IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.1962 OF 2019

Ashok Khiani ..Petitioner
Vs
Municipal Corporation of Greater
Mumabi & Ors. ..Respondents

Mr.Archit Jayakar a/w Divya Tyagi i/b Jayakar & Partners for the Petitioner.

Mr.S.J. Parad for Respondents.

CORAM : C.V. BHADANG, J.

DATE : 19th OCTOBER 2020
(Through Video Conference)

P.C.

1. Rule made returnable forthwith. The learned counsel for the respondents waives service. Heard finally by consent of parties.

2. The challenge in this petition is to the part of the judgment and order dated 02nd February 2015 passed by the Small Causes Court at Mumbai, in Appeal No.47 of 2011 by which the excess amount of the tax deposited by the petitioner, has been directed to be adjusted against future property tax.

3. The brief facts necessary for the disposal of the petition may be stated thus :-

The petitioner is a tenant, in respect of the ground floor as well as two units, namely, Unit No.122 and 123, on the first floor of Deep Plaza Building, B-Wing, M.N. Road, Kurla (West), Mumbai. The said entire building has been assessed by the third respondent, for the purposes of property tax.

4. It appears that vide Special Notice No.168 and 168A dated 07th March 2003 the respondents revised the rateable value of the premises in possession of the petitioner from Rs.2,58,265/- to Rs.10,17,535/-. The petitioner feeling aggrieved, filed a complaint before the Investigating Officer and the Investigating Officer by an order dated 13th September 2010 revised the rateable value to Rs.5,08,765/- per annum, with effect from 01st April 2002. It may be mentioned that the tax payable on the property was at the rate of 112.5% of the rateable value as determined.

5. On 24th December 2010 the third respondent made a demand of tax totaling to Rs.30,95,781/-. It is undisputed that the said amount has been deposited by the petitioner under protest as under.

Sr.No.	Covering letter dated	Amount
1	23 March 2011	11,27,200.00
2	23 March 2011	73,286.00
3	23 March 2011	60,745.00
4	14 June 2011	11,27,200.00
5	14 June 22011	73,810.00
6	14 June 2011	61,180.00
7	29 September 2011	2,86,180.00
8	29 November 2011	2,86,180.00
		----------------- 30,95,781.00 =======

6. The petitioner feeling aggrieved, filed Municipal Appeal No.47 of 2011 against the order of the Investigating Officer before the Small Causes Court at Mumbai. The Small Causes Court by a judgment and order dated 02nd February 2015 has partly allowed the appeal, in the following terms :-

> *"1. The appeal is partly allowed.*
>
> *2. The order passed by the Investigating Officer of Respondent dated 13.9.2010 fixing rateable value of the appeal property at Rs.5,08,765/- NPA with effect from 01.04.2002 is set aside.*
>
> *3. The rateable value of appeal property i.e. ground floor unit No.122 and 123 is restored to Rs.2,58,275/- NPA with effect from 01.04.2002 (which rateable value was of previous year).*

4. Excessive amount if any deposited by the appellant be adjusted against future taxes by paying interest thereon @ Rs.6.25/- per annum.

5. Both Parties shall bear their own costs.

As noticed earlier, the petitioner is only aggrieved by Clause-4 whereby, the learned Small Causes Court, instead of ordering refund of the excess amount, has directed the same to be adjusted against the future tax dues, albeit, after the Corporation pays interest thereon, at the rate of Rs.6.25% per annum.

7. I have heard Mr.Jayakar, learned counsel for the petitioners and Mr.Parad, learned counsel for the respondents. Perused record.

8. The learned counsel for the petitioner submitted that, once the Small Causes Court had restored the rateable value of the ground floor and the two units of the first floor, to Rs.2,58,275/- there was no reason to direct the balance to be retained by the Corporation, to be adjusted against the future taxes. It is submitted that such a course of action is neither contemplated in any provision, nor justified. He therefore submitted that balance amount may be directed to be refunded with appropriate interest.

9. The learned counsel for the respondent referring to the affidavit-in-reply dated 22nd October 2019 has submitted that as per the circular of the Corporation dated 03rd November 2017 there is a policy decision, to adjust the excess amount towards the arrears of the Municipal/property taxes. It is submitted that the entire property namely the Deep Plaza Building is assessed as a unit, for the purposes of the property tax. It is pointed out that the petitioner is a tenant in respect of the ground floor and two units of the first floor. It is submitted that the arrears of the entire building are Rs.13,15,823/- and after adjusting the outstanding of the property tax, of the entire building, the amount refundable is Rs.11,19,561/-. The learned counsel however, has taken exception to payment of interest, for want of any provision to that effect. He submitted that the refund cannot be processed only in respect of the ground floor and the two units, which are subject matter of dispute, in the present petition.

10. In reply the learned counsel for the petitioners has referred to the demand notice dated 24th December 2010 (Exhibit-F to the petition) in order to submit that the demand was only in respect of the ground floor and the two units on the first floor. The learned counsel pointed out that the rateable value of Rs.9,94,395/-

as mentioned in the said demand notice is in respect of the entire building while the rateable value of Rs.5,08,765/- is in respect of the disputed portion. In the submission of the learned counsel for the petitioner, if the Corporation can demand and accept the tax separately in respect of the portion in possession of the petitioner, there is no reason why the Corporation should not process and pay the refund of the excess amount in respect of the said portion.

11. I have considered the circumstances and the submissions made. It is not in dispute that the restoration of the rateable value of the ground floor and the two units of the first floor in possession of the petitioner, to Rs.2,58,275/- w.e.f. 01st April 2002, as determined by the Small Causes Court, has attained finality. There is also no dispute that the petitioner has paid a total amount of Rs.30,95,781/- as set out in paragraph 5 above and that is lying with the corporation. The only issue is whether the respondent-Corporation is obliged to refund it or can it retain it against the claim of future taxes as directed in Clause-4 of the operative order of the judgment dated 02nd February 2015.

12. In my considered view such a direction could not have been given and cannot be sustained in law. There is no legal

provision pointed out under which the excess amount can be so retained against the claim of future taxes. The reliance placed on the circular dated 03rd November 2017 is equally misplaced, inasmuch as, a conjoint reading of Clauses 2 and 3 of the said circular, would make it clear that it only pertains to the claim of the arrears and not the claim against future taxes. The learned counsel for the respondent-Corporation in all fairness did not dispute this aspect. The only limited contention is that the refund can be processed after adjusting the arrears of taxes of the entire building. It is submitted that there is a technical difficulty in the Corporation adjusting the balance amount towards the arrears of the ground floor and the two units only and then to process the refund. The contention in my considered view cannot be accepted. It is necessary to note that the corporation had accepted the taxes of Rs.30,95,781/- pertaining to the portion in possession of the petitioners. The entire dispute is regarding the said portion and there is no reason why the Corporation should not refund the excess amount, albeit after adjusting the arrears of the property taxes, if any, in respect of the said portion, which is in possession of the petitioner.

13. I find that the respondent-Corporation is liable to refund the excess amount with appropriate interest. The learned counsel for the petitioner pointed out that as per Section 217 of the Mumbai Municipal Corporation Act, 1888 the Corporation is entitled to interest at the rate of 6.25% per annum on the balance amount of property tax. He points out that the Small Causes Court has also allowed the interest at the same rate, albeit while directing the excess amount to be adjusted against future taxes. I find that the amount can be directed to be refunded with interest at the rate 6.5% per annum.

14. In the result the following order is passed.

ORDER

(i) The petition is allowed.

(ii) The impugned direction as contained in Clause-4 of the judgment and order dated 02nd February 2015 is hereby set aside.

(iii) The respondent-Corporation, shall refund the excess amount, after adjusting the arrears of the property taxes, if any, in respect of the portion in possession of the petitioner, along with interest rate of interest @ 6.5% p.a. from the date of deposit till repayment.

(iv) The amount shall be so refunded, within a period of three months from today.

(iv) Rule is made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.