

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15557 OF 2022

Mahavir Enterprises
The Emerald, 3rd Floor, Plot 195-B,
Sector-12, Vashi,
Navi Mumbai-400703 ... Petitioner.

Vs.

1. State of Maharashtra
through its Officials,
Bombay High Court,
Fort, Mumbai-32

2. Kalyan Dombivali Municipal
Corporation
through its Commissioner,
Shankar Rao Chowk, Kalyan (West),
Dist.Thane-421301.

3. The Assessor & Collector of
Property Tax,
Kalyan Dombivli Municipal
Corporation, Shivaji Chowk,
Kalyan (West)

4. Ward Officer
“G” Ward Office, Kalyan Dombivli
Municipal Corporation,
Dombivli(E)-421201 Respondents.

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Ms Ritika Agarwal a/w Ms Rachna Bhanushali i/b ACE Legal for petitioner.

Ms M.P. Thakur, AGP for State/Respondent No.1.

Mr A.S. Rao for Respondents no.2 to 4.

**CORAM: G.S.KULKARNI &
R.N.LADDHA, JJ.**

DATE : 19 APRIL, 2023.

P.C. :-

We have heard the learned Counsel for the parties on the earlier occasion and today.

2. This petition is filed praying for the following substantive reliefs.

a) To issue a writ of Mandamus or direction or order in the nature of Mandamus or writ of Certiorari or any other writ under Article 226 of the Constitution of India declaring that the acts of the Respondent no.2 to 4 in issuing impugned notice dt. 24.11.2010, impugned order dt. 22.11.2013 and impugned demand notices dt. 22.03.2014 and 26.02.2015 levying “shasti” for alleged unauthorized construction for the period 19.03.2010 to 17.09.2013 as arbitrary, unjust and liable to be quashed and set aside.

b) To issue a writ of Mandamus or direction or order in the nature of Mandamus or writ of Certiorari or any other writ under Article 226 of the Constitution of India

directing the Respondent no.3 to withdraw the impugned notice dated 24.01.2012 annexed at Exhibit G herein;

c) To issue a writ of Mandamus or direction or order in the nature of Mandamus or writ of Certiorari or any other writ under Article 226 of the Constitution of India setting aside the impugned order dated 22.11.2013 passed by the Respondent no.3 annexed at Exhibit K herein;

d) To issue a writ of Mandamus or direction or order in the nature of Mandamus or writ of Certiorari or any other writ under Article 226 of the Constitution of India directing the Respondent no.3 to withdraw the impugned notices dated 27.3.2014 and 26.2.2015 issued by the Respondent No.3 annexed at Exhibit "N and R" respectively herein;

e) To issue a writ of Mandamus or direction or order in the nature of Mandamus or writ of Certiorari or any other writ under Article 226 of the Constitution of India declaring the interest charged by Respondent No.2 to 4 from the period 01.04.2014 till date as arbitrary, unjust and void.

f) To issue a writ of Mandamus or direction or order in the nature of Mandamus or writ of Certiorari or any other writ under Article 226 of the Constitution of India declaring warrant charges by Respondent no.2 to 4 from the period 01.04.2017 till date as arbitrary, unjust and void.

g) To issue a writ of Mandamus or direction or order in the nature of Mandamus or writ of Certiorari or any other writ under Article 226 of the Constitution of India directing the Respondent no. 2 to 4 to issue fresh bills from 1.4.2010 till date, at regular rateable value, giving full credit for all the payments made till date.

h) To issue a writ of Mandamus or direction or order in the nature of Mandamus or writ of Certiorari or any other

writ under Article 226 of the Constitution of India prohibiting the Respondents from further levying interest and warrant charges on the subject buildings.

i) To issue a writ of Mandamus or direction or order in the nature of Mandamus or writ of Certiorari or any other writ under Article 226 of the Constitution of India declaring the order passed in SCS no. 89 of 2015 as invalid and opposed to the principles of natural justice.

3. There is a prior background to this litigation. The petitioner had earlier instituted a suit being Special Civil Suit No.89 of 2015 raising the issues subject matter of the present proceedings which was held to be not maintainable by an order dated 25.7.2022 passed by the Civil Court. Thereafter immediately, this petition came to be filed.

