IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 527 OF 2017
WITH
INTERIM APPLICATION (ST) NO.34252 OF 2024
IN
WRIT PETITION NO.527 OF 2017

Jayantilal Investments .. Petitioner

Versus

Bombay Municipal Corporation & Ors. .. Respondents

...

Mr.Yatin Shah for the Petitioner.

Ms.Jyoti Mhatre a/w Prakash Chavan i/b Komal Punjabi for the MCGM.

Ms.Prajkta Salkar, Dy.Sup. Assessment, present.

CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ
DATED : 15th JUNE, 2026.

JUDGMENT (PER BHARATI DANGRE, J) :

1 Rule. Rule is made returnable forthwith.

Heard by consent.

2 Section 209 of the Mumbai Municipal Corporation Act, 1888, cast a liability on the occupier to make payment of property taxes and sub-section (1) has set out that the Commissioner may serve a bill for the amount of the occupier of the premises, and if there are two or more occupiers, the bill shall be served on each of them for such portion of the sum due as bears to the whole amount due in the same ratio which the rent paid occupier bears to the aggregate amount of rent paid by them both or all in respect of the said premises.

RAJSHREE KISHOR MORE Digitally signed by RAJSHREE KISHOR MORE Date: 2026.06.16 11:29:13 +0530

Despite this clear provision, the Corporation has failed to follow the process and this is what the grievance of the Petitioner.

3 The Petitioner M/s.Jayantilal Investments, the Builders and Developers, has raised a challenge to the Demand Notice dated 13/01/2017 and the specific case pleaded by the Petitioner in the second round of litigation is that being a Developer and Builder, the Petitioner continued to be in occupation of Gala Nos.101 to 103 on the first floor of the building. The purchaser of Gala Nos.6, 7, 8, 9, 13, 14 and 15 located on the ground floor leased it out to Bharat Co-operative Bank Limited.

According to the Petition, the Petitioner itself alongwith other members regularly contributed towards the payment of taxes including the property tax except the occupier of Gala Nos.6, 7,8,9,13,14 and 15. Due to this default, the Corporation Authorities issued Warrant of Attachment and it is pleaded case of the Petitioner that in fact as per the provision in the Act, the amount would have been demanded from Respondent No.3 i.e. the Society, and the Petitioner being aggrieved by the action of projecting it as a defaulter, approached this Court by filing Writ Petition No.300 of 2012. The Division Bench on 31/01/2012. The grievance of the Petitioner praying for stay of auction of the societies property as the default was by one member of the Society i.e. Respondent No.4, who had purchased the property since 1996 and became its member.

Recording that the outstanding dues of the society

largely comprised of the amount not paid by Respondent No.4, who was liable for payment of dues in respect of Gala Nos.6,7,8, and 9, it was noted that even the Corporation found Respondent No.4 liable for the outstanding dues after 2000 with effect from 20/07/2011 and a sum of Rs.63,81,416/- for the period from 01/10/1995 to 31/03/2010 was due and payable which comprised of the dues of Respondent No.4 alongwith interest and penalty. However, the Court refrained itself from adjudicating the specific liability either of Respondent No.4 or that of the Society i.e. Respondent No.3.

The Division Bench directed the Corporation to hear the Petitioner, Respondent Nos.3 and 4 and determine the respective dues with respect to the specific period and raise a bill on the person concerned, having regard to the provisions of Section 209 and 209-A and, therefore, was permitted to take such action for its recovery as may be considered appropriate.

4 Despite this specific direction being issued since it was not adhered to, the Petitioner approached this Court raising a challenge to the notice dated 13/01/2017 addressed to it by the Assessor and Collector, R/South Ward, with reference to the subject of "Warrant of Attachment for recovery of arrears of municipal taxes in respect of property bearing SAC No.RS-03-05410050000 situated at Kandivali (West), Mumbai".

The said notice, referred to non payment of property tax of Rs.63,81,416/- (wrongly mentioned in the notice as Rs. 63814116) for the period from 01/10/1995 to 31/03/2010.

The notice also specified that the Petitioner had paid an amount of Rs. 32,39,584/- only, but had failed to make payment of the subsequent installment and the unpaid balance was computed as 31,41,832/- , and for the subsequent bills for the period from 01/04/2010 to 31/03/2017 it was informed that an amount of Rs.18,29,035/- was also outstanding.

5 Being aggrieved, the Petitioner has approached this Court. In the *interregnum* since another Demand Notice dated 07/05/2024 was raised on the Petitioner, in respect of an amount of property tax to the tune of Rs.1,06,56,690/- including penalty upto 31/03/2023, the Petitioner filed an Interim Application (L) No.34252/2024, seeking injunction against the Respondents and restraining them from taking any coercive action in respect of the said Demand Notice.

