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

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WRIT PETITION NO. 4209 OF 2022

Simplex Realty Limited & Anr.

...Petitioners

V/s.

Municipal Corporation of Greater
Mumbai & Anr.

...Respondents

Mr. Rafique A. Dada, Senior Advocate a/w. Mr. Ashish Kamat, Mr. Aditya Thakkar, M.S. Federal, Murtaza Federal, Paulomi Mehta, Ms. Nitika Bagaria i/b. M/s. Federal & Company for the Petitioners.

Mr. N.V. Walawalkar, Senior Advocate, a/w. Ms. Madhuri More i/b. Mr. Sunil Sonawane for the Respondent Nos. 1 & 2 – MCGM.

Mr. Harsharaj Madhukar Jadhav AA & C – present in Court.

CORAM : R.D. DHANUKA &

KAMAL KHATA, JJ.

DATE : 14TH OCTOBER, 2022.

P.C. :-

1. Rule. Mr. Walawalkar, learned Senior Counsel for respondent Nos. 1 and 2 waives service. Rule is made returnable forthwith.
2. By this petition filed under Article 226 of the Constitution of India, the petitioners have impugned the notice dated 08th August, 2022 and seek a writ of mandamus against the respondents to forthwith withdraw the said impugned notice.
3. The petitioners also seek a writ of certiorari against the

respondents from issuing any demand or further demand for property tax at a new assessment value without first complying with the provisions of the Mumbai Municipal Corporation Act, 1888 (for short 'MMC Act') including providing an opportunity of hearing and adjudicating by way of a reasoned order the objections/complaints of the petitioners.

4. The Municipal Corporation has issued two notices for the year 2014-15 and 2015-16 under Section 162 (2) of the MMC Act on 07th September, 2020 upon the petitioners. The petitioners responded to the said notices by raising various objections by way of complaint contemplated under Section 164 of MMC Act. The respondents had fixed the date of hearing in respect of the said complaint. It is the case of the petitioners that the said date was not convenient to the petitioners. Instead of communicating fresh date of hearing, the Municipal Corporation raised a demand upon the petitioners in the sum of Rs. 50,65,49,543/- by demand notice dated 08th August, 2022.

5. Mr. Dada, learned senior counsel for the petitioners invited our attention to the notices issued by the respondents, response of the petitioners to the said notices and also demand notice. He also invited our attention to Sections 162 to 166 of the MMC Act and vehemently urged that the petitioners having already filed a complaint under Section 163 of the MMC Act, the respondents without hearing

the said complaint by rendering an opportunity of being heard to the petitioners could not have raised any notice of demand. He submits that since there is no order of adjudication passed by the Municipal Corporation as on date on the said complaint filed by the petitioners under Section 163 of the MMC Act, the Municipal Corporation cannot make any entry in the assessment book.

6. Mr. Walawalkar, learned senior counsel for the Municipal Corporation on the other hand submitted that the Municipal Corporation would grant personal hearing to the petitioners in response to the complaint filed by the petitioners under Section 163 of the MMC Act and would pass an order on the said complaint under Section 165 of the MMC Act. Insofar as the notice of demand dated 08th August, 2022 annexed at Exhibit-K to the petition is concerned, learned senior counsel fairly pointed out that the notice of demand is not an order of adjudication but only a notice of demand which will have to be adjudicated upon by the respondents after granting personal hearing to the petitioners. Statement is accepted.

7. This matter was on board on 07th September, 2022, when this Court granted time to the Municipal Corporation to file affidavit in reply and directed not to take any coercive steps against the petitioners to enforce the impugned notice, which is the subject matter of this writ petition, till next date.

8. It is made clear that this Court has not expressed any views on the demand notice raised by the Municipal Corporation and the complaint filed by the petitioners. All the contentions of both the parties are kept open, including the issue of jurisdiction of the Municipal Corporation to issue such notice.

9. Mr. Walawalkar, learned senior counsel for the Municipal Corporation invited our attention to the last three lines of paragraph 7 of the affidavit in reply filed by the Municipal Corporation, stating that the respondents have rightly issued demand notice and as per Section 194 read with Sections 193, 192 of MMC Act and that the petitioners are obliged to deposit the said amount. He submits that Section 194 read with Sections 193, 192 of MMC Act shall be read as Sections 164, 163 and 162 of the MMC Act respectively. It is made clear that these provisions shall be read as Sections 164, 163 and 162 respectively instead of Sections Section 194 read with Sections 193, 192 of MMC Act.

10. In view of the statement made by Mr. Dada, learned senior counsel for the petitioners that the petitioners would appear before the concerned Authority and in view of the statement made by Mr. Walawalkar that hearing would be rendered by the Additional Municipal Commissioner (Project) that who has been delegated such powers under Section 168 of the MMC Act to hear the complaint, we

pass the following order :

a) The petitioners are directed to remain present before the Additional Municipal Commissioner (Project) on 19th October, 2022 at 11:00 a.m. for fixing an early date of hearing. Learned Additional Municipal Commissioner (Project) shall fix the date convenient to both the parties in the said meeting, proposed to be held on 19th October, 2022.

b) The Additional Municipal Commissioner (Project) shall pass an order after hearing the petitioners and after considering the complaint filed by the petitioners under Section 163 of the MMC Act within a period of eight weeks from the date of granting personal hearing to the petitioners, in accordance with law and without being influenced by the observations made in the impugned notice of demand and without being influenced by the stand taken by the Municipal Corporation in the affidavit in reply filed in this petition.

c) *Ad-interim* order passed by this Court on 07th October, 2022 to continue till the said complaint is decided and for a period of four weeks from the date of the communication of the order that would be passed by the Additional Municipal Commissioner (Project), if the order is adverse against the petitioners.

d) If any adverse order is passed by the Additional Municipal Commissioner (Project) against the petitioners, the petitioners would

be at liberty to file the proceedings permissible in law.

e) In view of the order passed in the earlier paragraphs of this order, we are not expressing any views on the contentions raised by the Municipal Corporation in the affidavit in reply.

f) It is made clear that Additional Municipal Commissioner (Project) shall pass a reasoned order and shall communicate the same to the petitioners.

g) 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.)