2024 INSC 596

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7873 OF 2024

RAJKOT MUNICIPAL CORPORATION **... APPELLANT**

VERSUS

STATE OF GUJARAT AND ORS. **... RESPONDENTS**

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. This Appeal challenges the Order dated 07.07.2016 (hereinafter referred to as "Impugned Order") in Special Civil Application No. 4577 of 2016 passed by High Court of Gujarat wherein the Appellant herein being Rajkot Municipal Corporation (hereinafter referred to as "Appellant-Corporation") was directed to refund a portion of the property tax, which was paid by the Respondent No. 02 herein, namely, Avenue Supermarts Limited. Respondent No. 02 had assailed the demand raised by Appellant-Corporation seeking payment of property tax for the Assessment

Year (hereinafter referred to as 'AY') 2015-16 along with outstanding arrears of such tax dues amounting to INR 2,97,02,324/- (Rupees Two Crores Ninety-Seven Lakhs Two Thousand Three Hundred and Twenty-Four Only). As a consequence to the non-fulfilment of aforesaid payment of dues by the predecessor-in-interest holder of the property, the premises were sealed on 21.03.2016 with prior indication to the Respondent No. 02.

2. The High Court of Gujarat vide Impugned Order had allowed the Special Civil Application moved by the Respondent No. 02 on the ground that the said Respondent cannot be made liable for the payment of arrears of property tax which arose prior to the acquisition of ownership, that is, prior to 03.09.2015. The High Court deprecated the approach of the Appellant-Corporation in charging exorbitant amount of dues from Respondent No. 02 as well as the uncalled inclusion of further interest and penalty on such outstanding arrears, which had already been challenged by the predecessor and had been stayed by the competent court. Considering the said circumstances, the High Court directed the

Appellant-Corporation to retain a portion of the property tax to the tune of INR 14,85,000/- (Rupees Fourteen Lakhs and Eighty-Five Thousand Only) relating to the relevant AY 2015-16 for which Respondent No. 02 had acquired ownership and possession, that is, from 03.09.2015 and to refund the rest of the amount of property tax along with simple interest at 6 per cent per annum from the date of recovery till the actual payment of refund. In compliance with the aforesaid direction *qua* refund by the High Court, the Appellant-Corporation has already refunded such quantum of excessive property tax to the Respondent No. 02.

3. Aggrieved by the direction to make the refund of accrued amount of property tax dues, the Appellant-Corporation is assailing the Impugned Order before this Court.

4. It is the case of the Appellant-Corporation that the Impugned Order directing the refund of property tax is contrary to the provisions of Sections 139 and 140 of the Gujarat Provincial Municipal Corporation Act, 1949 (hereinafter referred to as "GPMC Act 1949"). It is argued that a Commissioner, by virtue of Sub-

Section (1) of Section 140 of the GPMC Act 1949, is empowered to recover such outstanding property tax dues from an occupier where a person primarily liable to pay the tax, after being duly served with demand notice, has failed to make the payment thereof. Moreover, as per Sub-Section (4) of Section 140 of the GPMC Act 1949, such occupier may credit the said payment from a person who was primarily liable to discharge the liability of such dues. Thus, it was argued that from a cumulative reading of Sections 139 and 140 of the GPMC Act 1949, the Appellant-Corporation was justified in recovering arrears from Respondent No. 02.

5. Per contra, it is contended by Respondent No. 02 that the property in question which is a commercial complex known as Shivlink-IV bearing City Survey No. 5095/1B, 5095/1C(P), Plot No. 68, situated at Gondal Road, Rajkot, was acquired via Deed of Conveyance dated 03.09.2015 from its predecessor-in-interest, that is, Respondent Nos. 04 and 05. Respondent No. 02 would be liable for the payment of property tax from the date of acquisition of ownership and not for any period before this date, as affirmed

by the High Court. Respondent No. 02 points out that Respondent No. 03, the lessee of the property prior to 03.09.2015, has challenged similar tax demands for earlier years in both civil court and the High Court, resulting in a stay on recovery actions. Consequently, it was argued that until the conclusion of adjudication of such pending appeals pertaining to the arrears of any period before 03.05.2015, the Appellant-Corporation cannot make recovery of the said amount from Respondent No. 02.

