



Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9988 OF 2023
AND
WRIT PETITION NO. 9989 OF 2023
AND
WRIT PETITION NO. 9990 OF 2023

Wintry Engineering & Chemicals Pvt. Ltd. ..Petitioner
Vs.
The State of Maharashtra & Ors. ..Respondents

Mr. R. V. Desai, Senior Advocate with Mr. Deepak Bapat, Ms. Sonali Bapat, Mr. Sumedh Hinge and Mr. Pramod Kathane for Petitioner.
Ms. Shruti Vyas, 'B' Panel Counsel for State/Respondent No.1.
Mr. A. S. Rao for Respondent Nos.2 and 3.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : AUGUST 08, 2023

ORAL JUDGMENT (Per G.S.Kulkarni, J.):

1. These are three petitions filed under Article 226 of the Constitution of India whereby a challenge has been raised by the petitioner to the assessment orders dated 14 September, 2022 pertaining to the financial years 2015-16, 2016-17 and 2017-18, assessing the petitioner for payment of the Local Body Tax (for short, "the LBT") under the Maharashtra Municipal Corporation Act, 1949 (for short, "the MMC Act") by the Kalyan-Dombivali City Municipal Corporation (for

short the “**Municipal Corporation**”). There is also a prayer assailing the notice demanding such tax dated 14 June, 2023. As the prayers made in these three petitions are similar (except for the different periods), for convenience, the prayers as made in the first petition are required to be noted which read thus:-

“(a) Quashing and setting aside the impugned order dated 14/06/2023 as per “Exhibit-A” and declaring that ‘Chole’ village is not included in the local urban area of the Kalyan-Dombivali Municipal Corporation.

(b) Quashing and setting aside the impugned Assessment order dated 14/09/2022 as per “Exhibit-E” and directing the Respondent No.3 to refund the amount paid by the Petitioner or recovered from the petitioner on account of LBT, interest and penalty;

(c) Declaring that sub-rule (2) and sub-rule (3) of Rule 48 of the LBT Rules respectively for levy of penalty and interest are ultra virus to the Municipal Act.

(d) Cancelling the LBT registration Certificate as per “Exhibit-F”;

(e) That pending hearing and final disposal of this Petition, the recovery of Rs. 2,47,10,854 arising out of Assessment order dated 14/09/2022 as per “Exhibit-E” be stayed;

(f) Interim and ad-interim reliefs in terms of prayer clause No. (d) above be granted.”

2. Mr. Desai, learned senior counsel for the petitioner in support of the prayers as made in the petitions, has three principal submissions. The First submission is to the effect that the municipal corporation would not have any jurisdiction to assess the petitioner for levy of the LBT, in as much as the petitioner whose factory is situated at MIDC-Chole Village is

outside the jurisdiction of the municipal corporation. In support of such contention, Mr. Desai has referred to a notification dated 14 May, 2015 issued by the Government of Maharashtra, in its Urban Development Department. Mr. Desai's contention referring to the said notification, is that only those villages whose names are set out in Schedule-I of the said notification, would be required to be held to form part of the municipal area, whereunder Village Chole has not been included, and for such reason, the municipal corporation would not have any jurisdiction to levy LBT to the petitioner.

3. The second submission as urged by Mr. Desai is to the effect that the provisions under the MMC Act pertaining to the LBT stood deleted by Maharashtra Act No. XLII of 2017. Hence, by deletion of the charging provisions namely of Section 127 of the MMC Act, and the corresponding provision in relation to the levy and collection of the LBT, there is no warrant for the municipal corporation to either make any assessment, much less demand any LBT against the petitioner.

4. The third submission as urged by Mr. Desai is that it was illegal for the respondent/corporation to demand interest and penalty, as it is his submission that the LBT provisions would not permit levy of penalty and

interest and if at all the rules provide for it, they are ultra virus the Municipal Corporation Act.