4. Thus, the subject matter of the petition is demand notices issued by the respondent/municipal corporation under the provisions of Section 267-A of the Maharashtra Municipal Corporation Act (for short “MMC Act”). Section 267-A reads as under;

[267A. Levy of penalty on unlawful building.

(1) Whoever unlawfully constructs or reconstructs any building or part of a building.

- (a) on his land without obtaining permission under this Act or any other law for the time being in force or in contravention of any condition attached to such permission;
- (b) on a site belonging to him which is formed without approval under the relevant law relating to Regional and Town Planning;
- (c) on his land in breach of any provision of this Act or any rule or bye-law made thereunder or any direction or requisition lawfully given or made under this Act or such rule or bye-law; or
- (d) on any land, belonging to, or leased by, the Corporation, or the Central or State Government, or any statutory corporation or organization or company set up by any such Government, in breach of any provision of this Act or of any other law for the time being in force and the rules or bye-laws made thereunder,
[shall be liable to pay a penalty, at such rate as may be decided by the corporation, on such building], so long as it, remains as unlawful construction, without prejudice to any proceedings which may be instituted against him in respect of such unlawful construction:
Provided that, such levy and collection of tax and penalty shall not be construed as regularization of such unlawful construction or reconstruction for any period whatsoever of its such unlawful existence.
Provided further that,
(2) Penalty payable under sub-section (1) shall be determined and collected under the provisions of this Act, as if the amount thereof were a property tax due by such person].

5. Contention of the petitioner is that invocation of the said provision, in the facts of the case, is totally untenable as the construction in question as undertaken by the petitioner was legal

as also an occupation certificate was issued *qua* the construction. The petitioner without prejudice to its rights, deposited certain amounts with the municipal corporation, as noted by us in the order dated 5.4.2023. The said order reads thus:

“It is informed by learned counsel for the petitioner that the demand draft of Rs.76,83,312/- towards the property tax due and payable under the impugned notice dated 24 November 2010 and the notices issued thereafter, is sought to be deposited by the petitioner by a demand draft drawn in favour of the Registry. Such demand draft be accepted by the Registry to the credit of the present proceedings. The amount being deposited is 25% of the amount due and payable which was permitted to be deposited in pursuance of order dated 15 February 2023.

2. After hearing the proceedings for sometime, we are *prima-facie* not convinced as to the maintainability of this petition on the alleged ground that deemed occupation certificate was available to the petitioner on 19 March 2010 and therefore, the impugned notice dated 24 November 2010 could be challenged by filing the present petition, after almost 10 years i.e. in 2022. The petitioner would have to satisfy the Court on all these issues.

3. In the meantime, learned counsel for the petitioner shall also take instructions whether petitioner would be interested in depositing the demand amount in installments, so that dispute itself can be put to an end.

4. Stand over to 12 April 2023 (High on Board).

5. Let the Registry to accept the demand draft of Rs.76,83,312/-.”

6. In the peculiar facts and circumstances of the case and without delving on the issue as to whether municipal corporation was at all justified to invoke section 267-A of the MMC Act against the petitioner, we are of the opinion that it would be proper for the petitioner to make a representation alongwith all the documents to be submitted to the Designated Officer of the Municipal Corporation, within two weeks from today.

7. The Designated Officer of the Municipal Corporation shall consider the case of the petitioner as set out in the representation, and after hearing the petitioner take an appropriate reasoned decision to determine whether the petitioner would be liable to pay any amounts under Section 267-A of the MMC Act, in the facts of the case.

8. We clarify that the amount deposited by the petitioner in this Court, in pursuance of order dated 15.02.2023, shall be subject to such orders, to be passed by the Designated Officer of the Municipal Corporation.

9. In the event, the petitioner succeeds in its representation

before the Designated Officer, the Municipal Corporation shall be required to return the amount to the petitioner, deposited by the petitioner.

10. In the event, order is passed against the petitioner, liberty to the petitioner to take recourse to such remedies as may be available to it under the law.

11. All contentions of the parties, in regard to issues which would be decided by the Designated Officer, are expressly kept open.

12. We dispose of the petition in aforesaid terms. No costs.

13. Needless to observe that till appropriate order is passed by the Designated Officer the Municipal Corporation shall not take any coercive action against the structures of the petitioner for any recovery under the impugned demands.

14. Liberty to apply to the parties to seek appropriate orders, on return of the deposited amount.

[R.N.LADDHA, J.]

[G.S.KULKARNI, J.]