M/S. Nizamï¿½s Restaurant Private Limited & Anr. Vs Kolkata Municipal Corporation & Ors.

Court: Calcutta High Court (Appellete Side)

Date of Decision: Dec. 21, 2023

Acts Referred: Constitution Of India, 1950 â€" Article 14, 265
Kolkata Municipal Corporation Act, 1980 â€" Section 131, 131(2), 131(2)(e), 131(3), 170, 179(2), 307, 426, 427, 430, 430(a)(i), 432, 432(1)(c), 573
Indian Easements Act, 1882 â€" Section 52

Hon'ble Judges: Saugata Bhattacharyya, J

Bench: Single Bench

Advocate: Sakti Nath Mukherjee, Achintya Banerjee, R.N. Chakraborty, Tanusree Das, Ashoke Kumar Banerjee, Biswajit Mukherjee, Swapan Kumar Debnath, Sourav Chaudhuri

Final Decision: Disposed Of

Judgement

1. Writ petition is directed against two demand notices both were issued by the Superintendent, S.S. Hogg Market one is dated 14th January, 2011 and

another is dated 21st November, 2011 whereby M/s. NizamÃ¢â‚¬â„¢s Restaurant Private Limited was first asked to pay Rs.2,79,02,453/- and

subsequently the reduced amount of Rs.2,10,56,342/- towards various charges as indicated in the said two impugned demand notices. The decision of

the Municipal Commissioner, Kolkata Municipal Corporation which has been taken pursuant to the order passed by a co-ordinate Bench on writ

petition being WPA 22459 of 2011 on 31st January, 2012 which is Ã¢â‚¬ËœAnnexure P-9Ã¢â‚¬â„¢ to the writ petition has also been questioned in the writ

petition which supports the demand lodged on behalf of the Kolkata Municipal Corporation (hereinafter referred to as Ã¢â‚¬Å“KMCÃ¢â‚¬) vide aforesaid two

demand notices. However, it needs to be stated herein on re-examination of the quantum of demand as raised vide notice dated 21st November, 2011,

same was subsequently reduced to Rs.2,05,81,725/- which the petitioners were asked to pay to the KMC.

2. The writ petitioners are represented by Mr. Sakti Nath Mukherjee, learned senior advocate and during course of his submission first the meaning of

Ã¢â‚¬Å“stallageÃ¢â‚¬ was narrated before this Court in reference to the meaning attributed to the word Ã¢â‚¬Å“stallageÃ¢â‚¬ in several dictionaries and it was

demonstrated before this Court that the word Ã¢â‚¬Å“stallageÃ¢â‚¬ connotes onetime payment which should not be construed as continuous liability on the

person who is required to pay stallage which is different from rent since rent bears the meaning of continuous payment month by month. It has further

been submitted on behalf of the writ petitioners that stall operators are not tenants but licensees and the same cannot be transferred. Original

Recorded Permit Holder (hereinafter referred to as Ã¢â‚¬Å“RPHÃ¢â‚¬) was Sk. Nizam who died on 8th April, 1972 leaving behind four daughters, his widow

and son Irshad Alam. After the death of original RPH due to financial stringencies the restaurant had to be closed down and thereafter with the

assistance of Shelter Projects Limited the business of restaurant was re-started on formation of a company namely M/s. NizamÃ¢â‚¬â„¢s Restaurant

Private Limited. After induction of Shelter Projects Private Ltd. in the restaurant business and formation of the company as stated above an

application was made before the KMC on 19th March, 2009 for change of name in respect of six stalls as a single unit since it has been contended on

behalf of the petitioners that from the very beginning the restaurant was being operated as a single unit utilizing six stalls. Based on such application

for change of name inducting the aforesaid third party the superintendent S.S. Hogg market issued impugned demand notices dated 14th January, 2011

and subsequently dated 21st November, 2011 demanding charges for mutation, regularization of excess area, stallage, amalgamation of stalls, penalty

for amalgamation of stalls, charges for sub-floor areas, charges for excess area, penalty for encroachment and penalty for transferring the said unit of

six stalls to M/s. NizamÃ¢â‚¬â„¢s Restaurant Private Limited without permission of KMC. It has already been stated above that though vide demand

notice dated 21st November, 2011, Rs.2,10,56,342/- was demanded but on waiving amalgamation charge of six stalls into one unit on re-examination of

such demand finally Rs.2,05,81,725/- was demanded from the petitioners.