6. Furthermore, the Appellant-Corporation as well as the Respondent Nos. 04 and 05 have relied on Letter dated 18.01.2016, whereby it was stated that the Respondent No. 02 had kept INR 2,50,00,000/- (Rupees Two Crores and Fifty Lakhs only) as a token of assurance from Respondent Nos. 04 and 05 for clearing arrears of property tax. As argued, this letter was intended to ensure that in case of failure of payment of such arrears by the Respondent Nos. 04 and 05 (predecessor owners), it shall be incumbent on the Respondent No. 02 (subsequent owner) to make the payment thereof. Addressing this argument, Respondent No. 02 contended that mere

deposit of security amount by Respondent Nos. 04 and 05 would not tantamount to assignment of liability for payment of tax for a period for which Respondent No. 02 did not have ownership. Appellant-Corporation cannot be allowed to ascribe obligation upon Respondent No. 02 to seek remedy of refund from Respondent Nos. 04 and 05.

7. Having heard the Senior Counsel for the Appellant-Corporation as well as the Respondents, it is imperative to decipher the undisputed facts along with the applicable provisions of the GPMC Act 1949.

8. The relevant factual backdrop leading to the present Impugned Order commenced from the point where the original owner of the said property, namely, M/s Platinum Associates (hereinafter referred to as "original owner") entered into a Lease Agreement dated 01.12.2007 with Respondent No. 03 herein, namely, Reliance Communications Limited for an office space. Subsequently, the original owner sold the said property to Prabha Kantilal Pohkiya and Jyoti Rakesh Gandhi (Respondent Nos. 04 and 05 respectively) vide Conveyance Deed dated 05.12.2007. It needs mention here that Respondent

No. 03 continued to occupy the premises, thereupon, Respondent No. 02 purchased the said property from Respondent Nos. 04 and 05 through a Deed of Conveyance dated 03.09.2015.

9. Appellant-Corporation had raised several demand notices for payment of outstanding property tax on the premises starting from the year 2008. A Notice dated 29.07.2010 was issued by the Appellant-Corporation calling upon the Respondent No. 03, being in possession of the said property, to pay outstanding arrears of property tax along with penalty and other charges to the tune of INR 1,33,48,898/- (Rupees One Crores Thirty-Three Lakhs Forty-Eight Thousand Eight Hundred and Ninety-Eight Only) for the period commencing from 01.06.2008. The said demand was assailed by Respondent No. 03 by filing Municipal Appeal No. 19 of 2010 before the Civil Court, Rajkot, wherein Respondent No. 03 deposited 75% of the bill amount in Court. Thereafter, for AY 2011-12, demand notice was issued to the Respondent No. 03 seeking payment of property tax for the said AY as well as the arrears thereof, which was also challenged by

Respondent No. 03 before Civil Court in Municipal Appeal No. 1639 of 2011, where again 75% of the bill amount was deposited. It is pertinent to note that both these appeals are pending before the Civil Court with the stay on the deposit of the remaining 25% bill amounts continues.

10. Similar were the demands for the AYs 2012-13 and 2013-14, which were challenged before the High Court in Special Civil Application No. 3074 of 2014 on the ground of retrospectively charging of the arrears of property tax by the Appellant-Corporation. The said Application was disposed of vide Order dated 04.04.2014 with a direction to the Appellant-Corporation to serve a copy of the demand notices to the Respondent No. 03 in view of the uncertainty surrounding receipt of such notice. Further, the Appellant-Corporation was directed to consider the objections to be raised by Respondent No. 03 before issuing fresh bills. The Appellant-Corporation consequent to the above order proceeded to issue another demand notice for the AY 2014-15 upon Respondent No. 03 seeking payment of property tax inclusive of earlier arrears to the tune of INR

2,51,09,857/- (Rupees Two Crores Fifty-One Lakhs Nine Thousand Eight Hundred and Fifty-Seven Only). Respondent No. 03 then initiated a challenge against the said demand notices issued for the AYs 2012-13, 2013-14 and 2014-15 before High Court in Special Civil Application No. 3600 of 2015, wherein the High Court vide its Order dated 07.07.2016, directed a stay on the further recovery subject to payment of INR 60,00,000/- (Rupees Sixty Lakhs Only) as an interim measure, which would operate pending the appeal challenging the said recovery for the aforesaid three AYs. It was clarified that the said direction for stay would automatically vacate in the event of non-filing of an appeal assailing the demand for the said AYs.

