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

WRIT PETITION NO. 1741 OF 2016

Khulchand Hastimalji Jogani ...Petitioner
V/s.
Municipal Corporation of Gr. Mumbai & Ors. ...Respondents

Mr.Muttahar Khan, a/w. Mr. Dharmesh Joshi, i/b. T.D.Joshi & Associates for the Petitioner.

Mr.Bhavik Manek, a/w. Ms.Sheetal Metakari, i/b. Mr.Sunil Sonawane for the Respondent nos. 1 and 2 – MCGM.

Mr.Kalpesh Joshi, a/w. Mr.Mitesh Jain, i/b. M/s.Kalpesh Joshi Associates for the Respondent nos. 3 to 10.

Mr.N.R.Carvalho, Supdt. (Assessment) and Mr.P.B.Wagh – Ward Inspector, K/E Ward – MCGM, Officers present in Court.

CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.
DATE : 12TH OCTOBER, 2022.

P.C. :-

1. Rule. Mr. Manek, learned counsel for the respondent Nos. 1 and 2 waives service. Mr. Joshi, learned for the respondent Nos. 3 to 10 waives service. Rule is made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of India. The petitioner seeks a writ of mandamus against the respondent Nos. 1 and 2 to issue separate assessment bill in the

name of the petitioner in respect of the premises described in prayer clause 'A' of the petition.

3. It appears that there is dispute between the petitioner and respondent Nos. 3 to 10 in respect of the tenements constructed by the petitioner. In view of such dispute, neither the petitioner nor respondent Nos. 3 to 10 have paid their respective share of the Municipal property tax bills to the Municipal Corporation. The Municipal Corporation has initiated an action in view of the arrears of payment of assessment bills.

4. This matter was on board on 13th September, 2022. After hearing the learned counsel for the parties, this Court directed the Municipal Corporation to submit a report showing the break-up of the amount in respect of each unit of the petitioner as well as the respondent Nos. 3 to 10 after giving credit of the amount paid by the petitioner and the respondent Nos. 3 to 10.

5. In pursuance of the said order, the Municipal Corporation submitted a chart giving the break-up of the amount payable in respect of the units claimed by the petitioner and by the respondent Nos. 3 to 10 since 01st June, 2009 till 31st March, 2022 after giving credit of the amount paid by these parties. According to the chart submitted by the Municipal Corporation for the period between 01st June, 2009 and 31st March, 2022, the petitioner is liable to pay a sum

of Rs. 30,32,253/-, whereas the respondent Nos. 3 to 10 are liable to pay a sum of Rs. 40,15,285/-.

6. Mr. Khan, learned counsel for the petitioner, on instructions, states that his clients are ready and willing to undertake to pay the said amount of Rs. 30,32,253/- to the Municipal Corporation within one week from today. Undertaking is accepted.

7. Learned counsel for the respondent Nos. 3 to 10 on instructions from his clients states that the amount of Rs. 40,15,285/- would be paid by his clients to the Municipal Corporation within eight weeks from today. We are informed that the Municipal Corporation has already levied attachment on the entire property.

8. In view of the petitioner having made the statement through the learned counsel that an amount of Rs. 40,15,285/- would be paid by the petitioner to the Municipal Corporation, we direct the Municipal Corporation to raise attachment in respect of the tenements claimed by them within two weeks from the date of such payment and shall issue separate assessment bills with effect from 01st April, 2023.

9. Insofar the arrears of respondent nos. 3 to 10 are concerned, if the arrears reflected in the chart are not cleared within eight weeks from today, the Municipal Corporation would be at liberty to take further steps in respect of those tenements claimed by the respondent Nos. 3 to 10, without prejudice to the rights and

contentions of the parties. If the amount of arrears are paid within eight weeks from today by the respondent Nos. 3 to 10, the Municipal Corporation is directed to raise attachment after accepting the payment for a period upto 31st March, 2023.

10. If either the petitioner or the respondent Nos. 3 to 10 commits any further default in payment of property tax, the Municipal Corporation would be at liberty to take steps in accordance with law.

11. The petitioner as well as respondent Nos. 3 to 10 have agreed that there are certain common arrears which are the subject matter of the Civil Suit No. 100 of 2015 filed by the respondent Nos. 3 to 10 against the petitioner. The said suit is pending.

12. Insofar as the common area is concerned, the Municipal Corporation is directed to issue a common bill in respect of the common area by showing the name of the petitioner and respondent Nos. 3 to 10 as holders till the issue is decided by the Civil Court in the proceedings filed by the respondent Nos. 3 to 10 against the petitioner.

13. It is made clear that this order directing to issue separate assessment bill would not amount to adjudication of the issue of title in favour of the petitioner or respondent Nos. 3 to 10 and the same would be subject to the decision in the proceedings pending between the parties before Civil Court. Upon adjudication of their rival claims

before the Civil Court, the parties can apply to the Municipal Corporation for giving effect to the decree that would be passed by the Civil Court for effecting changes in the assessment bill.

14. It is made clear that insofar as the common area is concerned, if the arrears are not cleared by any of the parties in the ratio of 50% each, the Municipal Corporation would be at liberty to take appropriate action in respect of the arrears of the said common area, in accordance with law.

15. The Municipal Corporation is directed to raise a separate assessment bill in the name of these parties with effect from 01st April, 2023 subject to the directions issued aforesaid.

16. The Writ Petition is disposed off in aforesaid terms. Rule is made absolute accordingly. No order as to costs. Parties to act on the authenticated copy of this order.

(KAMAL KHATA, J.) ***(R.D. DHANUKA, J.)***