

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10077 OF 2023

1. **M/s. Siporex India Pvt. Ltd.**

A company registered under the
Companies Act 1956, having its
registered office at:
72-76, Mundhwa, Pune – 411036,
Maharashtra

2. **Vijay Shirke,**

Director of M/s. Siporex India Pvt. Ltd.,
having his office at: 72-76, Mundhwa,
Pune – 411036, Maharashtra

...Petitioners

~ versus ~

1. **Pune Cantonment Board,**

Office of the Cantonment Board,
Golibar Maidan, Shankarseth Road,
Pune – 411 001.

2. **Chief Executive Office,**

Pune Cantonment Board, Golibar
Maidan, Shankarseth Road, Pune –
411 001.

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3. Defence Estates Officer,

Pune Circle, 16, Rajendrasinhji Road,
Camp, Pune – 411 001.

4. Union of India,

Through the Ministry of Defence,
Having its office at: 2nd Floor, Aayakar
Bhavan, M.K. Road Churchgate,
Mumbai – 400 020.

...Respondents

WITH

WRIT PETITION NO. 9583 OF 2023

Bharat Forge Limited,

A company incorporated and registered
under the provisions of the Companies Act,
1956 and having its registered office at
Mundhwa, Pune Cantonment, Pune – 411
036, Maharashtra, India

...Petitioner

~ versus ~

1. Pune Cantonment Board,

Office of the Cantonment Board,
Golibar Maidan, Shankarseth Road,
Pune – 411 001.

2. Chief Executive Office,

Pune Cantonment Board, Golibar
Maidan, Shankarseth Road, Pune –

411 001.

**3. State of Maharashtra through
Department of Registration and
Stamps,**
office of Inspector General of
Registration and Controller of Stamps
having office at ground floor, Opp.
Vidhan Bhavan (Council Hall), New
Administrative Building, Pune-
411001.

...Respondents

**WITH
INTERIM APPLICATION (ST) NO. 21454 OF 2024
IN
WRIT PETITION NO. 9583 OF 2023**

Bharat Forge Limited,
A company incorporated and registered
under the provisions of the Companies Act,
1956 and having its registered office at
Mundhwa, Pune Cantonment, Pune – 411
036, Maharashtra, India

...Petitioner

In the matter of:

Bharat Forge Limited,
A company incorporated and registered
under the provisions of the Companies Act,
1956 and having its registered office at
Mundhwa, Pune Cantonment, Pune – 411

036, Maharashtra, India

...Petitioner

~ versus ~

1. **Pune Cantonment Board,**
Office of the Cantonment Board,
Golibar Maidan, Shankarseth Road,
Pune – 411 001.
2. **Chief Executive Office,**
Pune Cantonment Board, Golibar
Maidan, Shankarseth Road, Pune –
411 001.
3. **State of Maharashtra through
Department of Registration and
Stamps,**
office of Inspector General of
Registration and Controller of Stamps
having office at ground floor, Opp.
Vidhan Bhavan (Council Hall), New
Administrative Building, Pune–
411001.

...Respondents

WITH

WRIT PETITION NO. 10145 OF 2023

1. **M/s. B. G. Shirke Construction Technology Pvt
Ltd,**
A company registered under the Companies Act

A company incorporated and registered under the provisions of the Companies Act, 1956, having its registered office at: 72-76, Mundhwa, Pune – 411036, Maharashtra.

2. Vijay B Shirke,

Chairman and Managing Director of M/s. B. G. Shirke Construction Technology Pvt. Ltd., having his office at: 72-76, Mundhwa, Pune – 411036, Maharashtra

...Petitioner

~ versus ~

1. Pune Cantonment Board,

Office of the Cantonment Board,
Golibar Maidan, Shankarseth Road,
Pune – 411 001.

2. Chief Executive Office,

Pune Cantonment Board, Golibar
Maidan, Shankarseth Road, Pune –
411 001.

3. Defence Estates Officer,

Pune Circle, 16, Rajendrasinhji Road,
Camp, Pune – 411 001.

4. Union of India,

Through the Ministry of Defence,
Having its office at: 2nd Floor, Aayakar
Bhavan, M.K. Road Churchgate,

Mumbai – 400 020.

...Respondents

APPEARANCES

For the Petitioner in WP/1045/2023.	Dr Veerendra Tulzapurkar, Senior Advocate, with Barne Swapini Srinath i/b Crawford Bayley & Co.
For the Petitioner in WP/10077/2023.	Dr V Tulzapurkar, Senior Advocate, with Shailendra Kanetkar.
For the Petitioner in WP/9583/2023.	Mr Sachin Mahadik, with Sayali Phansikar i/b Mandlik & Partners.
For the Union of India	Mr C. N. Chavan.
For Respondents Nos. 1 & 2.	Mr KJ Presswalla and Tushad Kakalia with DJ Kakalia, Sandeep Goyal i/b Mulla & Mulla & Craigie Bllunt & Carlos.

CORAM : M.S. Sonak &
Kamal Khata, JJ.

