

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).6388/2005

(From the judgement and order dated 17/09/2004 in Civil Appln.No.3219/03 in FA No. 1246/2003 of

The HIGH COURT OF BOMBAY)

MUNICIPAL CORPN. OF GREATER MUMBAI

Petitioner(s)

VERSUS

NAGRI NIVARA PARISHAD

Respondent(s)

(With prayer for interim relief and office report)

WITH S.L.P.(C) Nos. 6390, 6391, 6392, 6407, 6408, 6393, 6394, 6395, 6396, 6398, 6401, 6409, 6404, 6405,

6402, 6403, 6406, 6399 & 6410 of 2005

(With prayer for interim relief and office report)

Date: 02/05/2005 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Petitioner(s)

Mr. K.K. Singhvi, Sr.Adv.

Mr. Pallav Shishodia, Adv.

Mr. D.N. Mishra, Adv.

For Respondent(s)

Mrs. Jayashree Wad, Adv.

Mr. Ashish Wad, Adv.

Ms. Surabhi Madan, Adv.

Mr. Neeraj Kumar, Adv.
for M/s. J.S. Wad & Co.,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The civil appeals are allowed, in terms of the signed order.

(N. Annapurna)
Court Master

(V.P. Tyagi)
Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2005

(Arising out S.L.P.(C) No.6388/2005)

Municipal Corpn. of Greater Mumbai
ant(s)

...Appell

Versus

Nagri Nivara Parishad
dent(s)

...Respon

WITH

CIVIL APPEAL NOS. OF 2005

(Arising out of S.L.P.(C) Nos.6390, 6391, 6392, 6407, 6408, 6393, 6394, 6395, 6396, 6398,

O R D E R

In S.L.P.(C) No.6388/05:

Leave granted.

It appears clearly that the operative portion of the impugned judgment, when it directs that the application of the respondent (petitioner before the High Court) is made

absolute in terms of prayer clauses (a) and (b) with the modification to the extent that the interest shall be at the rate of 9% p.a. instead of 14% p.a., the same is contrary to what is

stated in para 4 thereof. Prayer clauses (a) and (b) read as under:

"(a). Pending the hearing of First appeal St.No.22496/03, to grant stay of clause 4 of the order dated 9,10 and 29th October, 2002, in Municipal Appeal No.M-68 of 1998 in Small Causes Court, Bombay.

(b). Pending the hearing and final disposal of this Appeal to direct the Respondents to refund Rs.70,692 being the water taxes and sewerage taxes with interest therein @ 14% per annum from date of payment i.e. 01.04.1996 till realization."

....2/-

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Para 4 of the impugned judgment reads as follows:

"4. In my view proviso to Section 217 of the B.M.C.Act is quite clear which stipulates that in case the appeal is decided in favour of the appellant and amount of property taxes deposited with the Corporation

is more than the property tax payable to him, the Commissioner shall adjust the excess amount of the property tax with interest at the rate of 6.25 per centum per annum from the date on which the amount is deposited with the Corporation towards the property taxes payable thereafter. Earlier proviso stipulates that in case the appeal is decided in favour of the Corporation with interest 6.25 per centum p.a. shall be payable by the appellant on the balance of the property tax from the date on which the amount of property tax was payable."

In view of the above, it is evident that the excess payment of property tax, if any, has to be adjusted and not refunded and the statutory rate of interest 6.25% p.a. deserves to be awarded and not 9% p.a.

Resultantly, we partially allow the appeal and direct that the prayer as in clauses

(a) and (b) would be granted in favour of the respondent but limited in the terms of

paragraph 4 above noted. The adjustment would, however, be subject to the decision to be rendered in the Municipal Appeal.

S.L.P.(C) Nos. 6390, 6391, 6392, 6407, 6408, 6393, 6394, 6395, 6396, 6398, 6401, 6409, 6404, 6405, 6402, 6403, 6406, 6399 & 6410 of 2005:

Leave granted.

The appeals are allowed in terms of the order in Civil Appeal arising out of

S.L.P.(C) No.6388/2005.

.....J.

(Y.K. SABHARWAL)

J.

.....

(P.P. NAOLEKAR)

New Delhi,

May 02, 2005.