3. The basis of making such demand by the KMC is primarily questioned by the petitioners on the count that calculation and imposition of such

charges is without authority. While quantifying stallage charge unnecessarily multiplier was applied which has no legal sanctity. In reference to Section

573 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as the Ã¢â‚¬Å“said Act of 1980Ã¢â‚¬) it has been contended that after the lapse

of three years from the date on which the sum becomes due and payable the demand cannot be raised as it has been done in the present case by

issuing aforesaid two impugned demand notices. Last of all according to the petitioners the demand lodged by the KMC against the petitioner is

arbitrary and inadmissible in view of the relevant provisions of the said Act of 1980. Another plank of submission of the petitioners rests on Article 265

of the Constitution of India which provides no tax shall be levied or collected except by authority of law. According to the petitioners since the demand

made by KMC is not backed by statutory provisions of the said Act of 1980 which makes such demand nugatory on the strength of Article 265.

4. It has been argued that since Sk. Nizam was RPH and original licensee which is not transferrable, no charge can be imposed for transfer of the

said unit of six stalls first to Sk. Irshad Alam and subsequently to M/s. Nizam Restaurant Private Limited. It has also been submitted that stallage

charge coupled with multiplier is also not permissible in terms of the relevant provisions of the said Act of 1980. In this regard reliance has been

placed on Section 430 and Section 131 of the said Act of 1980. Section 430 provides the Municipal Commissioner may charge stallage, rent and fee as

may from time to time be fixed by the corporation for the occupation or use of any stall, shop, stand, shade or pen in municipal market or municipal

slaughter-house. According to the petitioners most of the charges imposed vide impugned demand notices cannot be construed as stallage, rent or fee

therefore KMC cannot levy such charges unjustifiably upon the petitioners. In other words, KMC can only impose stallage, rent and fee under the

relevant provisions of the said Act of 1980 that authorizes KMC to levy. While questioning the authority of KMC to impose charges as contained in

aforesaid two impugned demand notices one well-known proposition of law has been referred by Mr. Mukherjee that natural person has the capacity

to do all lawful things unless his capacity has been curtailed by some rule of law; it is equally a fundamental principle that in case of a statutory

corporation, it is just the other way. The corporation has no power to do anything unless those powers are conferred on it by the statutes, which

creates it (See: Manimuddin Bepari vs. Chairman of the Municipal Commissioner, Dacca, reported in 40 CWN 17). While laying stress on this

principle the judgment reported in (2007)3 CHN (Asian Leather Limited & Another vs. Kolkata Municipal Corporation & Ors.) has been referred to

on behalf of the petitioners. Borrowing inspiration from the said well-known principle of law it was argued that KMC cannot lay demand as reflected

from the aforesaid two impugned notices beyond the ambit of Section 430 of the said Act of 1980.

5. At the same time attention by this Court has been drawn to Section 131 of the said Act of 1980 which deals with annual budget of the corporation

whereby corporation has been authorized on or before 22nd day of March in each year to adopt for the ensuing year a budget estimate which shall be

the estimate of the receipts and expenditure of the corporation to be received and incurred on account of municipal government of Kolkata. In

reference to the aforesaid provisions as contained in Section 430 and Section 131 it has been argued that in budget that rate of stallage, rent or fee can

be fixed but new head cannot be introduced which would make the KMC entitled to impose and demand different category of charges which have not

been contemplated under Section 430(a)(i). In other words, charge or demand needs to be authorized by the statute under Section 430(a)(i) and the

same can be validated under Section 131.

6. While demonstrating inadmissibility of the demand which has been termed as unreasonable in respect of utilization of sub-floor area by the

petitioners it is contended that charge can be levied but the quantification must be reasonable. Extension of area at the instance of the petitioners as

alleged by KMC which appears from the demand notices is disputed by the petitioners. Penalty which has been imposed against the petitioner is

questioned on the ground that there is no provision to impose penalty as it has been done in the present case by the concerned authority of KMC

which makes the impugned demand notices bad and untenable. According to the petitioner no application was made for amalgamation of six stalls into

one since from the very beginning those six stalls were utilized as a single unit by the RPH, therefore KMC cannot impose amalgamation charge as it

has been done in the present case.

