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

WRIT PETITION NO. 2332 OF 2000
ALONG WITH
NOTICE OF MOTION NO. 157 OF 2018

Amerchand Mansion Co-op. Housing
Society Ltd., Mumbai & Ors. ...Petitioners
Versus
The Municipal Corporation Of
Bhihanmumbai & Ors. ...Respondents

….

Mr. Jehangir Jejeebhoy a/w Ms. Dhanashree Gaikaiwari i/b Bilawala & Co., for petitioner.

Mr. A. Y. Sakhare, Senior Advocate a/w Mr. Kunal Waghmare i/b Sunil K. Sonawane for MCGM.

Mr. Santhosh Ghogale, Inspector, Assessment Department, 'A' Ward.

Mr. Bhavesh G. Sawant i/b Minal Chandnani for Respondent No.4.

Mr. Vasim A. Shaikh i/b Pravin Mehta Mithi & Co., for Respondent Nos.5 & 6.

CORAM : G. S. KULKARNI, &
R. N. LADDHA, JJ.
DATE : March 17, 2023

ORAL JUDGMENT (Per G.S. Kulkarni, J.)

1. This petition under Article 226 of the constitution of India is filed praying for the following reliefs:

> *"a) that this Hon'ble Court be pleased to issue a Writ of Prohibition and/or any other appropriate writ, order or direction under Article 226 of the Constitution of India, restraining Respondent Nos.1 to 3 from in any manner giving effect to the*

Warrant of Attachment dated 5'" March 1997 being Exhibit "G" hereto and the Notice of Sale by Public Auction being Exhibit "K" hereto against Petitioner Nos.2 to 12

b) that this Hon'ble Court be pleased to issue a Writ of Mandamus and/or a Writ in the nature of mandamus and/or any other appropriate writ, order or direction under the provisions of Article 226 of the Constitution of India, directing Respondent Nos.1 to 3 -

(i) to issue individual bills for Property Taxes and Repairs Cess to all the individual unit/tenement owners as set out in Exhibit "F" hereto of the said property more particularly described in the Schedule, Ex."A" hereto and collect the same from them individually,

(ii) to accept from the Petitioners amounts of Property Taxes and Repairs Cess for their individual unitteonement towards the arrears and towards the recurring liability,

(iii) to give details of the property taxes and repair cess in respect each individual premises/units occupied by all the occupants/tenants/owners of the said building;

(iv) to give details of repair cess and property taxes recovered or to be recovered from the occupants/tenants/owners of the said property;

c) that pending the hearing and final disposal of the Petition this Honourable Court be pleased-

(i) to stay the effect, operation and implementation of the Warrant of Attachment dated 5" March 1997:

(ii) to restrain Respondent No.1 to 3 by themselves and/or through their respective agents, servants, representatives and/or any other person or persons claiming under or through them from, in any manner, putting up the tenements/units of Petitioner Nos.2 to 12 for sale by public auction ;

(iii) to direct Respondent No.3 to ascertain and apportion within a time to be fixed by this Hon'ble Court the arrears till date of filing of this Petition of the Property Taxes and the Repairs Cess of the said building ;

(iv) to order and direct Respondent No.3 to accept from Petitioner Nos.2 to 12 arrears of Property Taxes and

Repairs Cess as apportioned as per the immediate preceding sub-prayer within atime to be fixed by this Hon'ble Court;

(v) to direct and order Respondent No.3 to issue new bills for the payment of Property Taxes and Repairs Cess to all the unit/tenement owners set out in Exhibit "F" hereto and collect thesame from them individually;

(vi) to order and direct Respondent No.3 to accept from Petitioner Nos.2 to 12 recurring Property Taxes and Repairs Cess from the date of the Petition;

(vii) to restrain Respondent No.1 and/or Respondent No.3 by an order and injunction of this Hon'ble Court from putting up the tenements/units of Petitioner Nos.2 to fee sale by public auction,

d) that ad-interim orders in terms of prayer (c) above be granted;

e) that the costs of the Petition be provided for

<u>And</u>

f) that such other and further writs, orders, directions and/or reliefs as the nature and circumstances of the case may require be issued/granted."

2. This petition was listed for final hearing on several occasions. We have perused the earlier orders passed by the co-ordinate Benches of this Court. The dispute as raised by the petitioner is in regard to the recovery of property taxes from the petitioners and its members. As the petitioners defaulted in making payment of property taxes, a warrant of attachment as per the provisions of the Mumbai Municipal Corporation Act, 1888 was issued against the petitioners dated 5 March 1997 as also consequent notice of sale came to be issued dated 19 July, 2000. In the aforesaid circumstances, this

petition came to be filed.

