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

WRIT PETITION NO. 527 of 2023

Eastern Heights (Uppal Ganapati Coop Housing Society Ltd.) & Anr. … Petitioners

Versus

Brihan Mumbai Mahanagar Palika & Ors. …Respondents

Mr. Pradip R, Kadam for the Petitioners.
Ms. Vandana Mahadik for MCGM.

CORAM: G. S. KULKARNI & SHIVKUMAR DIGE, JJ.
DATED: 11 April, 2023

P.C.

1. Not on board. Taken on board.

2. Heard learned counsel for the petitioners and learned counsel for the municipal corporation.

3. This petition has been filed praying for the following reliefs :-

a. That this Honorable Court may be pleased to issue Writ of Quo Warranto and Writ of Certiorari or any other appropriate Writ, order or direction in the nature of Certiorari or direction thereby calling for the record and proceedings in respect of determination of capital value by the special notice bearing no. LX00012487 for assessment year 2021-2022 having inward no. LX/AC/2022-23/002427 dated 24.5.2022 (Exhibit "H") of the said petition property and after examining the legality, validity and propriety of the impugned fixation of the capital value of the vacant land considering the construction being carried out from ground floor to 7th floor be declared without authority of law, illegal and bad in law and the same be pleased to quash and set aside;

b. That this Hon'ble Court may be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of Certiorari and declare that the bills being assessment bills for the year 2021-2022 being bill no. 202111BIL15385121, 202122BIL15385122 dated 24.5.2022, for the assessment year 2022-2013 being bill no. 202210BIL16479400 and 202222BIL16479401 dated 1.10.2022 and at Exhibit "I" and "K" issued by the respondent for charging the property taxes based on the capital value illegally fixed are Illegal, bad in law and the same be quashed and set aside.

c. That pending the admission, hearing and final disposal of this petition this Hon'ble Court may be pleased to restrain the Respondent Authorities, their officers and servants from enforcing the notice of demand no. A.A. & C./L/757/2023-23 dated 19/20.1.2023 (Exhibit “L") in respect of assessment bills for the year 2021-2022 being Bill No. 202111BIL15385121, 202122BIL15385122 dated 24.5.2822, for the assessment year 2022-2013 being bill no. 202210BIL16479400 and 202222BIL16479401 dated 1.10.2022 by appropriate under of injunction of this Hon'ble Court to further and taking any action thereon.

d. That pending the admission, hearing and final disposal of this petition this Hon'ble Court may be pleased to restrain the Respondent Authorities, their officers and servants from enforcing the notice of demand no. A.AAC/1/797/2822-23 ded 19/20.1.2023 (Exhibit "L") in respect of assessment bills for the your 2021-2022 being Bill no 202111BIL15385121, 202122BIL15385122 dated 24.5.2022, for the assessment year 2022-2013 being bill no. 202210BIL16479400 and 202222BIL16479401 dated 1.10.2022 by appropriate order of injunction of this Hon'ble Court from treating these bills as unpaid and showing the said bills as outstanding against the petition property.

e. That pending the admission, hearing and final disposal of this petition this Hon'ble Court may be pleased to restrain the Respondent Authorities, their officers and servants from raising further bills on the basis of the capital value fixed illegally based on the construction being carried out as per the commencement certificate issued for ground plus 7th upper floor and without fixing proper fresh capital value by giving hearing to the petitioners."

4. Considering the reliefs as prayed for, we raised a query to the learned counsel for the petitioners as to why an appeal under Section 217 of the Mumbai Municipal Corporation Act, 1888 would not maintainable. Learned counsel for the petitioners, in reply to the query, submits that against the special notice dated 24 May 2022 received by the petitioners from the municipal corporation on 16 June 2022, the petitioner No.1 has made a representation/complaint dated 27th June 2022 to the Assistant Assessor & Collector (L Ward) of the Municipal Corporation of Greater Mumbai (Exhibit -J, Page 96) and the same has not been decided. He has drawn our attention to

Section 217(2)(b) of the Mumbai Municipal Corporation Act, 1888 to submit that till such complaint is decided, the appeal against the assessment in question would not be maintainable.

5. We have perused the representation/complaint as made by the petitioners. In our opinion, it would be appropriate that the said complaint made by the petitioners is decided by the Assistant Assessor and Collector in accordance with law as expeditiously as possible by granting personal hearing to the petitioners. The same be decided within a period of four weeks from today.

6. Till the complaint is decided and for a period of two weeks thereafter, if the same is adverse to the petitioners, no coercive action be taken against the petitioners for recovery of the property tax.

7. All contention of the parties are expressly kept open.

8. The petition is disposed of in above terms. No costs.

(SHIVKUMAR DIGE, J.) **(G. S. KULKARNI, J.)**