IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 553 OF 2021

Narendrakumar S/o Abjibhai Patel -- Petitioner

Vs.

Nagpur Municipal Corporation and Another -- Respondents

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. M.R. Joharapurkar, Advocate for Petitioner
Mr. Girish Kunte, Advocate for Respondents

CORAM : MANISH PITALE, J.

DATE : 24th MARCH, 2022

By this Writ Petition, the petitioner has challenged order dated 21/10/2020, passed by the respondent – Municipal Corporation and on that basis having raised demand towards unearned income for issuing no objection regarding transfer of leasehold rights. According to the petitioner, the impugned order and the demand raised pursuant thereto are unsustainable because the very basis of calculation is misplaced. It is contended on behalf of the petitioner that the amount the respondent – Corporation can charge has to be calculated on the basis of the amount of consideration stated in the document pertaining to transfer of leasehold rights and not the market value of the property in question.

2. The petitioner entered into a lease deed with the respondent – Corporation for a period between 03/09/1993 to 02/09/2023. During the aforesaid 30 years period, the petitioner entered into an agreement for assignment of leasehold rights with a transferee at a time when the remainder period of the lease was about four years and six months. In terms of the clauses of the lease deed executed between the petitioner and the respondent – Corporation, the petitioner approached the respondent – Corporation for grant of no objection for such assignment of leasehold rights. It is in this backdrop that the respondent – Corporation passed the impugned order and raised the consequent demand on the basis that the petitioner was liable to pay unearned income @15% of the market value of the property.

3. Mr. M.R. Joharapurkar, learned counsel appearing for the petitioner submitted that it is an undisputed fact that the total consideration for the agreement for assignment of leasehold rights is Rs.67 Lakhs. The Collector of Stamps, during the process of adjudication proceedings in the context of the aforesaid agreement of assignment of leasehold rights, specifically took note of the aforesaid amount of consideration of Rs.67 Lakhs. It was submitted that even if as per the policy of the respondent – Corporation, 15%

of unearned income was to be calculated. According to the learned counsel for the petitioner, it ought to be calculated on the aforesaid amount of Rs.67 Lakhs and not market value of the property itself. By referring to the provisions of the Maharashtra Stamps Act, 1958, the learned counsel for the petitioner submitted that even upon applying the relevant articles, it could not be said that the basis for calculation applied by the respondent – Corporation could be justified. It was brought to the notice of this Court that the petitioner had already deposited amount of Rs.11,78,614/- and that, therefore, the impugned order and the consequent demand deserved to be set aside.

4. On the other hand, Mr. G.A. Kunte, learned counsel appearing for the respondents submitted that the order passed by the Collector of Stamps in the process of adjudication ought not to be confused with the entitlement of the respondent – Corporation to raise demand for issuance of no objection certificate as per terms of the lease deed executed between the petitioner and the respondent – Corporation for a period between 03/09/1993 to 02/09/2023. It was submitted that a perusal of the relevant clauses of the lease deed would show that the leasehold rights could be transferred only upon permission being granted by the respondent – Corporation and that the respondent – Corporation was entitled to recover unearned income as per Government Rules or Resolutions / Rules of the Corporation itself. By inviting attention

to relevant Government Resolutions and the Resolutions of the House of the Corporation, it was submitted that the impugned order and the consequent demand were justified. It was submitted that, in fact, the House had taken into consideration the difficulties faced by the public when the quantum of unearned income was fixed at 25% of market value and hence, it was brought down to 15% thereof. Therefore, it was submitted that the writ petition deserved to be dismissed.

5. In order to appreciate the rival contentions raised on behalf of the parties, it would be necessary to refer to the relevant clauses of the lease deed executed between the parties for the period between 03/09/1993 to 02/09/2023. The relevant clauses read as follows :

> *"1(h) The Lessee shall not assign, transfer, alienate, sub-divide or sub-lease the demised land or any part thereof without the previous consent of the lessor or such authority as may be appointed for that purpose. The lessor however reserves its right to grant/refuse such permission and resume the land and the standing structure thereon without payment or any compensation. Provided that in case the lessor decides to grant permission to assign, transfer, alienate, sub-divide or sub-lease the demised land, it shall do so after recovery of the Unearned income fixed as per NMC resolution Rules/Govt. Rules framed from time to time in this behalf.*
>
> *(i) The Lessee, if without the written consent of the lessor, assigns, sale, transfer, mortgages alienates*

> *or sub leases the demised land or any part thereof, the lessee shall be liable to pay the Unearned income and penalty and all charges as per NMC & Government Rules for regularisation in favour of the assignee of the transferee with in stipulated period, felling which the lessor shall be free to enter upon the said land and repossess it without any construction as if this demise has not be made.*
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> *4. The above terms and conditions are subjected to the further decision of the House of Nagpur Municipal Corporation, in the matter related to grant of fresh lease and renewal of modified lease or cancellation of lease. Whatever the decision that may be taken by N.M.C. in this regard shall be applicable and binding to the lessee."*

6. The principal contention raised on behalf of the petitioner is that, even if undisputedly the respondent – Corporation in terms of the aforesaid clauses is entitled to recover unearned income for granting permission to transfer leasehold rights, the basis of such calculation ought to be the very document of such transfer of leasehold rights. According to the petitioner, the basis of calculation of unearned income cannot be the market value of the property. It is on this basis, that the petitioner claimed the relevant figure for calculating the unearned income as Rs.67 Lakhs, which was the consideration for the agreement executed by the petitioner for assignment of the leasehold rights.

7. According to this Court, once the petitioner signed on the lease deed and agreed to abide by the conditions contained therein, such clauses of the lease deed will apply with full force. A proper interpretation of the above quoted clauses of the lease deed, particularly clause 1(h) thereof would show that the petitioner would have to approach the respondent – Corporation for transfer of leasehold rights and that in such a situation, the respondent – Corporation shall recover unearned income as per the Government Resolutions or Resolutions of the Corporation itself. In this context, the relevant Government Resolutions / Resolutions of the House become significant. A perusal of the Government Resolution dated 23/12/2015, shows that the basis for calculating unearned income in such a situation came to be fixed at 25% of the market value of the property. It appears that the House of the respondent – Corporation took into consideration the difficulties faced by the public at large and by Resolution No.299 dated 20/10/2018, resolved to bring down the rate to 15% of the market value of the property. There is no dispute about the fact that the impugned order was passed and consequent demand was raised by the respondent – Corporation on the basis of the aforesaid Resolution of the Corporation, which reflects the policy, as contemplated under Clause 1(h) of the lease deed.

8. Considering the material on record from this angle, it becomes clear that the petitioner is not justified in contending that

the calculation of unearned income has to be on the basis of the consideration amount stated in the agreement for assignment of leasehold rights. While such an amount may be relevant for other purposes, insofar as the liability to pay unearned income is concerned, clauses of the lease deed can be the only basis. The respondent – Corporation, having acted upon the aforesaid clauses of the lease deed and the Resolution passed by the House of the Corporation itself, it cannot be said that the demand raised against the petitioner is either arbitrary or illegal.

9. In view of the above, it is found that there is no substance in the present writ petition.

10. Accordingly, the writ petition is dismissed.

JUDGE