DATE : 6th September 2024

ORAL JUDGMENT (Per MS Sonak J):-

1. Heard learned counsel for the parties.
2. The Petitioners in these Petitions have challenged the triennial revision and the calculation of Annual Rateable Value as mentioned in the impugned notices and the consequential bills/demands made on the basis thereof.
3. At the outset, Mr Presswalla learned counsel for the Cantonment Board had raised a preliminary objection to entertaining these Petitions on the ground that the Petitioners have an alternate and efficacious remedy of Appeal under Section 93 of the Cantonments Act, 2006.
4. By a detailed order dated 22 August 2023, this objection was overruled by a coordinate bench of this Court comprising Sunil B Shukre & Rajesh Patil, JJ. The order indicates that the impugned action was prima facie in breach of natural justice. Therefore, one of the exceptions to the practice of not entertaining Petitions when an alternate remedy is provided was attracted.
5. After that, on 2 January 2024, another coordinate bench (GS Patel & Kamal Khata, JJ) made an order on 2 January 2024 by which the Cantonment Board was directed to give an inspection of all materials which it proposed to rely upon in addition to the documents in the list provided by the Petitioners in October 2023. Further, the officer concerned of the Board was directed to give the

Petitioners an opportunity of hearing no later than 2 February 2024 and make a fresh order determining liability, if any.

6. After compliance with the directions in our order dated 2 January 2024, the concerned officer of the Cantonment Board has made fresh orders again, determining the Annual Rateable Value and the consequent liability.

7. By Interim Application No. 21454 of 2024 in Writ Petition No. 9583 of 2023, the Petitioners have sought leave to amend the Petition and challenge this fresh order determining the Annual Rateable Value.

8. At this stage, Mr Presswalla again points out that the Petitioners should be relegated to avail of the alternate remedy in Appeal under Section 93 of the Cantonments Act, 2006 because now, even the plea about the alleged failure of natural justice does not survive.

9. Learned counsel for the Petitioners submit that natural justice was not fully complied with. They submit that this is a case where a retrospective levy is sought to be imposed, and this, according to them, is beyond the jurisdiction of the Cantonment Board. Learned counsel, therefore, submitted that since jurisdictional issues are involved, this Court must finally dispose of the Petitions instead of relegating the Petitioners to the Appellate Authority.

10. We have considered the rival contentions. Under our order, the material upon which the Board relied has been furnished to the Petitioners. Besides, certain documents demanded by the Petitioners have even been furnished to the Petitioners. The Petitioners were given a hearing by the concerned officer of the Board. Therefore, at this stage, all that we can say is that this is not a case where there was a complete breach of the principles of natural justice or a case where the Annual Rateable Value has been determined without sufficient compliance with the principles of natural justice. If there are any deficiencies, the Appellate Authority can always look into them in an Appeal under Section 93 of the Cantonments Act, 2006.

11. Regarding retrospectivity, again, this is also a matter which can be looked into by the Appellate Authority. Mr Presswalla contended that this plea of retrospectivity has already been decided by this Court against the Petitioners. Mr Tulzapurkar, a learned senior advocate, disputes this position on behalf of the Petitioners. In any case, it is not for us to go into this issue at this stage, mainly since we are inclined to relegate the Petitioners to the remedy of an Appeal under Section 93 of the Cantonments Act, 2006.

12. This Court, in the case of **SGS Infratech Ltd vs. Chief Executive Officer, Pune Cantonment Board and Ors.**¹ considered somewhat similar contentions and held that alternate remedies

1 Writ Petition No. 1264 of 2012 decided on 31 July 2012.

provided by the statute could not be bypassed without sufficient reasons. The reasoning in the said decision applies to these cases.

13. Accordingly, these Petitions are disposed of by relegating the Petitioners to avail of the alternate remedy of Appeal under Section 93 of the Cantonments Act, 2006. Suppose the Petitioners institute their Appeal within five weeks from today by complying with the conditions prescribed in Section 96-B. In that case, such Appeals should be heard on merits and disposed of within one year of their institution. All parties' contentions are explicitly kept open for consideration by the Appellate Authority.

14. Learned counsel for the Petitioners state that the amounts in dispute will be deposited by them with the Board within four weeks from today, i.e., on or before 4 October 2024. They, however, submit that during the pendency of the Petitions, they have already deposited some amounts without prejudice with the Board. They submit that these amounts should be directed to be adjusted. Mr Presswalla quite fairly agrees that this could be done. Accordingly, the Petitioners would be entitled to adjust the amounts already paid and deposit the balance amount within four weeks from today, i.e., on or before 4 October 2024.

15. The Appellate Authority is directed to dispose of these Appeals within one year, i.e., on or before 11 October 2025. However, if, for some unavoidable reasons, the Appellate Authority is unable to do so, then the Petitioners are granted liberty to apply to the Appellate Authority for the return of the deposited amount

and its substitution with the bank guarantee. If such an application is made, the Appellate Authority must consider the same per the law and after hearing all the parties. By ‘consider’, we mean that such an application, if made, must be disposed of per the law.

16. These Petitions are disposed of by relegating the Petitioners to the remedy of Appeal under Section 93 of the Cantonments Act 2006. All contentions of all parties are explicitly kept open.

(Kamal Khata, J)

(M.S. Sonak, J)

Note: This judgment is modified as per speaking to the minutes of order dated 1 October 2024.