3. On 1 December 2000, a Division Bench of this Court considering the rival contentions had passed the following order:

> *"1. Heard Mr.Iyer for the petitioners, Ms. Pawar for respondents No.1 to 3 and the other counsel appearing for the other respondents.*
>
> *2. Mr. Iyer draws our attention to the explanation to Section 209-A of the Bombay Municipal Corporation Act, 1888 and submits that the petitioners as well as respondent No.2, who have made the payments of their Municipal taxes, ought not to be made to suffer by way of sale of the premises occupied by them. She further draws our attention to the material placed on record pointing out that the petitioners and respondent No.21 have made the necessary payment to the Municipal Corporation. According to the petitioners, it is the respondents No.5 to 20 who are defaulters. There is a power under the statute to raise separate bills and Ms. lyer submits that in the facts and circumstances of the present case, it is necessary that they ought to be so raised. In the circumstances, she prays for ad-interim order in terms of prayers (c)(ii) and (c) (iii).*
>
> *3. Prayer (c)(iii) is for a direction to the respondent No.3 to ascertain and apportion the arrears of various occupants. To facilitate this, the 1st petitioner society will give the names of various occupants to respondents No.1 to 3 and Ms. lyer states that those names and the probable outstanding amounts, as per their record, will be informed to respondents No.1 to 3 on or before 6th December 2000. The respondents will thereafter raise separate upto-date bills as per their record within two weeks thereafter. In the meanwhile, there will be ad-interim order in terms of prayer (c)(ii) to the extent of the premises occupied by the petitioners and the one occupied by respondent No. 21.*
>
> *4. As far as the other respondents are concerned, the are at liberty to make the necessary payment within the period stipulated above during which period the premises occupied by them will not be sold. However, respondents No.1 to 3 will be at liberty to take further Steps after the expiry of this period.*
>
> *5. Respondents No. 1 to 8 will be at liberty to file their reply.*
>
> *6. Matter to stand over to 21st December 2000.*

Authenticated copy of this order be made available to the parties."

4. Thereafter, on 22 February 2001 this Court passed further orders recording that most of the prayers sought in the Writ Petition have been worked out as a result of the earlier order dated 1 December 2000 passed by this Court. In such context, the Court passed the following order:

"Most of the prayers sought in the Writ Petition have been worked out as a result of the order dated 1.12.2000 made by this Court. Separate bills to individual flat owners apportioning Municipal taxes have been issued and a large number of them have promptly paid up. As far as the petitioners, and the respondents, who have paid up their share of Municipal taxes are concerned, there is no question of attaching their property or putting it for sale, with regard to the recalcitrant and defaulting flat, owners, the Municipal Corporation is at liberty to taken any action permissible in law.

2. This leaves open only the question of penalty which the Bombay Municipal Corporation proposes to levy even on flat owners who have, after the apportionment, paid up completely their tax arrears. For this purpose, Chamber Summons No.18 of 2001 has been moved. It appears to us that the issue could have been easily resolved long ago if the Bombay Municipal Corporation had voluntarily issued bills apportioning the taxes. What the Bombay Municipal Corporation has done under the direction of this Court could have been done long ago. There is no element of injustice in subjecting such flat holders to penalty. Hence, we direct the Joint Municipal Commissioner incharge of the matter to reconsider the issue as to whether the flat holders, who have completely paid their respective shares of the Municipal taxes pursuant to the order of this Court dated 1.12.2000 should be subjected to penalty. If the Bombay Municipal Corporation reconsiders it and decides to drop the matter, nothing further needs to be done. However, if the Bombay Municipal Corporation desires to pursue the matter, then we would have to consider whether the prayer made in Chamber Summons No.18 of 2001 is to be granted.

