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wp-2592-13

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2592 OF 2013

Property Owners' Association
& Others

V/s.

State of Maharashtra
& Others

Petitioners

.. Respondents

ALONG WITH

WRIT PETITION NOS.1278 OF 2013,

235 OF 2014, 2758 OF 2013,

142 OF 2014, 228 OF 2014, 234 OF 2014, 2948 OF 2013,

WP(L) NOS. 2752, 2754, 2755, 2759, 2760, 2764, 2762, 2765,

2767, 2768, 2769, 2770, 2771, 2773, 2774, 2775, 2780, 2786, 2768,

2788, 2791, 2792, 2793, 2794, 2795, 2796, 2797, 2798, 2799, 2817,

2818, 2848, 2849, 2918, 2919, 2714, 2780, 2914, 2969, 2434, 2914,

2407, 2753, 2787, 2778, 2756 OF 2013, and

WP No.322 of 2014 (NOB, Mentioned)

...

Mr. H. N. Vakil and Sunil Chavan i/b.Mulla & Mulla, for the Petitioners
in W. P. No.2592 of 2013, 2756 of 2013, 2778 of 2013 and 2948 of
2013.

Mr.Vijay Bandekar, for the Petitioners in W. P(L) No.2758 of 2013.

Mr. Madhav Jamdar, for the Petitioner In W.P. No.2407 of 2013.

Mr. P. G. Lad, AGP, for the Respondent-State in W.P. No.1278 of 2013 and
W.P(L) No.2758 of 2013.

Mr. Milind More, AGP, for the Respondent-State in W. P. No.235 of 2014.

Ms. Geeta Shastri, Addl. G. P. for the RespondentState
in W. P. No.2592 of 2013.

Mr. M. D. Naik, AGP, for the Respondent-State in W. P. No.228 of 2014.

Mr. Arif Y. Bookwala, Sr. Advocate i/b. FF & Associates, for the
Petitioner in W. P. No.2714 of 2013 with Mr. Tushar Deshpande,
Mr. M.L. Chaturvedi and Mr. F. Fedrick & Associates, for the Petitioner
in Group of W.P(L) No.2752 of 2013 to 2919 of 2013.

Mr.Siraj Menon i/b Jayesh Desai for petitioner in WP No.235 of 2013.

Mrs.Kavita Shah, for the Petitioner in W. P. No.1278 of 2013.

Mr. M. S. Doctor, for the Petitioner in W. P. No.2969 of 2013.

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Mr.S.A.Sawant for petitioner in WP(I) No.495 of 2014.

Mr.Snehal Shah i/b Narayanan & Narayanan for petitioner in WP No.322 of 2014.

Mr.E.PBharucha, Sr.Advocate with Mr. S. S. Pakle with Ms. Sharmila Modle for MCGB.

CORAM: MOHIT S. SHAH, C.J. &
M.S.SANKLECHA, J.

DATE : 24 FEBRUARY 2014

P.C.:

Several writ petitions have been filed challenging the Constitutional validity of the amendment to the Mumbai Municipal Corporation Act, 1888 regarding levy of property tax.

2. By order dated 23 December 2013 passed in Writ Petition No.1812 of 2013 and connected writ petitions, we had granted ad-interim relief in the following terms:-

"In the meantime, the petitioners will pay municipal taxes at the pre-amended rates and also the additional tax at the rate of 25% of the differential tax between the tax payable under the old regime and now payable on the basis of capital value of the property. Such amounts shall be accepted by the MCGB without prejudice to the rights and contentions of the parties."

3. Affidavit-in-reply has now been filed by the Municipal Corporation. Learned counsel for the petitioners pray for time to file rejoinder affidavit.

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4. In view of the above, hearing of these petitions is adjourned to 11 March 2014 at 12.30 pm with liberty to the petitioners to file affidavit-in-rejoinder by 7 March 2014.

5. In the meantime the petitioners shall pay municipal taxes at the pre-amended rates and also the additional tax at the rate of 50% of the differential tax between the tax payable under the old regime and now payable on the basis of capital value of the property. The petitioners will pay such amounts and the Municipal Corporation shall accept the amounts without prejudice to rights and contentions of parties.

6. At this stage, our attention is invited to the fact that there are several persons, who are having their properties within the territorial limits of the Mumbai Municipal Corporation and who are aggrieved by the amendment under which taxes at higher rate have been levied in respect of their properties. It was submitted that if the ad-interim protection being granted to petitioners approaching this Court is not granted to other persons, who may not be in a position to move this Court, then they would be put to unnecessary hardship and would be forced to pay the municipal taxes at higher rates..

7. Having regard to the above, we direct that the Municipal Corporation for Gr.Mumbai shall accept the municipal taxes as per the above formula from other property owners, even if they have not filed any writ petition before this Court. However, such property owners shall pay taxes as per the above formula alongwith an undertaking to the Municipal Corporation that in case this Court negatives the challenge to the Constitutional validity of the Amendment Act, they will pay balance amount of tax and the interest on the balance amount at statutory rate within such time as may be granted by this Court.

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8. It is clarified that those who have paid earlier as per ad-interim direction contained in our order dated 23 December 2013 shall also pay further amounts, so as to conform to the above formula laid down in this order within two weeks from today.

9. It is further clarified that the above clarification is also subject to examination of the challenge levelled by the petitioners against the rate of interest.

10. In cases where writ petitions are filed by Associations of persons, Associations shall furnish to the Municipal Corporation names of the members of the Association as well as addresses and description of the property involved.

11. It is clarified that this order will not apply to the institutions who were recognized as charitable institutions and granted exemption as charitable institutions prior to impugned Amendment Act. Charitable institutions granted exemption as charitable institutions will be governed by separate ad-interim order, which may have been or which may be passed in individual writ petitions.

CHIEF JUSTICE

(M.S.SANKLECHA, J.)



05 MAR 2014

TRUE COPY
R. S. Sanklecha
04/03/2014
Section Officer
High Court, Appellate Side
Bombay

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