
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12396 OF 2024**

1. Baron Resorts Pvt. Ltd.
(formerly known as Baron Hotels Pvt. Ltd.)
and
2. Atur India Pvt. Ltd. ...Petitioners

Versus

Maharashtra Tourism Development
Corporation ...Respondent

Mr. Karl Tamboli, Counsel, *i/b Darshanchandra B. Zaveri,*
for Petitioners.

Mr. Anish Khandekar, *for Respondent.*

Mr. Sanjay Dhekane, *Representative of Respondent, present in*
Court.

**CORAM: B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

DATE : DECEMBER 17, 2024

P.C.:

1. Rule. Respondents waive service. With the consent of parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition is filed seeking an appropriate writ, order or direction to the Respondent to refund/return the deposit amount of Rs.1.35 crores along with interest at 8% per annum [calculated till 31st July 2024].

The interest component comes to Rs. 1,64,04,164/-. Hence, the total refund claimed is total Rs. 2,99,04,134/-.

3. The facts of this case are rather peculiar. In the year 1993, the Respondent (MTDC) decided to lease out Panshet Resort and Aqua Sports Centre, situated at Panshet, District Pune (***“said property”***) by inviting tenders. Petitioner No. 2, on behalf of Petitioner No.1, made an offer to take on lease the *said property* by its offer dated 30th June 1993, and a revised offer of 15th September 1993. On 7th October 1993, the Respondent duly accepted the offer in principle and requested Petitioner No.2 to contact its office to finalise the Lease Agreement. Since the Respondent did not have clear title to the *said property*, pending execution of the Lease Deed, the Respondent executed two Memoranda of Understanding, dated 19th January 1994 (1st MOU) and 15th March 1994 (2nd MOU) with Petitioner No.1 (formally known as “Baron Hotels Pvt. Ltd.”) on the terms and conditions, and at the agreed consideration set out therein. On 10th February 1994, Petitioner No.1 also gave a proposal to the Respondent to take the complete resort, pending the completion of the Lease Deed and agreed to pay 4% of the turnover of the rooms until the Lease Deed was signed. On 25th March 1994, possession of the *said property* was also handed over by the Respondent to Petitioner No.1 consequent to the terms set out in the 2nd MOU dated 15th March 1994.

4. It is the case of the Petitioners that thereafter, Petitioner No.1, time and again requested the Respondent to expedite the issue of executing the Lease Deed for the *said property*. Since the Petitioners were apprehending that they may be dispossessed from the *said property* by the Respondent without following the due process of law, on 30th July 1999, the Petitioners filed Special Civil Suit No.887 of 1999 before the Civil Judge, Senior Division, Pune, so as to protect the possession of Petitioner No.1. In the said Suit, an interim order was passed in favour of the of the Petitioners. This was challenged by the Respondent herein in Appeal from Order No. 936 of 1999. This Appeal was ultimately allowed by this Court on 21st April 2007. In the meanwhile, the Respondent filed their own Suit, being Suit No. 539 of 2004 before the Civil Judge, Senior Division, Pune, claiming a sum of Rs.4.48 crores from the Petitioners and also seeking their eviction from the *said property*. This Suit was ultimately rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 (**‘CPC’**) being barred under the provisions of the *Maharashtra Government Premises (Eviction) Act, 1955* (for short, the **“1955 Act”**).

5. The Respondent, thereafter, under the provisions of the *1955 Act*, on 15th September 2005, filed Application No.82/06 before the Competent Authority, for recovery of damages and interest thereon under the 2nd MOU dated 15th March 1994, and also for re-possession of the *said property*. On 11th September 2008, the Competent Authority passed an order directing

the Petitioners to vacate the *said property* and to pay approximately a sum of Rs. 11.64 crores within a period of 30 days from the date of the said order.

6. Against the said order dated 11th September 2008, the Petitioners filed Civil Appeal No.642 of 2008 before the District Court, Pune [***“Appellate Authority”***]. On 24th February 2009, the Appellate Authority rejected the Petitioners’ Application for stay of the eviction order. Being aggrieved thereby, the Petitioners preferred a Writ Petition before this Court being Writ Petition No.3216 of 2009. In this Writ Petition, on 27th April 2009, this Court directed the Petitioners to deposit a sum of Rs.1.35 crores with the Respondent, without prejudice to the rights and contentions of the parties in the then pending Appeal No.642 of 2008. Thereafter, pending the disposal of this Writ Petition, on 27th May 2009, possession of the *said property* was handed back to the Respondent by Petitioner No.1. The Petitioners thereafter filed Civil Application No.1288 of 2009 and sought a clarification/modification of the order dated 27th April 2009 passed in Writ Petition No. 3216 of 2009. The order of 27th April 2009 was thereafter modified by this Court vide its order dated 8th June, 2009, the relevant portion of which reads thus :

“2. By the order dated 27.4.2009, the petitioners were directed to deposit an amount of Rs.1.35 crores with the respondent herein. Mr. Warunjikar for the petitioners states that the amount has already been deposited. He therefore prays that till the appeal is heard by the District Judge, Pune, the order passed on 11.9.2008 by the competent authority be stayed.