> *3. To come up for further order on 2.3.2001.*
>
> *4. Copy of this order duly authenticated by the Associate of this Court be supplied to the parties."*

5. On the adjourned date of hearing i.e. 19 March 2001, a Division Bench of this Court passed an order inter alia recording a statement as made on behalf of the Municipal Corporation that it will not be possible for the Municipal Corporation to drop the matter pertaining to the levy of penalty against the petitioners and accordingly, this petition on such limited issue came to be admitted by the following order :-

> *" Pursuant to our order dated February 22, 2001. Ms. Pawar has taken instructions from the Mumbai Municipal Corporation and states that it will not be possible for the Corporation to drop the matter pertaining to penalty to be levied against the petitioners even in those case the bills have been apportioned and all due amounts of taxes have been paid.*
>
> *2. Rule in the writ petition. Respondents appearing before us waive service through their respective counsel.*
>
> *3. Chamber Summons No.18 of 2001 is allowed. The amendments proposed therein are permitted to be carried out in the writ petition.*
>
> *4. Amendments to be carried out within two weeks.*
>
> *5. Pending the hearing of the writ petition, there shall be an interim order in terms of prayer clause c(viii) of the chamber summons.*
>
> *6. An affidavit dated 1.3.2001 is filed by the respondents 14 to 19 and 22 to 28, in which it is asserted on oath that the apportioned tax amounts falling to their respective shares have been paid off. Xerox copies of the receipts issued by the Corporation are annexed.*

> *In these circumstances, respondents 14 to 19 and 21 to 28 shall also have the benefit of the interim order passed above."*

6. The proceedings have accordingly remained pending for final hearing. On 11 December 2015, when the present proceeding were listed before a co-ordinate Bench of this Court, the Court passed an order recording the details of the amounts payable by the individual unit holders of the building in question by way of property taxes and the repair cess being handed over to the Advocate appearing for the petitioners. It was observed that in view of the details supplied to the petitioners, the individual unit holders would be required to pay the amounts due and payable as per the break-up given by the Municipal Corporation. It was further observed that if some of the unit holders have already paid the amounts, the petitioners were free to bring the same to the notice of the municipal authorities by producing requisite documents. Three months time was granted to the individual unit holders to pay the amounts as set out in the details supplied by the Municipal Corporation. It was observed that it will be open for the individual unit holders to pay the amount under protest without prejudice to their rights of challenging the demand. The petitioners were also directed to file an affidavit setting out the details of the amounts paid by the individual unit holders to the

Municipal Corporation and the names of the defaulters, if any. Such affidavit was to be placed on record on or before 15 March 2016. The said order is quite relevant and would be required to be noted, which reads thus:

> *"Yesterday the papers of this Writ Petition were produced and the details of the amounts payable by the individual unit holders in the building of the first Petitioner by way of property taxes and the repairs cess have been handed over to the learned Counsel appearing for the Petitioners. In view of the details supplied to the Petitioners, now the individual unit holders will have to pay the amounts due and payable as per the break-up given by the Mumbai Municipal Corporation.*
> *2. If some of the individual unit holders have already paid the amounts, the Petitioners are free to bring the same to the notice of the Municipal Authorities by producing requisite documents.*
> *3. We grant time of three months to the individual unit holders to pay the amounts as set out in the details supplied by the Municipal Corporation. It will be open for the individual unit holders to pay the amounts under protest without prejudice to their right of challenging the demand.*
> *4. The Petitioners shall file an affidavit setting out the details of the amounts paid by the individual unit holders to the Municipal Corporation and the names of the defaulters, if any. Such affidavit shall be filed on or before 15th March 2016. Place this Petition under the caption of "Directions" on 21st March 2016.*
> *5. In view of the compliance made by the Municipal Corporation, the order directing the Municipal Commissioner to personally remain present in this Court is hereby recalled."*

7. Thereafter, in pursuance of the orders passed by this Court, the Municipal Corporation had furnished inspection of the entire record of the Municipal Corporation to the representative of the first petitioner. This was recorded by this Court in its order dated 26 April 2018 which reads thus:

"1. The learned senior counsel appearing for the Mumbai Municipal Corporation has produced for perusal of the Court a compilation of various documents signed by the Assistant Assessor and Collector of 'A' ward. We direct the Mumbai Municipal Corporation to place a copy of the said compilation on record.

2 The learned senior counsel for the Mumbai Municipal Corporation states that as regards payments received by the Mumbai Municipal Corporation towards property taxes in respect of the property subject matter of this petition, the concerned officer of the Mumbai Municipal Corporation will give inspection of the record to the representative of the first petitioner. We accept the said statement. It will be open for the first petitioner to contact the Assistant Assessor and Collector for fixing the time for giving inspection.

3. Place the petition on weekly board of the week commencing from 11th June 2018. It will be open for the petitioners to file an additional affidavit only for the purpose of recording the details of the payments made to the Mumbai Municipal Corporation towards property taxes revealed on the basis of the inspection of the records. Such affidavit shall be filed on or before 8th June 2018."

