

(2001) 07 BOM CK 0081

In the Bombay High Court

Case No : Writ Petition No. 1624 of 1996

Pragji Vrindavan Premises Co-operative Society Ltd. and
Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 03-07-2001

Acts Referred:

Maharashtra Housing and Area Development Act, 1976 — Section 82

Maharashtra Housing and Area Development Act, 1977 — Section 83, 83(1), 83(2)

Citation : AIR 2002 Bom 6 : (2001) 4 BomCR 748 : (2001) 4 BOMLR 578 :
(2002) 1 MhLj 298

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : Tejas G. Vora and Girish Vora, for the Appellant; K.R. Belosey, for the Respondent

Judgement

1. The first petitioner is a Co-operative Society which was registered on 29th April, 1978 under the Maharashtra Co-operative Societies Act, 1960 ("the Act"). Under a Deed of Conveyance executed on 20th July, 1977 the first petitioner has become an absolute owner of the land bearing No. 20/24, Dhirubhai Marg, Bombay-400 002. Accordingly, it has been stated that Index II has been obtained by the petitioners evidencing that the first petitioner is the absolute owner of the property. Prior to the execution of the Deed of Conveyance, a building known as Pragji Vrindavan Mala occupied by several tenants stood on the aforesaid piece of land. The said building was over a hundred years old. The tenants formed a Co-operative Society by the name of Pragji Vrindavan Premises Co-operative Society Ltd., the first petitioner, which in turn purchased the property from the original landlords who were the trustees of a trust known as the Dwarkadas Pragji Vrindavan Charitable Trust. On 17th April 1988, the rear portion of the building collapsed completely rendering the building uninhabitable. Thereafter, the members of the Society resolved to pull down the entire building and reconstruct a new building on the site. Accordingly, the Cooperative Society

approached the Bombay Housing and Area Development Board (respondent No. 4). The fourth respondent contributed a total amount of Rs. 4.78 lakhs towards the cost of construction. The total cost of construction is stated to have exceeded Rs. 30 lakhs and the balance, over and above the amount which was contributed by the fourth respondent, was paid by the members of the first petitioner. The construction of the building was commenced in July 1988 and was completed in June 1990. The building is now in the occupation of the members of the Co-operative Society.

2. The Mumbai Building Repairs and Reconstruction Cess is levied under the provisions of Section 82 of the Maharashtra Housing and Area Development Act, 1976. The amount of cess is recovered by the Bombay Municipal Corporation under Sub-section 3 of Section 82. Section 83 provides for the exemption of certain buildings and lands from the payment of cess. Under Clause (g) of Sub-section (1) of Section 83, an exemption from cess is provided in respect of lands and buildings vested in or leased to a Cooperative Society. The proviso to Clause (g) stipulates that these buildings shall be entitled to exemption only if more than one half of the total number of tenements is occupied by the members of that society. Under Clause (j) of Sub-section (1) of Section 83, buildings exclusively used for non-residential purposes are exempted from cess. Under Clause (n), buildings erected or which may be erected in an area, after the date on which the Bombay Building Repairs and Reconstruction Board Act, 1969 came into force in such area are similarly exempted from the payment of cess.

3. An application was made by the petitioner for the grant of an exemption to the Housing Board and it appears that a personal hearing was given to the petitioners. By a letter dated 23rd June, 1992, the petitioners recorded the relevant facts of the case and requested for the grant of an exemption under Clauses (g) or (j) of Sub-section (1) of Section 83. On 29th March, 1993, a bill for repairs for the period 1st April, 1992 to 30th September, 1992 was received by the petitioners in the amount of Rs. 61,862/-. Thereafter, on 4th August, 1993 a bill for the period of 1st October, 1992 to 31st March, 1993 in the amount of Rs. 80,555/- was received. The petitioners were served with a notice on 24th August, 1993 of the third respondent calling upon them to pay an amount of Rs. 1,42,427/-. By their letters dated 21st September, 1993 and 30th November, 1993, the petitioners reiterated the request for an exemption from the payment of the repair cess and expressed their readiness to refund the contribution which had been made by the Housing Board. On 21st March, 1994 a further bill for repair cess was received by the petitioners in the total amount of Rs. 2,42,972/-. The petitioners have thereafter, followed up the matter with the respondents by several letters dated 27th October, 1994, 22nd December, 1994, 27th March, 1995 and 4th December, 1995 seeking an exemption from the payment of cess.

4. Under the provisions of Section 83(1)(g) lands and buildings vesting in, or leased to a co-operative housing society are entitled to an exemption from the payment of cess subject to the condition that more than one-half of the total

number of tenements is occupied by the members of that Society. Similarly, under Clause (j), buildings exclusively used for non-residential purposes are exempted from the payment of cess. Under Clause (n), buildings erected or which may be erected in an area, after the date on which the Bombay Building Repairs and Reconstruction Board Act, 1969 came into force are similarly exempted. Under Sub-section (2) of Section 83, as it originally stood, it was provided that notwithstanding anything contained in Sub-section (1), if a building is deemed to be structurally repaired at any time by the Board under this Act, then that building, after such repairs shall not be exempt from or be entitled to be exempt from the payment of cess under Clauses (g), (i), (j), (k) or (l) of that sub-section. Subsequently, by Maharashtra Act No. 12 of 1989 the reference to Clause (g) came to be deleted in Sub-section (2). Sub-section (2) has since been deleted from the provisions of the statute book by the Maharashtra Act No. 16 of 1998. That being the position, the petitioners are entitled for an exemption from the payment of cess. No affidavit in reply has been filed on behalf of the respondents to oppose the present petition. The petitioners had applied for exemption from the payment of cess by their letter dated 23rd June, 1992 which was written soon after the grant of a personal hearing by the Housing Board. Having regard to the Judgment of the Learned Single Judge of this Court, (D.R. Dhanuka, J.) in Pearl Mansion Co-operative Housing Society Ltd, v. Municipal Corporation of Greater Bombay, reported in 1994 Mh.L.J. 1133, the petitioners will be entitled to a refund of the amount, if any, that has been collected from them after the date of the aforesaid application.

5. When the Petition came to be admitted on 28th August, 1996, an order was passed by the learned Single Judge granting interim relief in terms of prayer Clauses (c) and (d) subject to the condition that the petitioners deposit an amount of Rs. 4.80 lakhs. In the circumstances, having regard to the provisions of the Act, the demand for repair cess is not sustainable since the petitioners are entitled to an exemption u/s 83 of the Act. The demand for repair cess under the impugned bills/demand notices set out in Exh. H, Exh. R. and Exh. S are quashed and set aside. The petitioners will be entitled to a refund of the repair cess, if any, paid by the petitioners on or after the date of their application dated 23rd June, 1992, The fourth respondent will be entitled to withdraw and retain the amount of Rs. 4.80 lakhs deposited by the petitioners in pursuance of the interim order, if the amount is not already withdrawn.

6. The Writ Petition is made absolute in the aforesaid terms. In the circumstances, there shall be no order as to costs.

7. Order accordingly: