

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**INTERIM APPLICATION NO. 13592 OF 2023
IN
FIRST APPEAL NO. 2569 OF 2007**

Sanjay Rajkumar Gupta and Anr.

...Applicants

IN THE MATTER BETWEEN

Municipal Corporation of Gr. Bombay & Anr.

... Appellants

Versus

Rajkumar Chiranjial Gupta and Anr.

...Respondents

Mr. R.M. Nakhawa i/b Mr. Vasant Dhawan , Advocate for the Applicants.

Mr. Santosh Parad , for the Respondent-MCGM.

Mr. U.A. Vaishnav, Assisat Assessor and Collector from M/East Ward present inf the Court.

CORAM: M.M.SATHAYE J.

DATE : 30th NOVEMBER 2023

PC. :

1. The above Appeal is filed by the Municipal Corporation challenging Judgment and Order dated 27/01/2006 passed by the Additional Chief Judge, Court Room No. 18 of the Small Causes Court, in Municipal Appeal No. 4 of 2000 under Section 217 of Mumbai Municipal Corporation Act, 1888. By the said impugned

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order, the learned Judge has allowed the Appeal of the present Applicants' predecessors, thereby fixing rateable value of the subject property at Rs. 2,28,702.01 with effect from 01.04.1998. It is further directed that impugned order will be effective from 31.08.2006.

2. While admitting the present Appeal, on 21.09.2007, this Court rejected stay application of the Municipal Corporation and clarified that the adjustment made as per the impugned order will be subject to final outcome of the Appeal, however, it further provided that necessary adjustment will have to be made by the Corporation as per the impugned Order.

3. Learned Counsel Mr. Nakhawa submitted that since the stay application was rejected and this Court has already directed that necessary adjustment will have to be made by the Corporation as per the impugned order, the Municipal Corporation is duty bound to give effect to the impugned Order and refund the amount alongwith interest.

4. In response to this, Mr. Parad, learned counsel for the Municipal Corporation, submitted that necessary adjustment about excess amount of tax has been already effected and according to him an amount of Rs. 4,75,280/- is already adjusted. This position is disputed by Mr. Nakhawa based on Judgment of the Hon'ble Supreme Court in the case of **Municipal Corporation of Greater Mumbai and Others Vs. Property Owners' Association and Ors.**

Reported in (2023) 3 SCC 258 and contended that further refund amount is payable. He further submitted that in the interregnum during pendency of this application, the Applicants have succeeded in their Appeal about the capital value of the subject matter property. He has placed on record a copy of Judgment and Order dated 24.07.2023 passed by the Additional Chief Judge, Court Room No. 18 of the Small Causes Court, in Municipal Appeal No. 164 of 2017. Perusal of the said Order shows that the impugned order therein, passed by the Investigating Officer dated 23.10.2014 is set aside in view of the law laid down in the aforesaid judgment of MCGM Vs. Property Owners' Association and Ors. and matter is remanded back to the Municipal Corporation for fresh hearing and fixation of property tax in accordance with direction of this Court in Writ Petition No. 2592 of 2013 decided on 24.04.2019. He submitted that in view of this subsequent development, now the Applicants are entitled to further refund from the amount paid by them under protest. Learned counsel for the Municipal Corporation however submitted that this amount of capital value is not subject matter of the present Appeal. Be that as it may.

5. It was informed to the Court, that the Applicants have already made an Application/ Representation to the Municipal Corporation for necessary refund of interest and also for refund of amount owing to their appeal being allowed in respect of the capital value.

6. In the aforesaid facts and circumstances, the present

Interim Application can be conveniently disposed of by directing the Municipal Corporation to decide the application made by the Applicants, in a time bound manner and till that time Notice/letter dated 24.01.2022 issued by the Municipal Corporation can be stayed. Hence, the following order is passed:

- (a) Municipal Corporation of Greater Mumbai (Original Appellant) is directed to decide the Applicants' pending Application / Representation about refund of interest as well as refund of amount of capital value and rateable value impugned in the present First Appeal, after hearing the Applicants, within a period of 8 weeks from today, in accordance with law.
- (b) Till the time the Applicant's representation is decided as aforesaid, implementation and execution of Notice dated 24.01.2022 issued by Asst. Assessor & Collector, M/East Ward in respect of outstanding arrears, shall remained stayed.
- (c) Municipal Corporation is directed to communicate the order that would be passed on the representation of the Applicants, within one week of its decision.
- (d) Needless to mention that the Applicants, if aggrieved by the order of the Municipal Corporation that would be passed, will be at liberty to adopt such legal proceedings as permitted under law.

7. Interim Application is disposed of in the aforesaid terms.

8. Place the First Appeal for hearing on 08.02.2024.
9. All concerned to act upon authenticated or digitally signed copy of this order.

[M.M.SATHAYE,J.]