6 Pursuant to the order passed by this Court, a reasoned order is passed by the Corporation when it considered the stand of the Petitioner M/s.Jayantilal Investments, the Secretary of Respondent No.3 Society, Balaji Arcade Premises CHS Ltd. and though notices were issued to Respondent No.4 Mrs.Shirley Rajwani, she did not present herself during the hearing.

The reasoned order has considered the submissions advanced on behalf of the Parties and the Officer passing the order opined that it is necessary to have the details of payment made by either parties towards the relevant period alongwith the paid up receipts in order to decide the individual unit holders liabilities of tax payment to the Corporation. The

Petitioner and Respondent No.3, Society were, therefore, directed to furnish the details of the paid up property tax for the period pertaining to the outstanding statement in the attachment proceedings.

At the end of the whole deliberation, with the fact being appreciated that the premises bearing Unit No.6 to 15 were in the possession of Bharat Cooperative Bank, out of which Unit No.6,7,8 and 9 were owned by Mrs.Shirley Rajwani and Unit No.10, 11 and 12 are owned by Laxmi Thaval , whereas Unit NO.13, 14 and 15 are owned by Pramod Salvi. All the three owners had let out the premises to Bharat Co-operative Bank . and Laxmi Thaval and Pramod Salvi paid the property taxes of their respective units let out to the Bank by paying it to the Society and the Society paying it to the Corporation. Ms.Shirley Rajwani, Owner of Unit No.6,7,8 and 9 had collected the property tax for their respective units from the Co-operative Bank from 1966 to 2011, but it was not paid to the Society or to the Corporation.

7 This fact was established through a letter dated 20/11/2012 addressed to the AA&C, R/S Ward by the Branch Manager of Bharat Cooperative Bank, stating that a sum of 9,83,921/- which was due from the Bank as permissible increase in addition to the rent and this amount was already paid to Shirley Rajwani. The Bank therefore, addressed a letter to the Authorities as regards the rise in percentage of taxes and the Bank computed the property tax due and payable and according to it an amount of Rs.9,83,921/- was paid to Shirley Rajwani.

It was, therefore, observed that the owners of other units viz. 10 to 15 were regularly paying the taxes, but not the owners of Unit No.6,7,8 and 9. It is, in these circumstances the following order came to be passed :

> "Now considering the liability of taxes / dues to the specific period I am of the view that the Asstt. Assessor & collector R/ South Ward should determine the dues/ taxes of Petitioner M/S Jayantilal Investment, Respondent No.3 Balaji Arcade Premises Co-op. Soc. Ltd. & Respondent, no. 4 Mrs. Shirley. N. Rajwani and work out the property taxes, having regard to the directions given by the Hon'ble High Court vide order-dated 31/01/2012 in W.P. No. 300/2012
>
> I thus direct A.A.&C,R/S to communicate the property demand / taxes to the Petitioner M/S Jayantilal Investment, Respondent No. 3, Balaji Arcade Premises Co-op. Soc. Ltd. & Respondent. no.4, Mrs. Shirley N. Rajwani till the period 31.03.2010 and issue individual bills w.e.f. 01.04.2010 for the subject matter involved as per the directions given by the Hon'ble High Court vide order dated 31/01/2012 in Writ Petition No. 300 of 2012.
>
> A.A.&C., R/S is further directed to communicate the respective parties about this order by enclosing bill cum demand letter so as to enable the respective parties to clear their liability accordingly."

8 The Petition is accompanied with several communications, referring to the unit holding of the individual members of the Society and from the sub division of the units it is not disputed that unit Nos.101, 102 and 103 belong to the Petitioner.

9 A communication of 02/11/2016 addressed to the Petitioner requested for production of copies of payment of property tax receipts from 01/10/1995 to 31/10/2010 and this was complied with. A communication was, therefore, addressed to the Society informing that M/s.Jayantilal Investments had made payment to the Authority in respect of the property tax in the sum of Rs.51,60,002/- from 01/4/2010

to 30/9/2016 in respect of its unit 101, 101A, 102 and 103.