7. Mr. Mukherjee, learned senior advocate has drawn attention of this Court to the averments made in paragraph 16 of the writ petition wherefrom it

appears that though the restaurant of the petitioners was initially comprising of an area of 3484.25 sq. ft. but on measurement subsequently it was

found that the restaurant covered the area of 5313 sq. ft. and according to the petitioner utilization of such excess area was approved by the Municipal

Commissioner on 10th January, 2004. As per note dated 6th January, 2006 of the Joint Municipal Commissioner total demand towards arrear

fees/charges that was quantified to the tune of Rs.24,00,000/- and the said amount was paid by the petitioners which should be construed as part of

rehabilitation process in order to revive the old restaurant which remained closed for some time due to financial stringencies. According to the

petitioners the arrear provident fund contribution had to be provided by the petitioners for the benefit of its staff amounting to Rs.58,00,000/- and

retirement benefits were paid to the tune of Rs.19,44,600/- .Therefore it has been projected before this Court that petitioners not only paid

Rs.24,00,000/- but in addition thereto for providing service benefits to the staff of the restaurant petitioners paid Rs.58,00,000/- + Rs.19,44,600 =

Rs.77,44,600/- and the aforesaid huge amount spent by the petitioners is required to be considered as a step towards rehabilitation of the unit which

remained closed. In respect of paragraph 12 of the affidavit-in-opposition used on behalf of KMC to the writ petition it has been urged that

Rs.24,00,000/- was assessed by the KMC being the outstanding demand and since the same was duly paid, it constitutes implied approval of inducting

NizamÃ¢â‚¬â„¢s Restaurant Private Limited in order to demonstrate that the proposal of inducting NizamÃ¢â‚¬â„¢s Restaurant Private Limited by the RPH

for running restaurant business has been duly approved by the concerned authority of KMC. Paragraph 4(g) of affidavit-in-opposition and page 31 of

the supplementary affidavit used on behalf of KMC have been relied upon. On perusal of paragraph 4(g) of the affidavit-in-opposition it appears that

KMC decides to grant license in favour of M/s. NizamÃ¢â‚¬â„¢s Restaurant Private Ltd. subject to certain terms and conditions and payment in terms of

demand notice. Whereas page 31 of the supplementary affidavit contains a letter dated 14th January, 2011 issued to the Director of M/s. NizamÃ¢â‚¬â„¢s

Private Limited by Superintendent S.S. Hogg Market intimating that the mayor vide order dated 12th January, 2011 approved the prayer of the

petitioners which was made by the petitioners on 29th March, 2009 seeking mutation based on the agreement dated 15th June, 2007, in favour of M/s.

Nizam Restaurant Private Limited. It was submitted that as per letter dated 14th January, 2011 of superintendent S.S. Hogg Market and the

averments made in paragraph 4(g) of the affidavit-in-opposition the concerned authority of KMC approved the application of the petitioner which was

made in March, 2009. Therefore, after approval of such proposal of inducting M/s. NizamÃ¢â‚¬â„¢s Restaurant Private Limited being a new entity to run

the restaurant which was previously being run by the RPH, charges cannot be levied which is not permissible under the relevant provisions of the

statute. In this regard reliance has been placed on paragraph 11, 12, 13 and 14 of Asian Leather Ltd. & Anr Ã¢â‚¬" vs Ã¢â‚¬" Kolkata Municipal

Corporation & Ors. reported in (2007)3 CHN, page - 476. It is contended based on the law laid down in Ahmedabad Urban Development Authority

vs. Sharad Kumar Jayantikumar Pasawalla reported in AIR 1992 (SC), page Ã¢â‚¬" 2038, paragraph Ã¢â‚¬" 6, that tax and/or fee cannot be imposed by

delegated authority based on implied authority; the provisions must be very specific and empowered such authority to impose tax/fee. Delegated

authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied

intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power. According to the petitioner since Section 430

authorizes KMC to impose stallage, rent, fees the petitioners ought not to be saddled with levying of other charges or fees which have not been

contemplated under Section 430 (a)(i).

