Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO. 2305 OF 2020
IN
COMM ARBITRATION PETITION NO. 562 OF 2017

The Municipal Corporation of Greater Mumbai ...Applicant
In the matter between
Sanjiv Laxmichand Hinduja and Anr ...Petitioners
Versus
Uma Constructions & Ors ...Respondents

Mr GS Godbole, *with Yamuna Parekh, i/b Aruna Savla, for the Applicant.*
Mr Rohaan Cama, *i/b Tushar Goradia, for Respondents Nos. 2 and 3.*

CORAM: G.S. PATEL, J
DATED: 26th October 2021

PC:-

1. Delay condoned.

ASHWINI HULGOJI GAJAKOSH

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2. The Interim Application is thoroughly misconceived. It seeks an modification of my order of 30th January 2020. The MCGM says that that portion of the order which deals with a demand of property tax is an error because the officers of MCGM were "unable to explain the correct position". A copy of the order is from page 146. Paragraphs 4 to 15 read thus:

“4. The MCGM was required by the order of 16th January 2020 to check its records and inform the Court of what amounts were due, if any towards unpaid property tax/assessment charges.

5. It has presented a tabulation with supporting documents claiming that now there is an amount of Rs. 96,17,051/- that is due towards property tax. This is astonishing and is clearly not believable. The reason is plain. Since March 2018, there have been five separate orders of SJ Kathawalla J specifically dealing with this contention regarding unpaid property tax. Initially the claim from the MCGM was for Rs. 58,33,978/- for the period from 1st April 2010 to 31st March 2018. This is noted in the order dated 5th March 2018.

6. The next order of relevance is of 27th March 2018 when the Assistant Assessor was directed to place before this Court a revised working as of that date and this had to be done after taking into consideration that the commencement certificate was issued on 3rd February 2012.

7. On 9th April 2018 the Corporation revised its demand. The order of that date reads thus:

“1. Respondent No.1 Developer entered into a Development Agreement with the Society on 3rd September 2009. The IOD was issued by the Corporation to the Respondent No.1 Developer on 2nd March 2010. In January – 2012, the Petitioners/Applicants handed over possession of their respective premises to the developer, after which the building was demolished. On 31st March 2018, the Developer has given possession of the flats to the tenants/members for fit outs. The developer has not obtained occupation certificate till date. Since the Respondent No.1 Developer has not paid the property tax, the Corporation attached the Suit property on 15th March 2018 At that time, the Corporation claimed an amount of Rs.58,33,978/- towards arrears of property tax. On 2nd April 2018 the Corporation was directed to issue a revised bill on or before 9th April 2018. The Petitioners and the Respondents also gave an undertaking to this Court to pay the property taxes as demanded by the Corporation or as ordered by the Court.

2. **The Corporation has now issued a revised bill of Rs.62,03,259/-,** wherein they have given a break-up i.e. an amount of Rs.20,485/- is to be paid by the Society (for the period prior to the IOD issued by the Corporation to the developer) and an amount of Rs.61,82,754/- payable by the developer. **Since the Corporation will proceed to sell the property which is already attached, since the Respondent No.1 Developer is directed to pay its share of Rs.61,82,754/- and the Society is directed to pay its share of Rs.20,485/- to the Corporation** within a period of one week from today. It is clarified that if the developer or the Society have any dispute qua the property tax charged by the Corporation, they may pay the amounts under protest.

3. The Executive Engineer, H/West Ward, Mumbai shall visit the Suit premises and submit his report to this Court on 16th April 2018 at 3.00 pm informing the Court whether the construction carried by the developer is as per the sanctioned plans and as to when the OC shall be issued qua the Suit project."

(*Emphasis added*)

8. It seems that thereafter the 1st Respondent firm and the Society paid their respective shares of the enhanced demand of Rs. 61,82,754/- and there is evidence showing this payment. This evidently covered the period up to 31st March 2018.

9. The next order of 27th April 2018 notes the statement on behalf of the MCGM by its Advocate that the partners of the firm had made payments towards property tax. Their statement was accepted.

10. Mr Madon states that thereafter the firm has paid the amount due up to September 2018.

11. There is a notice of demand of property taxes dated 12th December 2019. It is in the aggregate amount of Rs. 17,55,028/- and covers three bill periods, October 2018 to 31st March 2019; 1st April 2019 to 30th September 2019; and 1st October 2019 to 31st March 2020. Mr Madon makes a statement on instructions that this entire amount will be paid in proportions previously directed between Mr Madon's client and Dr Saraf's client, i.e. 50% each. The statement is supported by Dr Saraf as well for the 4th Respondent. There is a demand notice threatening property auction pasted on the building.

12. In this situation, it is inconceivable that the MCGM could have used my order of 16th January 2020 to go back in history to 2012 or 2013 and raise a fresh demand now for Rs. 96,17,051/-. The explanation offered across the bar and said to be on instructions of one Mr. Subodh Waval, Superintendent H/West Ward and one Mr Sabha S Parkar, Ward Inspector of H/West Ward is that there was a 'computer error'. On further questioning, they now say

that in the calculations of earlier property tax demands, the FSI assumed was 1.00 but it was found that the actual consumption of FSI was 2.00. This is even more unbelievable, because I cannot understand how the MCGM, which is the Planning Authority and the Sanctioning Authority does not know what FSI was utilized or permitted in plans that the MCGM itself sanctioned. Then it is suggested, again without any basis that I can tell, that there was a computer error in the Building Proposals Department. How and why these two gentlemen from the Assessor's Office wandered off into the Building Proposal Department and who gave them the authority to do that is unclear. Nothing in my order permitted to go off on any such fishing expedition.

13. Nothing that is stated in this compilation is even remotely credible. All these bills are generated yesterday, 29th January 2020. They have never been raised at any point, despite, as I noted, multiple opportunities from 2018 before Kathawalla J. Even at that time nobody pointed out this alleged computer error or FSI discrepancy. Nobody from Building Proposals attests to any such error, computer or otherwise. As I have already commented, it is utterly inconceivable that the actual FSI consumption could be erroneously reckoned. Certainly nothing permitted these two gentleman to go on this kind of a roving inquiry to make more and more demands. This compilation is rejected.

14. Only for the sake of order, I am taking it on record and marking it "X1" for identification with today's date. The demand notice of 12th December 2019 for 17,55,028/- is also taken on record and marked "X2" for identification with today's date. The warrant of

> attachment pasted on site and said to be dated 12th December 2019 is taken on record and marked "X3" for identification with today's date.
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> 15. At this stage, on instructions Mr Patil withdraws the demand. This is noted. It is however subject to Mr Madon and Dr Saraf's statements on instructions that the amount of Rs. 17,55,028/- will be paid within a period of four weeks from today."

3. These paragraphs make it clear that various benches of this Court went out of their way to ensure that the interests of the MCGM were at all times safeguarded especially in regard to property tax. It is the Court that asked counsels to take instructions, directed specific officers to look into the matter, to verify the records and to place comprehensive statements before the Court.

4. It is hardly open to the MCGM now to claim that his officers and counsel "were unable to explain".

5. Mr Godbole points out that there was an advertent error in calculation. He draws my attention to page 72. This is an inspection note of 26th February 2014. It speaks of a joint inspection by the MCGM. The document is signed by officers of the MCGM. It reports the FSI consumed as 0.99. Mr Godbole says that this is an error carried forward from an error from the developers' architect's calculation at page 73. But this does not explain why or how or for how long MCGM officers continued in this state of blissful ignorance or were so fast asleep that they missed a demand of over Rs. 96 lakhs.

6. The IA is dismissed. No costs.

7. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)