As the property was assessed as a single unit, the Society was asked to confirm the same and to produce receipts of payment to MCGM to deal with it further. This received response from the Society on 08/11/2016 to the following effect :-

> As per our society records for the unit no 101, 101A (previously 119), 102 & 103 (units belongs to M/s. Jayantilal Investments) BMC taxes up to 31.03.2010 paid except penalty (chargeable before the reg. of society) up to the year 2000 Rs. 5,50,822/- (out of which Rs 47,304/- paid by the society member inadvertently now balance outstanding Rs. 5,03,518/-)
>
> For the period 2010 to 2015 BMC given revised property tax bill in the month September 2015 and we accordingly raised the bill to the individual gala owners including M/s Jayantilal Investments. But against that bill no payments received including earlier period arrears
>
> As on 31.03.2015 total outstanding (includes penalty) Rs 49,13,817/- (detailed year wise breakup attached), out of which M/s Jayantilal Investments Rs. 10,86,748/- (detailed workings attached) and balance Rs. 38,27,069/- belongs to Rajwani group-rented to Bhaart Bank.(shop no 6 to 15).
>
> For the period 01/04/2010 to 31/03/2015 Society adjusted Rs. 67.980/- against property tax liability of Rs. 6,51,210/- for the unit no 101, 101A, 102 to 103 (detailed working attached).
>
> We also inform you that M/s Jayantilal Investments has paid during the period 01/04/2010 to 31/03/2016 to the Society Rs. 5,16,092/- for the Society Maintenance and Property taxes pending up to 31.03.2010. We have also paid BMC Tax Rs. 67,980/- for the period 2010 to 2015 and Rs 47,304/- against penalty up to year 2000
>
> We further inform you that for the FY 2015-16 our member inadvertently paid Rs 22,282/- against the liability of Rs 89,353/- belongs to the unit 101 to 103 now balance payable Rs 67,071/-.
>
> Kindly do the needful."

10 Supporting this is the statement showing total BMC taxes due and payable as on 31/03/2015 and it also include

statement showing BMC tax liability towards unit NO. 101 to 103 and the computation in the said statement reveal that the BMC taxes from 2000 to 31/03/2010 for Unit Nos.101, 101A, 102 and 103 is NIL.

The computation also reflected that an amount of Rs.67,071/- is the amount due and payable by the Petitioner and it is categorically stated in the Affidavit that the Petitioner is ready and willing to make the aforesaid payment.

The statement would also reveal that some more amount is liable to be paid towards tax to the Corporation, but from the statement produced by the Society it is evidently clear that this amount is not due and payable by the Petitioner and in any case we find substance in the contention of the Petitioner that somebody else's liability cannot be fastened upon it and as the reasoned order passed by the Corporation clearly reveal that the said liability is of Shirley Rajwani for Unit Nos.6, 7, 8 and 9 as even the amount of payment of taxes of units i.e. 10, 11, 12, 13, 14 and 15 is already paid by the owners despite the fact that these premises were handed over to Bharat Cooperative Bank and in the reasoned order it is clearly recorded that the bank had remitted the taxes to Shirley Rajwani, but the same is not deposited by her.

11 In the wake of the clear reasoned order passed by the Corporation, we are really surprised as to how the Corporation can once again fasten the liability of non-payment of taxes of some other premises upon the Petitioner and this is being done despite the reasoned order being passed in the year 2016 and

a demand notice is issued to the Petitioner in the year 2017 and also on 07/05/2024, once again seeking recovery of arrears of taxes, which are not liable to be paid by the Petitioner.

We fail to understand as to why the Corporation is fastening the liability of payment of the tax upon the Petitioner from 01/4/2013 to 31/03/2025 when it has already come on record and the Society has also admitted that this amount is not payable by the Petitioner.

12 For this reason, we restrain the Corporation from recovering any amount from the Petitioner under the two impugned demand notices, i.e. 13/01/2017 and 07/05/2024 and in any case we leave it to the Assistant Assessor and Collector to recover the tax from the defaulter, but definitely not the Petitioner. We wonder as to when the Corporation itself has passed the Speaking Order and is aware that the tax is not paid by the owner of Unit No.6 to 9, but in an attempt to pass on the liability upon the Petitioner, despite a clear understanding being reflected from the reasoned order, it continued to issue Demand notice to the Petitioner, for the same amount, for which according to us the Petitioner is not liable.

In any case, when we restrain the Corporation from doing so, we expect the Corporation to seek assistance from the society if it so desire in recovering the unpaid taxes from the defaulters, but we expect that the liability in no way shall be shared by the Petitioner.

Needless to state the amount of tax due and payable by the Petitioner for Unit Nos.101, 101A, 102 and 103 shall be continued to be borne by the Petitioner.

13 With this direction, the Petition is disposed of. In the wake of disposal of the Petition, pending Interim Application also stand disposed of.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**