8. It is also urged on behalf of the petitioners on the strength of Section 573 of the said Act of 1980 that any sum due to the corporation on account of

any charge, cost, expenses, fee, rate or rent or on any other account under this Act or the rules or the regulations shall be recoverable from the person

from whom such sum is due as if it were a property tax with a rider that no proceeding for recovery of any such sum under Section 573 shall be

commenced after lapse of three years from the date on which such sum becomes due. Therefore, according to the petitioners demand of charge/fee

for utilization of excess area as made by the KMC cannot be countenanced since for a long period the RPH has been utilizing said excess area and

contemporaneously no proceeding was initiated for recovery of charge/fee for such use of excess area. On the aforesaid point of limitation reliance

has been placed on the judgment of the HonÃ¢â‚¬â„¢ble Division Bench reported in (2018) 3 CHN 328 (Sahujain Charitable Society & Anr. vs. The

Kolkata Municipal Corporation & Ors.) paragraphs 27 and 28.

9. It is submitted that only mutation and other mutation related charges can be levied but other charges which have been indicated in the aforesaid

impugned demand notices ought not to have been levied on the petitioners while approving the proposal which was made on 19th March, 2009 on

behalf of the petitioners. At the same time it is also contended that levying of charges including dues for mutation as applied on behalf of the

petitioners must be reasonable and satisfy the test of Article of 14 of the Constitution of India. It has been specifically submitted on behalf of the

petitioners that charges which have been levied including the mutation fee ought to be construed as tax upon placing reliance on the judgment of the

Apex Court reported in (2005) 4 SCC 245 (Calcutta Municipal Corporation and Others vs. Shrey Mercantile(P) Ltd. and Others.), paragraphs 18, 20

and 21.

10. On applying multiplier as it transpires from the impugned notices in order to arrive at a sum as demanded from the petitioners towards rates and

fees including mutation charges, it has been submitted on behalf of the petitioners that the same is not permissible since the statute is silent on use of

multiplier. It is also contended that the demand of the KMC must be reasonable and ought not travel beyond the scope of the relevant statute. In this

regard following judgments have been relied upon:-

i) AIR 1989 SC 1642, M/s. Dwarkadas Marfatia & Sons vs. Board of Trustees of the Port of Bombay;

ii) (2004) 3 SCC 214, Jamshed Hormusji Wadia vs. Board of Trustees, Port of Mumbai & Another).

11. Lastly it has been submitted on behalf of the petitioner that in violation of order dated 31st January, 2012 passed on the previous writ petition being

W.P.A. 22459 of 2011 the Municipal Commissioner passed order without considering the points taken in the written objection filed before the

Commissioner though it was directed vide said order dated 31st January, 2012 that the Commissioner shall consider the points to be taken in the

written objection.

12. In addition to the judgments referred to above being relied upon on behalf of the petitioners other judgments relied upon by the petitioners are as

follows:-

i) (2006) 4 CHN 499, ABL International Ltd. and Anr. vs. Kolkata Municipal Corporation & Ors., paragraphs 29 and 30;

ii) AIR 1992 SC 2038, Ahmedabad Urban Development Authority vs. Sharad Kumar Jayant Kumar Pasawalla and Others, paragraphs 6 and 7;

iii) (2000) 2 CLJ 161, State of West Bengal vs. M/s. Shrey Marchantile Private Ltd. and Ors.;

iv) (2011) 4 SCC 602, Gangadhara Palo vs. Revenue Divisional Officer & Another.

13. Per contra Mr. Ashoke Kumar Banerjee, learned senior advocate ably assisted by Mr. Biswajit Mukherjee, learned advocate representing KMC

submitted that RPH was Sk. Nizam having six stalls covering total area of 3484.25 sq. ft. but on inspection in presence of petitionersÃ¢â‚¬â„¢

representative it was found that the restaurant was being operated on a total area of 5313 sq. ft. consisting of excess area of 1594.40 sq. ft. and sub-

floor area of 234.35 sq. ft. According to KMC license was granted in favour of RPH in respect of six stalls which were amalgamated into one unit.