11. The present dispute arises from Demand Notice dated 11.03.2016 which was issued by the Appellant-Corporation to Respondent No. 02, seeking not only the payment of property tax for the AY 2015-16 but also the outstanding dues amounting to INR 2,97,02,324/- (Rupees Two Crores Ninety-Seven Lakhs Two Thousand Three Hundred and Twenty-Four Only). It was also mentioned therein that on

failure to discharge the payment of the said liability, the said property would be sealed. Because of non-discharge of the demand as raised, the property in question which was now under the ownership and possession of Respondent No. 02 with effect from 03.09.2015 was sealed on 21.03.2016 with prior indication vide affixation of public notice on the said property. Furthermore, a final notice dated 20.02.2016 was issued by the Appellant-Corporation for attachment of the said property and for issuance of warrant of sale owing to failure of payment of the said outstanding arrears along with penalties and charges within five days from the date of such notice.

12. It is in pursuance thereto, that the Respondent No. 02 proceeded to deposit the outstanding dues *qua* the said property and challenged the aforesaid action of the Appellant-Corporation before High Court on the grounds as recorded above.

13. It is evident from the aforementioned factual strata that the Respondent No. 02 would fall in the category of Section 139(1)(b)(iii) of GPMC Act 1949 being the owner of the said property. It is clear and undisputed that the Respondent No. 02 had purchased the said

property from Respondent Nos. 04 and 05. Therefore, till 03.09.2015, the "person primarily liable to make payment" from a co-joint reading of Sections 139 and 140 of the GPMC Act 1949 was the lessor of the said property, that is, Respondent Nos. 04 and 05. The liability prior to 03.09.2015, thus, cannot be foisted upon Respondent No. 02. The High Court was thus correct in observing that Respondent No. 02 was liable to pay property tax from the date of acquisition of ownership. Further the High Court, had been conscious enough while directing deduction of the liability of the tax from Respondent No. 02 for the relevant period, that is, subsequent to the date of purchase being 03.09.2015, prior to making refund of the remaining amount along with interest. It may be added here that this Impugned Order has been duly complied with by the Appellant-Corporation and the amount has already been refunded as evidenced from Communication dated 25.07.2016 and Letter dated 28.07.2016.

14. Although considering the above factual matrix the challenge against the direction for refund in the Impugned Order in light of the provision of Section

140 of the GPMC Act 1949, has become a mere academic exercise, yet we may proceed to look at it from another perspective. Here, Respondent No. 03, the lessee of the property, acknowledged the demands raised by the Appellant-Corporation for the period prior to 03.09.2015 and even challenged the same in the statutory appeals. The said challenge pertaining to the demands for previous three AYs, that is, from 2012-13 to 2014-15 were disposed of via an interim stay Order upon deposition of certain amount. It is apposite to note herein that the Appellant-Corporation has neither challenged the said stay Order dated 07.07.2016 passed in Special Civil Application No. 3600 of 2015 nor has contested before us that the Respondent No. 02 has not filed statutory appeals as directed therein. So, the contention of the Respondent No. 02 that pending such adjudication of appeals the Appellant-Corporation cannot challenge the correctness of directions of the High Court for refund of the amounts as deposited by Respondent No. 02 cannot be faulted with.

15. Another aspect which cannot be lost sight of is that 75% of the due amounts as per the bills raised by the Appellant-Corporation for the AYs 2010-11 and 2011-12 stand deposited before Civil Court, Rajkot in Municipal Appeal Nos. 19 of 2010 and 1639 of 2011, securing a major portion of the liability subject to outcome of the appeals where the Appellant-Corporation, being a party thereto and is contesting, cannot be permitted to take double benefit. Moreover, in case the said appeals get dismissed, the deposited amount would eventually be paid to the Appellant-Corporation. This would result in a situation where the Appellant-Corporation would have a sum deposited in its favour equivalent to over and above the actual outstanding amount. Thence, to obviate such double payment in favour of the Appellant-Corporation and causing disruption in the pending litigation against the demands accrued prior to 03.09.2015, we are of the opinion that the order directing refund by the High Court stands justified considering the peculiarity of the aforesaid facts and circumstances.

16. In light of the aforesaid discussion, we do not find any ground to interfere with the Impugned Order dated 07.07.2016 passed by the High Court. The appeal is, therefore, dismissed.

17. Pending applications, if any, also stand disposed of. There will be no orders as to costs.

.....J.
(ABHAY S. OKA)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
AUGUST 09, 2024.