5. Ms. Shruti Vyas, 'B' Panel Counsel for State/Respondent No.1 and Mr. A. S. Rao, learned counsel for Respondent Nos.2 and 3 have opposed these petitions on the ground that none of the contentions as urged on behalf of the petitioner are tenable. It is also contended that the petitioner has alternate remedy of challenging the assessment orders by filing statutory appeals as provided for under Section 406 of the MMC Act.

6. In so far as the first submission of Mr. Desai is concerned, on Village "Chole" not falling within the municipal area of the KDMC is concerned, we may note that the State of Maharashtra by virtue of notification dated 14 May, 2015 (Exhibit-C to the petition) has notified the revised boundaries of the municipal corporation after inclusion of the area specified in Schedule-I to be an area as specified in Schedule-II, which is appended to the said notification. From the reading of the said notification, it is clearly seen that the same has been issued in the context of the requirements of clause (2) of Article 243-Q of the Constitution read with Section 3(3)(a) of the MMC Act. To appreciate Mr. Desai's submission in this regard, it would be necessary to not only note the said

notification, but also the statutory provisions under which the notification has been issued. The relevant provisions of the Constitution and of the MMC Act read thus:-

“243Q of the Constitution.

Constitution of Municipalities.—

- (1) There shall be constituted in every State,—
- (a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;
 - (b) a Municipal Council for a smaller urban area; and
 - (c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

- (2) In this article, “a transitional area”, “a smaller urban area” or “a larger urban area” means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

Relevant provisions of the MMC Act are as under:

Section 2(30A)- “larger urban area” means an area specified as a larger urban area in a notification issued under clause (2) of article 243-Q of the Constitution of India or under the Act.

Section 3 Specification of larger urban areas and constitution of Corporations -

- (1) The Corporation for every City constituted under this Act existing on the date of coming into force of the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994, specified as a larger urban area in the notification issued in respect thereof under clause (1) of article 243-Q of the Constitution

of India, shall be deemed to be a duly constituted Municipal Corporation for the larger urban area so specified forming a City, known by the name “ The Municipal Corporation of the City of ”.

[(1A) The Corporation of the City of Nagpur incorporated under the City of Nagpur Corporation Act, 1948 for the larger urban area specified in the notification issued in this respect under clause (2) of article 243-Q of the Constitution of India shall, on and from the date of coming into force of the Bombay Provincial Municipal Corporations (Amendment) and the City of Nagpur Corporation (Repeal) Act, 2011, be deemed to have been constituted under this Act and accordingly the provisions of this Act shall apply to the area of the City of Nagpur.]

(2) Save as provided in sub-section (1), the State Government may, having regard to the factors mentioned in clause (1) of article 243-Q of the Constitution of India, specify by notification in the Official Gazette, any urban area with a population of not less than three lakhs as a larger urban area.

(2A) Every larger urban area so specified by the State Government under sub-section (2), shall form a City and there shall be a Municipal Corporation for such larger urban area known by the name of the “ Municipal Corporation of the City of”.]

(3) [(a) [Subject to the provision of sub-section (2), the State Government] may also from time to time after consultation with the Corporation by notification in the Official Gazette alter the limits specified. for any city under sub-section (1) or sub-section (2) so as to include therein or to exclude therefrom, such area as is specified in the notification.]

[(b) Where any area is included within the limits of the 4[larger urban area] under clause (a), any appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, by-laws or forms made, issued, imposed or granted under this Act or any other law, which are for the time being in force in the 5[larger urban area] shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise provided in section 129A or any other provision of this Act, apply to and be in force in the additional area also from the date that area is included in the 5[larger urban area].]

(4) The power to issue a notification under this section shall be subject to the conditions of previous publication.

[Provided that, where the population of any urban area, in respect of which a Council has been constituted under the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, as per the latest census figures has exceeded three lakhs, the State Government may, for the purpose of constituting a Corporation under this Act for such urban area, with the same boundries, dispense with the condition of previous publication of the notification under this section.]”