14. It is further contended that till date no license is granted in favour of Irshad Alam since death of RPH in 1972. While questioning the right of said

Irshad Alam to induct Shelter Projects Pvt. Ltd. into his business of running the said restaurant emphasis is laid on Section 52 of the Easements Act,

1882 which defines Ã¢â‚¬Å“licenseÃ¢â‚¬â€‹. Section 52 of the Easements Act, 1882 is quoted below:-

Ã¢â‚¬Å“52. Ã¢â‚¬Å“LicenseÃ¢â‚¬â€‹ defined. - Where one person grants to another, or to a definite number of other persons, a right to do, or continue to

do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right

does not amount to an easement or an interest in the property, the right is called a license.Ã¢â‚¬â€‹

The purpose of placing reliance on the definition of Ã¢â‚¬Å“LicenseÃ¢â‚¬ as ascribed in the aforesaid Act of 1882 is to demonstrate before this Court that the

license which was granted in favour of RPH is not transferrable and the act of Irshad Alam to induct Shelter Projects Pvt. Ltd. and to form a private

limited company namely M/s. NizamÃ¢â‚¬â„¢s Restaurant Pvt. Ltd. is an inappropriate step which the son of RPH is not authorized to take. According to

KMC NizamÃ¢â‚¬â„¢s Restaurant Pvt. Ltd. being a proprietorship firm or a partnership firm is a completely different legal entity. However, an agreement

was made by the son of RPH on 15th June, 2007 and subsequently on 19th March, 2009 NizamÃ¢â‚¬â„¢s Restaurant Pvt. Ltd., being the petitioner herein,

applied for mutation on enclosing the said agreement dated 15th June, 2007, a copy of the Memorandum of Association and an indemnity bond

undertaking that the petitioners would pay the mutation charges and all other dues as per Kolkata Municipal Corporation Rules and Regulations. On

24th March, 2009 another letter was submitted on behalf of the petitioners declaring the area of stall is 3484.25 sq. ft. but agreed to pay any

difference in fees in connection with the area of the stall in future in terms of the KMC Rules. The said letter of the petitioners dated 24th March,

2009 is annexed to the supplementary affidavit affirmed on behalf of KMC on 7th July, 2023 at page 30.

15. It is relevant to record herein that up to 31st December, 2005 total outstanding dues against the said restaurant was more than Rs.24,00,000/-and

the son of the RPH vide application dated 30th September, 2005 approached the Mayor of KMC that he would pay Rs.5,00,000/-immediately and the

rest amount to be paid @ Rs.2,00,000/- per month for realization of outstanding dues. Such proposal which was presented by the son of RPH vide

application dated 30th September, 2005 was approved by the Mayor and accordingly, Rs.5,00,000/- was paid on 17th January, 2006 and subsequently

on 9th March, 2006, Rs.2,00,000/- was paid. Subsequently, no payment was made thereafter though it was proposed that Rs.2,00,000/-would be paid

per month for realization of outstanding dues. On 16th June, 2007 KMC issued demand notice asking for payment of Rs.19,63,958.00/-up to April 2007

for realization of outstanding stallage and electric charges and on receipt of the said notice on 28th June, 2007 son of RPH paid Rs.20,31,614/-

towards said demand along with interest. According to KMC this was the last payment made towards stallage and electric charges in respect of the

said restaurant.

16. On receipt of the application dated 19th March, 2009 from the petitioners a joint inspection was carried out on 11th September, 2009 to ascertain

the excess area utilized by the petitioners in running the said restaurant and it was found that instead of 3484.25 sq. ft. 5313 sq. ft. area was being

utilized by the petitioners. Thereafter Superintendent of S.S. Hogg Market vide letter dated 14th January, 2011 intimated the petitioners that the Mayor

vide order dated 12th January, 2011 was pleased to approve the prayer which was submitted vide letter dated 29th March, 2009. However, in

paragraph 7(a) of the said supplementary affidavit the date of the said letter of the petitioners was described as 19th March, 2009. But it has been

categorically submitted on behalf of KMC and it also emanates from the letter dated 14th January, 2011 of the Superintendent, S.S. Hogg Market that

such approval is subject to payment of charges relating to mutation, amalgamation, regularization of excess area etc. in connection with six stalls and

the petitioners were requested to make payment at an early date failing which interest would be levied on the said outstanding amount. Such letter

dated 14th January, 2011 is annexed to the supplementary affidavit, at page 31.