3. He further prays that in the event the petitioners succeed in the appeal, the respondent should be directed to refund the amount of Rs.1.35 crores to the petitioners along with the interest payable at the rate of 14% per annum.

4. Since there is no dispute that the amount of Rs.1.35 crores has been deposited by the petitioners with the respondent, the order passed by the competent authority on 11.9.2008 is stayed pending the proceedings before the District Judge, Pune, in Civil Appeal No.642 of 2008. It is made clear that the proceedings in the aforesaid appeal shall continue.

5. The District Judge, Pune, while passing the final orders in the aforesaid appeal will consider whether the amount of Rs.1.35 crores deposited by the petitioners should be refunded along with interest in case the petitioners succeed.

6. Civil Application disposed of”

7. As per the directions of this Court on 8th June 2009, the Appellate Authority, after hearing the parties, by its order dated 31st July 2012, partly allowed Appeal No.642 of 2008 filed by the Petitioners and reduced the payment of liability from 11.64 crores to approximately Rs.65,253/- together with interest @ 8% p.a. as more particularly set out therein. This amount was to be deducted from the amount of Rs.1.35 crores deposited by the Petitioners with the Respondent and the rest of the amount along with interest at 8% p.a. from 8th June 2009 was directed to be refunded to the Petitioners herein.

8. Being aggrieved by the aforesaid order, the Respondent herein filed Writ Petition No.2401 of 2013. In this Writ Petition, the Petitioners herein also filed a Civil Application being Civil Application No.384 of 2018, *inter alia* praying that the Respondent herein be directed to refund the amount of Rs.1.35 crores, together with interest @ 8 % per annum. Whilst this Civil Application was pending, the Writ Petition filed by the Respondent herein (Writ Petition No.2401 of 2013) itself was taken up for hearing and disposed of on 20th September 2023. In a nutshell, with the consent of the parties, the order dated 11th September 2008 passed by the Competent Authority, and the order dated 31st July 2012 passed by the Appellate Authority, were both quashed and set aside and the matter was remanded back to the Competent Authority to decide the Eviction Application afresh. By this order even the Civil Application filed by the petitioners herein, being Civil Application No.384 of 2018 was disposed of and the prayer in the Civil Application [for refund of Rs.1.35 crores with interest] was made subject to the final adjudication by the Competent Authority.

9. As per the directions of this Court, the Eviction Application (Application No.82/06) filed by the Respondent herein under the provisions of the 1955 Act was heard afresh by the Competent Authority. The Competent Authority, *vide* its order dated 14th March 2024, rejected Application No.82/06 including the prayer for damages sought against the Petitioners. The Competent Authority *inter alia* came to the conclusion that

the Petitioners herein cannot be saddled with any damages as they did not appear to be in unauthorized occupation of the *said property* as per the provisions of rule 6.

10. It is the case of the Petitioners that now that they have succeeded before the Competent Authority, they are entitled to the refund of Rs.1.35 crores deposited with the Respondent, together with interest @ 8% per annum.

11. In answer to this contention of the Petitioners, it is the case of the Respondent that the order of the Competent Authority has been challenged by the Respondent before the District Court at Pune and the said challenge is pending. The Learned Advocate appearing on behalf of the Respondent therefore submitted that the prayer for refund is completely misconceived and ought not to be granted.

12. We have heard the Learned Counsel for the parties. We have also perused the papers and proceedings in the above Writ Petition. Though, the facts have been set out by us in great detail above, the issue is really a very narrow one. The point in the above Writ Petition is whether the Respondent can hold on to the money deposited by the Petitioners with it when the Competent Authority has decided the matter in favour of the Petitioners and no monetary liability has been imposed upon them. Once

this is the case, we are clearly of the view that the Respondent cannot hold on to the money that was deposited with it by the Petitioners pursuant to the orders passed by this Court on 27th April 2009, read with the order dated 8th June 2009 passed in Writ Petition No.3216 of 2009. The Respondent-MTDC has held on to this money from 27th May 2009 (for about 15 years). We, therefore, direct that the Respondent shall refund the amount of Rs.1.35 crores deposited with it to the Petitioners within a period of eight weeks from the date of uploading of this order on the High Court Website.

13. As far as the interest component is concerned, since a challenge to the order dated 14th March 2024 passed by the Competent Authority rejecting Application No.82/06, is pending before the District Judge, Pune, we direct that interest @ 8% per annum from 27th May 2009 till 30th November 2024, on the sum of Rs.1.35 crores, shall be deposited by the Respondent before the District Judge, Pune, in which the Respondent's Appeal is pending. This figure comes to Rs.1,67,65,151/-. This amount shall be deposited in the said Court within a period of eight weeks from the date of uploading of this order on the High Court Website and shall abide by further orders passed in the Appeal filed by the Respondent. It is needless to clarify that in the event the Respondent succeeds in its appeal, and there is any monetary claim that is imposed upon the Petitioners, they are free to take out necessary proceedings to recover the amounts that the Petitioners

would be liable to pay pursuant to the order passed in the Appeal, if any. It is also clarified that if the Respondents fail in their Appeal, the District Judge, Pune, shall pass necessary orders allowing the Petitioners to withdraw the amount of Rs.1,67,65,151/-, or part thereof, as the case may be.

14. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

15. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.] [B.P. COLABAWALLA, J]