(emphasis supplied)

7. Thus, Article 243Q of the Constitution provides for “Constitution of Municipalities”. Sub-clause (c) of Clause (1) thereof provides that there shall be constituted in every State, a municipal corporation for a larger urban area. Sub-clause (2) of Article 243Q would provide that for the purposes of the said Article, “a transitional area”, “a smaller urban area” or “a larger urban area” means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, may specify by public notification for the purposes of ‘Part IX-A’ of the Constitution.

8. Section 3 of the MMC Act would be required to be read with sub-clause (2) of Article 243Q of the Constitution, as Section 3 of the MMC Act provides for specification of larger urban areas and Constitution of the

Corporation. Sub-section (1) of Section 3 specifically refers to the provisions of clause (1) of Article 243Q of the Constitution. It also provides that the Corporation for every City constituted under the MMC Act, existing on the date of coming into force of the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994, specified as a “larger urban area” in the notification issued in respect thereof, under clause (1) of article 243-Q of the Constitution, shall be deemed to be a duly constituted Municipal Corporation, for the ‘larger urban area’, so specified forming a City, known by the name of the respective Municipal Corporations. Sub-section (2) of Section 3 provides that save as provided in sub-section (1), the State Government may, having regard to the factors mentioned in clause (1) of Article 243-Q of the Constitution, specify by notification in the Official Gazette, any urban area with a population of not less than three lakhs as a ‘larger urban area.’ Further, sub-section (2A) of Section 3 provides that every ‘larger urban area’ so specified by the State Government under sub-section (2), shall form a City and there shall be a Municipal Corporation for such ‘larger urban area’ known by the name of the respective Municipal Corporations of the City. What is relevant for the present proceedings are the provisions of sub-section (3) of Section 3 and clauses (a) and (b) thereof. Clause (a)

of sub-section (3) of Section 3 provides that subject to the provision of sub-section (2), the State Government may also from time to time after consultation with the Corporation by notification in the Official Gazette, alter the limits specified for any city under sub-section (1) or sub-section (2), so as to include therein or to exclude therefrom, such area as is specified in the notification. Clause (b) of sub-section (3) provides that where any area is included within the limits of the larger urban area under clause (a), any appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, by-laws or forms made, issued, imposed or granted under the Act or any other law, which are for the time being in force in the 'larger urban area' shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise provided in section 129A or any other provision of the MMC Act, apply to and be in force in the additional area, also from the date that area is included in the 'larger urban area'. Thus, when a particular area forms part of a larger urban area as notified in such manner, it needs to form part and/or fall within the municipal corporation limits as notified.

9. In so far as the notification as issued by the State Government, as referred by Mr. Desai is concerned, it is the notification dated 14 May, 2015 which is required to be noted which reads thus:-

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08 August, 2023

“ URBAN DEVELOPMENT DEPARTMENT
Hutatma Rajguru Chowk, Madam Cama Marg, Mantralaya,
Mumbai 400 032 dated the 14th May 2015
NOTIFICATION

MAHARASHTRA MUNICIPAL CORPORATIONS ACT, 1949.

No. KDMC.1015/C.R.15/15/UD-28.- Whereas, by the Government Notification, Urban Development Department, No. KDMC.1015/C.r.15/15/UD-28, dated the 11th March 2015 published in the Maharashtra Government Gazette, Extraordinary Part-I-A Central Sub-Division, dated the 11th March 2015, the Government of Maharashtra had announced its intention to issue a notification in exercise of the powers conferred by clause (a) of sub-section (3) of section 3 of the Maharashtra Municipal Corporations Act (LIX of 1949), with a view to alter the limits of the Kalyan-Dombivali Municipal Corporation so as to include therein certain areas;

And whereas, the objections and suggestions received pursuant to the said notification within the period mentioned therein have been considered by the Government;

And whereas, having regard to the factors mentioned in clause (2) of article 243-Q of the Constitution of India, it is expedient to alter the limits of the Kalyan-Dombivali Municipal Corporation so as to include therein certain areas;

Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (3) of section 3 of the Maharashtra Municipal Corporations Act, and of all other powers enabling it in that behalf, the Government of Maharashtra after consultation with the Municipal Corporation of the City of Kalyan-Dombivali and after previous publication as required by sub-section (4) of the said section 3, hereby with effect from 1st June 2015, alters the limits of the larger urban area for which the Municipal Corporation of the City of Kalyan-Dombivali has been constituted, so as to include therein the areas specified in Schedule-I appended hereto. The revised boundaries of the Kalyan-Dombivali Municipal Corporation after inclusion of the area specified in Schedule-I, shall be such as specified in Schedule-II appended hereto.