17. After approval of prayer granted in favour of the petitioners by the concerned authority of KMC a demand notice dated 14th January, 2011 was

issued by the KMC whereby Rs.2,79,02,453.00/- was demanded towards changing names of licensees, amalgamation of stalls, regularization of

excess area, interest and penalty. Subsequently, on reconsideration of the quantum of demand after receipt of objection from the petitioners the

amount was reduced to Rs.2,10,56,342.00/- and a demand notice dated 21st November, 2011 was issued asking the petitioners to make payment. On

receipt of aforesaid two demand notices a writ petition being W.P.A. No. 22459 of 2011 was filed by the petitioners and the same was disposed of

vide order dated 31st January, 2012 directing the Municipal Commissioner of KMC to dispose of the matter after considering the written notes of

submissions of the petitioners within certain time by passing a reasoned order.

18. Thereafter there was further re-examination of quantification of demand and the total demanded amount was reduced to Rs.2,05,81,725/-; such

demand notice is at page 35 and 36 of the said supplementary affidavit.

19. It has been submitted on behalf of the KMC that while revisiting the quantification of the amount which was demanded from the petitioners though

it was found that there was physical amalgamation of six stalls into one unit without formal permission/sanction of the KMC but the KMC waived the

charges for amalgamation as a special consideration which is recorded in the impugned order of the Municipal Commissioner being Ã¢â‚¬Å“Annexure P-

9Ã¢â‚¬â€‹ to the writ petition.

20. On behalf of KMC, the argument which was advanced by the petitioners based on Article 265 of the Constitution of India, is disputed on the

premise that the demand notice issued to the petitioner is for realization of stallage and other ancillary charges which cannot be equated with tax. It is

further submitted that there is difference between tax and rent/fee; in case of rent/fee there is quid pro quo and based on understanding between the

parties rent/fee is realized. In this regard attempt has been made to distinguish the decision in Asian Leather (supra). In paragraphs 42 and 45 of

Asian Leather (supra) whether the party who deposited the drainage development fee was entitled to recover the same after the relevant circular was

declared ultra vires the KMC Act, 1980 and Rules and Regulations framed thereunder, was the issue before the HonÃ¢â‚¬â„¢ble Division Bench. In

support of the prayer for recovery of deposited amount judgment of the Apex Court in the case of Sales Tax Officer, Benaras and Ors. vs. Kanhaiya

Lal Makund Lal Saraf reported in AIR 1959 SC 135 was relied upon which according to KMC was overruled by the nine Judge Bench of the

Supreme Court reported in (1997) 5 SCC 536 (Mafatlal Industries Ltd. and Ors. vs. Union of India and Ors.). It was the contention of the respondents

that since Kanhaiya Lal (supra) was overruled by the nine Judge Bench of the Supreme Court in Mafatlal Industries Ltd. (supra) the judgment of the

HonÃ¢â‚¬â„¢ble Division Bench in Asian Leather (supra) ought not to have been relied upon by the learned senior counsel representing the petitioners.

21. Another contention which was raised on behalf of the respondents was inapplicability of the judgment of a coordinate Bench in ABL International

Ltd. and Anr. vs. Kolkata Municipal Corporation & Ors. reported in (2006) 4 CHN 499; since against the said judgment appeal was preferred by the

KMC and the HonÃ¢â‚¬â„¢ble Division Bench vide order dated 17th March, 2010 observed that the judgment and order under appeal shall be of no

consequence and the effect and the same was set-aside. The learned counsel representing KMC while placing reliance on the unreported judgment of

the HonÃ¢â‚¬â„¢ble Division Bench dated 17th March, 2010 specifically argued that the learned senior advocate representing the petitioners ought not to

have relied upon an order of the coordinate Bench passed in ABL International (supra) when the said judgment was set-aside by the HonÃ¢â‚¬â„¢ble

Division Bench vide order dated 17th March, 2010 and accordingly it was submitted that there was an attempt on the part of the petitioners to mislead

this HonÃ¢â‚¬â„¢ble Court.

