Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1056 OF 2023

Shantilal Gulabsing Rajput ...Petitioner
Versus
The Mumbai Municipal Corporation & Ors ...Respondents

Mr Shantilal G Rajput, *for the Petitioner in person, is present.*
Mr Sunny Shah, *with Natesh Kotwal, i/b Veritas Legal, for Respondent No. 4.*
Ms Rupali Adhate, *for the Respondent-MCGM.*
Mr Atulkumar Singh, *Deputy Superintendent, Assessment Department, 'A' Ward, is present.*

CORAM G.S. Patel & Kamal Khata, JJ.
DATED: 19th October 2023

PC:-

1. The Petitioner, enthusiastically joined by the 4th Respondent, seeks a mandamus against the Municipal Corporation of Greater Mumbai ("**MCGM**") to issue bifurcated or separate property tax bills regarding to their respective premises in the New Bake House Premises Cooperative Society Ltd, New Bake House, Bake House Lane, Fort, Mumbai 400 023.

2. The limited Affidavit in Reply filed by the MCGM states in paragraph 9 that there have been continuous defaults in payment of outstanding property tax. As on the date of the Affidavit, i.e., 14th December 2022, nearly a year ago, the total outstanding of property tax dues from 1st October 2013 to 31st March 2023, i.e., for an entire decade was Rs.72,29,949/-. As on the date of the Affidavit, that amount was still unpaid. This included a bill dated 1st October 2022 for the period 1st April 2022 to 30th September 2022 and 1st October 2022 to 31st March 2023 for Rs.20,15,148/-.

3. Then paragraph 10 contains a submission that unless the full outstanding is cleared these Petitions ought not to be entertained.

4. Ms Adhate for the MCGM further submits that once these dues are paid, the request for bifurcation can be considered. She explains that if a bifurcation is ordered just now it will be impossible for the MCGM to divide the outstanding demand between various units. Today there is only a single consolidated property tax bill for the entire property.

5. We decline to pass this kind of the order that the Petitioner and the 4th Respondent seek. It is open to them and to other members of the society to approach the MCGM and make payment of the entire outstanding up to date. Once that is done, the MCGM will consider the request for bifurcated separate property tax bills of each unit in the cooperative society building and process this in accordance with the law.

6. Our attention is drawn to the decision of the learned Single Judge of this Court (Dr DY Chandrachud J, as he then was) in *Dalpat T Anjaria & Ors v Municipal Corporation of Greater Mumbai & Ors*,[1] regarding Sections 209 and 209A of the Mumbai Municipal Corporation Act 1888. The learned Single Judge held that these Sections are meant to ensure that the general body of members in the society should not be made to suffer on account of a default of one or more members of the society in paying their dues. That is not the issue that is before us at all. It may be that there is an internal discord in regard to which member or non-member occupying which premises has or has not paid. The provisions of Section 209A clearly confer a discretion on a commissioner to serve a bill on each tenant member. Nothing in either Section 209 or Section 209A can be read to mean, nor did the decision of the learned Single Judge hold, that without paying the arrears that are undoubtedly accumulated for over a decade, individual members can get separate rights and can only pay fractional amounts of the accumulated arrears. Neither of these sections has been held to confer a right on individual society members to pay only a fractional share and, as members of the Society, to say that they are unconcerned with the remaining amounts due from, and billed to, the very society of which they are members. If there are defaulting members, then the society can well take action in cooperative law against them. Notably, in *Anjaria*, the amount was ordered to be deposited.

7. Paragraph 8 of the *Anjaria* decision is crucial. It says:

> 8. Apart from the aforesaid provision, section 209 also

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1 2005 SCC OnLine Bom 194 : (2005) 2 Mah LJ 727 : (2005) 3 Bom CR 663 : (2005) 107 (3) Bom LR 40.O provides that if the person primarily liable for the payment of property taxes does not pay the amount due under the bill after it has been duly served and if the said person is not an occupier of the premises in respect of which tax is due, the Commissioner may serve a bill of the amount due on the occupier of the premises. **The Corporation in its affidavit has stated that it is agreeable to issue individual bills to tenant-members of co-operative Societies in respect of their individual premises on the basis of the area of each unit and the rateable value thereof taking into account the ratio which the rent estimated under section 154 in respect of each tenement bears to the aggregate amount of estimated rent for the whole property. The Municipal Corporation has, however, stated that before this course of action is adopted under section 209-A, an application should be furnished by the Society concerned with full details of the members and a statement that in the event that the Municipal Corporation is constrained to sell the individual premises of a defaulting member in realisation of the share of such member in the outstanding property taxes, the society would accept the auction purchaser as its member. Subject to the Municipal Corporation receiving a request from the Co-operative Society and the agreement of the Society to recognise the auction purchaser as a transferee member, the Municipal Corporation has agreed to assess individual flats separately and to issue separate bills in respect of each flat. In its affidavit, the Municipal Corporation has also stated that in case of any default towards the payment of property taxes, action would be taken against the individual flat owner or occupier, as the case may be, by attaching and auctioning the flat of the defaulting member alone, subject to the condition that the purchaser would obtain a right of membership in the**

> **society in place of the defaulting member**.

(*Emphasis added*)

8. This paragraph is entirely ignored in the arguments before us, and emphasis is placed only on a portion of paragraph 9:

> 9. **The affidavit which has been filed by the Municipal Corporation in compliance with the directions which were issued by the Court during the pendency of these proceedings is in implementation of its obligation under section 209-A of the Mumbai Municipal Corporation Act, 1888. The object of section 209-A is to ensure that the general body of members who comprise of a Co-operative Housing Society should not be made to suffer on account of a default of one or more of its members who fail and neglect to pay their outstandings to the Corporation. The Municipal Corporation is now directed to follow the scheme which it has placed before the Court in terms of its obligation under section 209-A uniformly in other cases as well without requiring each individual Society to approach the Court for the grant of relief.** The Municipal Corporation has agreed to do so in its affidavit dated 21st February, 2005 and its assurance is accepted and recorded.

(*Emphasis added*)

9. Isolated portions cannot be plucked out of context from a judgment like this. Before us, there is no scheme, no proposal and no deposit of respective dues. What is being canvassed is simply that some individuals will pay their fractional shares but the Society (which in *Anjaria* was not even formed, another material point of distinction) has no liability *as a society* to clear all arrears. But a cooperative society is a distinct legal entity, with rights and responsibilities. It is the Society that is the owner of the property. Nothing in *Anjaria* suggests that property tax bills can be bifurcated or separated without there first being a clearing of accumulated dues. The MCGM is correct in its approach.

10. The Petition is rejected. No costs.

(Kamal Khata, J) **(G. S. Patel, J)**