Schedules – I

The description of area to be included in the larger urban area of the Municipal Corporation of the City of Kalyan-Dombivali

Sr.No.	Name of the revenue Village	Area of the villages to be included in area of the Kalyan-Dombivali Municipal Corporation
(1)	(2)	(3)

1.	Ghesar	Entire area of revenue village
2	Hedutane	Entire area of revenue village
3	Umbroli	Entire area of revenue village
4	Bhal	Entire area of revenue village
5	Dwarli	Entire area of revenue village
6	Menere	Entire area of revenue village
7	Vasar	Entire area of revenue village
8	Ashele	Entire area of revenue village
9.	Nandivali Turf/ Ambernath	Entire area of revenue village
10	Advali- Dhokali	Entire area of revenue village
11	Davadi	Entire area of revenue village
12	Chinchpada	Entire area of revenue village
13	Pisvali	Entire area of revenue village
14	Golivli	Entire area of revenue village
15	Sonarpada	Entire area of revenue village
16	Mangaon	Entire area of revenue village
17	Kole	Entire area of revenue village
18	Nilaje	Entire area of revenue village
19	Katai	Entire area of revenue village
20	Usarghar	Entire area of revenue village
21	Gharivali	Entire area of revenue village
22	Sandap	Entire area of revenue village
23	Bhopar	Entire area of revenue village
24	Nandivali- Panchanand	Entire area of revenue village
25	Asade	Entire area of revenue village
26	Sagaon	Entire area of revenue village
27	Deslepada	Entire area of revenue village

Schedule-II

The revised boundaries of the larger urban area for which the Municipal Corporation for the City of Kalyan-Dombivali

1. North-Southern bank of Ulhasnagar river and Southern bank of Bhatsa (Kalu) River alongwith the Northern boundary of village viz. Umbarde, Kolivali, Gandhare, Barave, Atali, Ambivali turf Barhe, Balyani, Manda, Titwala, Chole and Thakurli.
2. East-Along the Eastern and Southern boundaries of village Titwala up to the Southern boundary of village Manda and along the Eastern-Southern boundary of village Manda up to the Eastern-Southern boundary of village Balyani. Along the Eastern boundary of village Umbharni up to the Eastern-Southern boundary of village Mohili. Along the Northern bank of Waldhuni River, Southern boundary of village Galegaon, Mohane, Vadavali up to the southern-eastern boundary of village Shahad and up to the western boundary of Ulhasnagar Municipal Corporation (along the eastern boundaries of village Ashele, Khadegolavali) up to the Eastern boundary of village Aashele, Chinchpada, Manere, Vasar.
3. South-Along the Southern boundaries of villages viz. Vasar, Bhal, Umbroli up to the Eastern-southern boundary of village Hedutane and further up to Southern boundary of villages viz. Hedutane, Nilaje, Ghesar.
4. West-Along the boundary of village viz. Ghesar, Nilaje, Katai, Usaraghar, Sandap, Bhopar and further along Eastern bank of Ulhas River towards up to the Western boundaries of village Kopar, Dombivali (old) and Thakurli.”

10. It is clear from the reading of the above notification that it is issued in exercise of the powers conferred on the State Government under clause (a) of sub-section (3) of Section 3 of the MMC Act. It also specifically refers to the factors mentioned in clause (2) of Article 243Q of the Constitution, as also to the revised boundaries of the municipal corporation, to the effect that after inclusion of the area specified in Schedule-I, it shall be such area as specified in Schedule-II. Schedule-II of the notification provides for the revised boundaries of the larger urban

area for which the Municipal Corporation for the City of Kalyan-Dombivali, in which in paragraph 1 under the title “North”, Village Chole has been included. Thus, on a conjoint reading of Article 243Q read with Section 3(3)(a) and (b) of the MMC Act, as also the definition of the larger urban area as provided in Section 2(30A) of the MMC Act, it is clear that Village Chole forms part of the revised boundary of the larger urban area as Article 243Q read with the provisions as noted by us above of the MMC Act would contemplate. Thus, Mr. Desai’s contention that village Chole is not part of the revised boundary of the larger urban area or for that matter, is out side the jurisdiction of the KDMC, is untenable.