22. It is also submitted that slightest departure in facts turns the principle promulgated by the Court inapplicable in the context of relevancy of the ratio

decided in Asian Leather (supra) by the HonÃ¢â‚¬â„¢ble Division Bench in the present case; according to the respondent the demand made by the KMC

is neither tax nor rent but license fee. In this regard reliance is placed on AIR 2008 SC 690 (State of Rajasthan Vs Ganeshi Lal), paragraphs 14, 15

and 16. In paragraph 14 it has been enunciated by the Apex Court that one additional or different fact may make a world of difference between

conclusions in two cases. Therefore, disposal of cases by blindly placing reliance on a decision is not proper. Said ratio is relied upon in order to

demonstrate before this Court that the issue decided in Asian Leather (supra) is not akin to the issue being considered by this Court in the present

case which centers around demand of license fee, arrear stallage and utilization of excess area for a considerable period of time.

23. By placing reliance on the judgment of the co-ordinate Bench reported in (2003)1CHN 380 (Nepal Chandra Kar & Ors. vs. Calcutta Municipal

Corporation & Ors.) it has been contended that the claim of arrear stallage cannot be resisted on the strength of Section 573 of the said Act of 1980

on applying limitation of three years as provided in the proviso therein. Borrowing inspiration from the judgment in Nepal Chandra Kar (supra) and the

power conferred upon the concerned authority of KMC in terms of Section 432 of the said Act of 1980 it is submitted that in case of realization of

stallage section 573 has no manner of application as it has been decided in the aforesaid case. In addition thereto reliance has also been placed on

section 426 and 427 of the said Act of 1980 in order to demonstrate before this Court that specific restraints are imposed on the licensees of stall and

slaughter-house in the municipal markets.

24. In order to substantiate the demands made on behalf of KMC towards stallage, mutation, use of excess area and sub-floor area it has been

categorically submitted that section 430 of the said Act of 1980 empowers the Municipal Commissioner to charge stallage, rent or fee as may from

time to time be fixed by the corporation in this behalf for the occupation or use of any stall, shop, stand, shed or pen in a municipal market or municipal

slaughter-house. In furtherance thereto according to the respondents in terms of section 131 while adopting for the ensuing year a budget estimate

which shall be the estimate of the receipts and expenditure of the corporation to be received and incurred on account of the municipal government of

Kolkata shall state the rates at which various taxes, surcharges, cesses and fees shall be levied by the corporation in the year next following. Sub-

section (2) of section 131 indicates different accounts in connection with those accounts the budget estimate shall separately state the income and the

expenditure of the corporation to be received and incurred. According to KMC general account as provided under section 131 (2)(e) is the relevant

head under which the issue relating to realization of stallage and other fees as demanded by KMC from the petitioners is covered. It was submitted by

the learned counsel representing KMC that the demand notice issued to the petitioners claiming recovery of stallage and other charges as delineated in

the said notice is not beyond the scheme of the said Act of 1980 and the KMC is authorized by the aforementioned relevant provisions of the said Act

of 1980 to claim such stallage and other charges while approving the proposal which was submitted on behalf of the petitioners vide letter dated 19th

March, 2009. In this regard reliance was placed on an unreported judgment of a co-ordinate Bench dated 13th May, 2005 passed in WPA 1060 of

2003 (Subhasish Deb vs. Kolkata Municipal Corporation & Ors.) wherein it was held that without permission of the Municipal Commissioner no one is

entitled to use a municipal market for selling any animal or article and for the purpose of occupation or use of any stall, the Municipal Commissioner is

entitled to charge such fee as may be fixed by the corporation in that behalf. While dismissing the writ petition the co-ordinate Bench observed that

schedule of rates prescribed by the Municipal Commissioner is in accordance with the powers conferred under Section 430 of the said Act of 1980

and such authority was not challenged, therefore petitioner was held liable to pay the amount that was charged by the corporation towards change of

name. The learned counsel representing KMC made endeavour to distinguish some of the judgments relied upon on behalf of the petitioners.

