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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2243 OF 2011

Seatech Estate Private Limited and anr.

.. Petitioners

Vs.

Municipal Corporation of Greater
Mumbai and ors.

.. Respondents

Mr. Milind Sathe, Senior Advocate a/w Mr. Deepak Poonamiya for
petitioners.

Mr. A.A. Kumbhakoni a/w Mr. Shardul Singh, J.J. Xavier and Ms. Vidya
Gharpure for BMC.

CORAM: S. A. BOBDE &
R. D. DHANUKA, JJ.

FEBRUARY 21, 2012.

P.C.

1. Rule, returnable forthwith. Respondents waive service. Heard
finally by consent of parties.

2. At the out-set, Mr. Sathe, the learned counsel for the petitioners seeks leave to withdraw the challenge to letter dated 5/8/2010 by which the petitioners have questioned the unilateral reduction of the tenure of the lease from lease on perpetuity to a lease for 30 years. Mr.Sathe states that the matter is pending decision of this court in Writ Petition No. 3539 of 2011 after remand from the Supreme Court and he seeks leave to challenge the same at a later date. The said challenge is allowed to be withdrawn with liberty as prayed for.

3. The only contention raised by the petitioners in this case is the validity of the demand made by the respondents-BMC dated 30/7/2010 in respect of acknowledging the transfer of the lease from the last assignee to the petitioners. The issue concerns a property being Plot No. 4A of Worli Estate with structures standing thereon (hereinafter referred to as the leasehold property). On 6/10/1948 the respondent no.1-Corporation perpetually demised the lease to one Mr. Zulfikarallykhan Shah Nawaz Bhutto on the terms and conditions set out therein in perpetuity. One of the terms read as follows:-

“13. So often as the said premises or any part thereof shall by assignment or transfer or by death or by operation of law or otherwise howsoever become assigned or transferred for the estate in perpetuity hereby granted to cause every deed or instrument of assignment or transfer and every Probate of a Will or Letters of Administration Decree Order Certificate or other document effecting or evidencing the assignment or transfer to be left within a period of four calendar months after the date of such document and for seven days at least at the office of the Corporation for the purpose of registration in the Estate Registers of the Corporation PROVIDED ALWAYS that the time occupied in registering any document with the Sub-Registrar of Assurances shall not be included in computing the period aforesaid AND in case the Commissioner shall deem it necessary or advisable to take legal advice as to any such assignment or other document on demand to pay to the Corporation all costs which the Commissioner may incur in and about the obtaining of such advice as aforesaid.”

4. Accordingly when the petitioners applied for the registration and assignment in their favour in the estate register of the Corporation, the Municipal Corporation raised a demand as follows:-

Particulars	Amount
Transfer fee	5,000/-
Penalty for not obtaining prior permission of MCGM.	5,000/-
Penalty for late submission of documents	8,000/-
7% of total consideration amounts as premium as shown in Index – II of Deed of Assignment dtd.(i.e. 12,00,000,00/-)	84,00,000/-
Total	84,18,000/-

5. The petitioners have questioned the legality of Item Nos.2 and

4. Mr. Sathe, the learned counsel for the petitioners, submits that the issue of such a demand is illegal is not more res-integra in view of a judgment of the Division Bench of this court in the case of **Mahendra J. Vora vs. The Municipal Corporation of Gr. Bombay [Writ Petition No. 166 of 1997 decided on 15/2/2011]**. After considering a similar challenge to a demand for premium raised by the Corporation in respect of transfer of leasehold rights, the Division Bench held as follows:-

“12. The Supreme Court has thus held that whenever there is compulsory exaction of money, there should be specific provision for the same. In the present case, we have not been

pointed out any provision permitting the Corporation to recover premium from the assignee of lease. We have also not been pointed out any recital in the Lease Deed permitting the Corporation to do so. Therefore, the Corporation obviously was not entitled to claim premium for taking entry about assignment of the lease hold rights. We also found that neither there is any provision in any law nor there is any term in the Lease Deed with which we are concerned in these petitions requiring the lessee to seek prior permission of the Corporation before assigning his lease hold rights. As prior permission itself is not contemplated, there is no question of the Corporation levying any penalty for assigning the lease hold rights without prior permission in that regard, therefore, is without authority of law.”

6. The material circumstances of the present case and the conditions of the lease are not different from the conditions before the Division in the aforesaid writ petition. Hence we have no hesitation in holding that the said demand is illegal. Mr. Kumbhakoni, the learned counsel for the respondent-Corporation, however, resisted any direction to the Corporation not to charge the said demand on the ground that the petitioners have already complied with the demand without any protest and have paid the amount on 3/8/2010, after the demand was raised on

13/7/2010. According to Mr. Kumbhakoni, the Corporation has also effected a change in the register on the basis that the petitioners have paid the amount as demanded. The contention of the learned counsel for the Corporation is, therefore, that the petitioners having paid the entire amount without protest, they are now not entitled to any relief from this court and they must file a civil suit for any such relief. Mr. Kumbhakoni further submitted that when the petitioners have applied for refund on 8/2/2011, they did not claim that the amount was paid under protest.

7. Having considered the matter, we find no merit in the contention of the Corporation, particularly, since there is no doubt that they had no authority in law to collect any such amount from a leaseholder such as the petitioners. This is not a situation where one party has received an amount from another party without the other party lodging a protest which the party is otherwise entitled to receive in law. Here such the demand of monies by a statutory authority has been held to be specifically without any authority of law. Moreover, in a refund application we find that though the petitioners did not allege that they had paid the amount under protest, they have clearly asserted that the demands for premium for transfer of leasehold rights are without authority of law, arbitrary, high handed, per-

se illegal and untenable. There is no dispute regarding the applicability of the aforesaid judgment of the Division Bench of this court.

8. In the circumstances, we do not consider it appropriate to relegate the petitioners to the remedy of a civil suit only on this ground. The respondents are directed to refund the amount of Rs.84,00,000/ and Rs. 5000/- collected under letter dated 30/7/2010.

9. Rule made absolute in above terms.

(R. D. DHANUKA,J.)

(S. A. BOBDE, J.)