8. As there was some issue in regard to the inspection not being granted, the Court passed a further order on 21 June 2018, which reads thus:

"1. When it was pointed out by the learned counsel appearing for the Petitioners that the direction contained in paragraph 2 of the order dated 26th April, 2018 is not complied with, the learned Senior Counsel for the Respondents on instructions he states that Mr. Kadam, Assistant Assessor and Collector 'A' Ward will give inspection to the Petitioners. Accordingly, we direct the representative of the Petitioners to remain present in the office of Mr. Kadam, Assistant Assessor and Collector, 'A' Ward on 26th June, 2018 at 11.00 a.m. Necessary inspection shall be given to the representative of the Petitioners of the relevant record.
2. Even if a copy of the order is not uploaded, the parties will act upon this order.
3. After taking inspection, it will be open for the Petitioners to file additional Affidavit as per the liberty granted by the earlier order.
4. Place the Petition on weekly board of the week commencing from 9th July, 2018."

9. It is on such backdrop, the proceedings are listed before this Court today.

10. We have heard Mr. Jejeebhoy, learned counsel for the petitioners, Mr. Sakhare, learned senior counsel for the respondent/Corporation. In our opinion, as observed by the co-ordinate Bench of this Court in its order dated 22 February 2001, most of the prayers sought in the writ petition in fact have stood worked out. It clearly appears that as to what had remained were issues of a purported non-clarity of the petitioners, as to what amounts have been deposited by the members of the petitioner with the Corporation towards property taxes. The issue is purely in regard to the calculation of the taxes paid by the petitioner's members and actually received by the Municipal Corporation and ascertaining of the amounts that are in fact due and payable. We do not find any substance in such contention of the petitioners that we should exercise the writ jurisdiction in resolving any issue on calculations.

11. In any event from the reading of the order dated 19 March 2001, it appears that the only issue which remains is of levy of penalty. As the whole anxiety of the petitioners is that individual bills be issued to each of the members of the petitioner no.1/society,

Mr. Sakhare, on instructions, has made a statement that with effect from 1 April 2023, individual bills would be issued to all the members of the petitioner-society. It also cannot be countenanced that the members of the petitioner no.1 are not aware of the details of payments made by them to the Municipal Corporation, for the reason that there was sufficient opportunity available to the petitioners to inspect the Municipal record in regard to the payments made by the petitioner No.1 and its members. We do not dwell on any such issues and/or adjudicate such issues of fact.

12. Insofar as the issue of penalty is concerned, the Municipal Corporation would be required to determine the actual amount of penalty which is liable to be paid by the petitioners taking into consideration the entire period in respect of which the impugned warrant of attachment was issued and for the period thereafter.

13. Mr. Sakhare, on instructions, referring to a statement as placed on record (a copy of which is furnished to the learned counsel for the petitioners) states that the property taxes due and payable by the petitioner/its members are of 1,94,27,832/- and the outstanding amount with penalty is 4,84,91,829/-. Such statement indicating the said amounts as tendered by Mr. Sakhare is taken on record and

marked **'X'** for identification. Considering the entire break-up which has been now given, which appears to be the yearly breakup from the period 1 April 2003 upto 31 March 2023, we permit the petitioners to make a representation in regard to the amount of penalty being levied by the Municipal Corporation. If such representation is made, Mr. Sakhare submits that it would be considered and decided by the designated officer of the Municipal Corporation in accordance with law.

14. The petition is accordingly disposed of by the following order.

ORDER

i. The petitioner is permitted to make a representation, as observed in paragraph 12 above, to the designated officer of the Municipal Corporation. Such representation be made within a period of four weeks from today. The same be considered by the designated officer of the Municipal Corporation within a period of four weeks thereafter.

ii. Needless to observe that in the peculiar facts, it would be required to be accepted as submitted by Mr. Jejeebhoy that in the event there are arrears of property taxes and penalty for the relevant period the Municipal Corporation is free to issue appropriate warrant of attachment in respect of the independent units and proceed to recover the property taxes in accordance with law. All the contentions of the parties in that regard are expressly kept open.

iii. It will be open to the petitioner/society to point out to the Municipal Corporation as which of the unit holders have defaulted.

iv. In view of the above orders, the impugned warrant of attachment and the notice of same are rendered in consequential and the same are set aside with liberty to the Corporation to undertake further fresh course of action in the event there is a recovery of property taxes for the relevant period as observed above as may be permissible in law.

v. Rule accordingly stands discharged.

15. In view of the disposal of the petition, pending notice of motion does not survive. It stands disposed of.

[R. N. LADDHA, J.] **(G. S. KULKARNI, J.)**