is a partnership firm and therefore the application as framed and filed was not maintainable.

6. The learned Deputy Registrar by the impugned order has granted the Recovery Certificate which has been confirmed in revision.

7. I have heard Mr.Shah, learned counsel for the petitioner and Mr.Metkari, learned AGP for respondent Nos.1 and 2 and Ms.Seema Chopda, learned counsel for respondent No.3. Perused record.

8. Mr.Shah the learned counsel for the petitioner has submitted that there was a genuine and *bona fide* dispute as to the liability of the petitioner and the entitlement of the respondent No.3 to claim the property tax and the maintenance amount that too retrospectively from the year 2010-11. It is submitted that therefore, the learned Deputy Registrar could not have granted the recovery certificate and ought to have relegated the parties to a substantive remedy under the provisions of the said Act. In the submission of the learned counsel for the petitioner, summary proceedings under Section 101 of the Act are not suited for the purpose, where there is a *bona fide* dispute as to the amount which is recoverable. For this purpose reliance is placed on the decision of this Court in the case of ***Top Ten, A Partnership Firm, Near Variety Square, Sitabuldi, Nagpur & Ors. V/s. State of Maharashtra & Ors.***[1]**.** Further reliance is placed on the judgment of this Court in the batch of petitions in ***Property Owners Association and Others V/s. State of Maharashtra and Others***[2]**,** in order to submit that this Court has specifically held that the property tax cannot be revised retrospectively on the capital value. It is submitted that there was also a dispute as to whether the petitioner was holding two units/tenements or a single unit/tenement. It is also submitted that

1 Wp No.92 & 1230 of 2009 decided on 09.12.2011
2 2019 SCC Online Bom 706

the application as framed and filed was not competent, inasmuch as there was no resolution by the respondent No.3 to proceed against the petitioner as a partnership firm.

9. The learned counsel for respondent No.3 submitted that the judgment in the case of ***Property Owners Association and Others V/s. State of Maharashtra and Others (Supra)*** would not apply inasmuch as the said judgment clearly sets out that it would apply only to the parties which had approached this Court. It is pointed out that the said judgment cannot apply to cases were the bill has been accepted by the owner. It is submitted that the application was properly filed and there is no dispute as to the demand raised by the MCGM or the quantum thereof.

10. The learned counsel for the respondent No.3 has referred to the certificate dated 22nd June 2013 by VINOTAK Investment Pvt. Ltd. showing the list of sold and unsold Residential flats, Commercial premises and Refuge area in Marathon Maxima building. It is pointed out that at Serial no.19 the petitioner is shown to be holding two units namely 202 and 203 and thus the petitioner cannot conceivably claim that it was holding only one unit.

11. It is submitted that Writ Petition No.9305 of 2019 involving a similar dispute has been dismissed by this Court on 05th December 2019.

12. I have carefully considered the rival circumstances and the submissions made. The contention that the application was not filed under a proper authority cannot be accepted. Merely because the authorization was to take action against a partner would not make the action against the partnership firm on which the said partner is a member bad in law. The contention based on the of decision in this Court in the case of the *Property Owners Association and Others (Supra)* also cannot be accepted. The Division Bench while holding that the Capital Value Rules of 2010, shall apply prospectively has clarified that the said judgment will apply only to the properties which were subject matter of the said petitions, except Writ Petition No.2592 of 2013 and Public Interest Litigation No.46 of 2014. Admittedly the respondent No.3 was not a party to the said batch of petitions and therefore as indicated by the Division Bench in the said judgment itself it will not apply to the present case. Even assuming that there is any dispute, it is essential in respect of the claim of the property tax retrospectively made by the

MCGM. Thus there is no dispute as to the “arrears of its dues” within the meaning of Section 101 of the said Act.

13. The contention that the petitioner is only holding a single unit/tenement also cannot be accepted as nothing has been brought on record to show that there was any modification of the plan, as admittedly the petitioner is holding the tenements unit Nos.201 and 202.

14. The learned counsel for the respondent No.3 pointed out that all the other members of the respondent No.3-society, except three, which includes the petitioners, have paid the amount of the bill as raised.

15. Be that as it may I have gone through the impugned orders passed and I do not find that they suffer from any infirmity, so as to require interference in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The petition is without any merit and it is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.