11. In so far as the second contention as urged by Mr. Desai referring to the provision of the Maharashtra Act No. XLII of 2017 is concerned, to submit that the provisions of the LBT stand deleted and once the provisions are deleted, the municipal corporation would not have any jurisdiction to levy LBT, also cannot be accepted. This in view of the clear provision of Section 78 of the Maharashtra Act No. XLII of 2017 which is a saving provision, which provides that the amendments made by the said Act to the Maharashtra Municipal Corporations Act shall not affect the provisions of the MMC Act, when it provides that notwithstanding the amendments made in the Mumbai Municipal Corporation Act, by such

Act (Maharashtra Act No. XLII of 2017), those laws and all rules, regulations, orders, notifications, form, certificates and notices, appointments and delegation of powers issued under the MMC Act which were in force immediately prior to the appointed day of the Maharashtra Goods and Services Tax Act, 2017, shall subject to the other provisions of the said Act, in so far as they apply, continue to have effect after the appointed day of the Maharashtra Goods and Services Tax Act, 2017, for the purposes of the levy, returns, assessment, re-assessment, appeal, determination, revision, rectification, reference, limitation, production and inspection of accounts and documents and search of premises, transfer of proceedings, payment and recovery, calculation of cumulative quantum of benefits, exemption from payment of tax and deferment of due date for payment of tax, cancellation of the certificate of Entitlement etc. as also whether or not the tax, penalty, interest, sum forfeited or tax deducted at source, if any, in relation to such proceedings is paid on or before the appointed day. Thus, Section 78 has clearly saved the applicability of the LBT provisions for the relevant period even after coming into force of the GST regime. Thus, Section 78 of the Maharashtra Act No. XLII of 2017 itself provides that the repeal is in view of the provisions of the MGST Act, 2017 being brought into force.

12. Thus, In view of the above clear position in law, we cannot accept the contention as urged by Mr. Desai that in view of the deletion of the provisions of the LBT by Maharashtra Act No. XLII of 2017, the saving clause would not operate and the entire exercise of assessment as undertaken by the municipal corporation in regard to the LBT being levied by the municipal corporation is without jurisdiction. Such argument of Mr. Desai is in fact contrary to the provisions of Section 78 of the Maharashtra Act No. XLII of 2017 and Section 173 of the MGST Act.

13. In so far as the third contention is concerned, we are not inclined to examine such contention, in as much as the rules themselves are clear that they would provide for interest and penalty to be levied in the event the circumstances so arise and the tax has not been paid as per the provisions of the Act. It is not the petitioner's case that the rules are framed without any corresponding provision and the power vested under the MMC Act. This apart, we also find that such a challenge as mounted in the petition on the interest and penalty, is a contention in desperation. In the context of the contention as raised by the petitioner, we also cannot be oblivious of the fact that the petitioner had voluntarily registered itself as a dealer under the provisions of the MMC Act, as also has partly deposited the

LBT due and payable, and now after the assessment orders are passed, and a demand is made by the petitioner against the petitioner, the petitioner decided to knock the doors of this Court mounting the challenge as noted by us above.

14. In the aforesaid circumstances, we are of the clear view that the petitions cannot be entertained and are liable to be dismissed. However, dismissal of the petitions would not preclude the petitioner from availing appropriate alternate remedy of filing an appeal by invoking the provisions of Section 406 of the MMC Act. If such appeal is filed by the petitioner, all contentions of the petitioner are expressly kept open.

15. The petitions are accordingly dismissed in the above terms. No costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]