25. On analysis of chronology of facts, it appears that son of RPH made application on 30th September 2005 to the KMC for payment of outstanding

amount towards stallage and electric charges since up to 31st December, 2005 it was found that Rs.24,00,000/- was due. Vide letter dated 30th

September, 2005 it was proposed that Rs.5,00,000/- would be paid immediately and the rest of the amount to be paid @ Rs.2,00,000/- per month for

clearing the dues up to 31st December, 2005. The request made by the son of RPH vide letter dated 30th September, 2005 was accepted by the

KMC, accordingly payment commenced and on 17th January, 2006 Rs.5,00,000/- was paid and subsequently on 9th March, 2006, Rs.2,00,000/- was

paid but thereafter as per proposal made in the letter dated 30th September, 2005 no payment was made. Subsequently as per demand notice dated

16th June, 2007 for realization of dues up to April, 2007 on 28th June, 2007 son of RPH paid Rs.20,31,614/- towards outstanding dues along with

interest on account of stallage and electric charges. According to KMC this was the last payment made by the son of RPH which is not controverted

by the petitioners. Meanwhile on 15th June, 2007 an agreement was made between son of RPH and the third-party forming M/s. NizamÃ¢â‚¬â„¢s

Restaurant Pvt. Ltd. based on which on 19th March, 2009 application was made for mutation enclosing an indemnity bond whereby an undertaking

was tendered that the petitioners would pay requisite fee and charges. On 24th March, 2009 another letter was submitted by the petitioners intimating

the KMC that the restaurant comprised of 3484.25 sq.ft. and if any difference is found relating to the area of the restaurant the petitioners were ready

to comply with the requirement. The KMC having received the application of the petitioners dated 19th March, 2009 made a joint inspection on 11th

September, 2009 when it was found that instead of 3484.25 sq.ft. being the area allotted to the restaurant comprising of six stalls 5313 sq.ft. was the

area of the restaurant and additionally sub-floor area was also utilized comprising of 234.35 sq.ft. Case has been made out by KMC that initially six

stalls were allotted to RPH that was amalgamated into one unit without any formal approval. Thereafter in consideration of the application of the

petitioners dated 19th March, 2009 on behalf of KMC vide letter dated 14th January, 2011 proposal was approved for induction of third party upon

formation of M/s. NizamÃ¢â‚¬â„¢s Restaurant Pvt. Ltd. on payment of charges applicable as per Market Schedule. The letter dated 14th January, 2011 of

Superintendent, SS Hog Market is quoted below:

Ã¢â‚¬Å“To,

Mr. Arabinda Mukherjee,

Director,

M/S NizamÃ¢â‚¬â„¢s Restaurant Pvt. Ltd.

23-24 Hogg Street

Kol-700027

Sub:- Demand in connection with Mutation,

Amalgamation, regularization of Excess

Area, etc. in respect of STALL no.-H(P)-

16-17,18-19,23-25,26,26/1 &26/2 of S.S

Hogg Market (Old Complex)

Sir,

With reference to your letter dated 29/03/2009, I am directed to state that HonÃ¢â‚¬â„¢ble Mayor vide his order dated 12/01/2011 has been

pleased to approve your prayer.

The demand in connection with charges applicable as per Market Schedule is enclosed herewith for your information.

However, you are requested to make payment at an earliest.

This is also for your information that in case of non-payment of the said demand after expiry of 30(thirty) days from the date of

communication, interest @ 2 % per month will be accruded (sic).

Superintendent

S.S Hogg MarketÃ¢â‚¬â€‹

(emphasis supplied)

26. After issuance of aforesaid letter to the petitioners three demand notices dated 14th January, 2011, 21st November, 2011 and lastly a demand

notice which was approved by the Municipal Commissioner on 4th July, 2012 were served upon the petitioners finally demanding Rs.2,05,81,725/-while

modifying the demand notice which was issued on 14th January, 2011. The concerned authority of KMC waived amalgamation charge and penalty for

amalgamation of stalls which as it appears were levied in the first demand notice.

27. Therefore, it appears that last payment was made on 28th June, 2007 towards arrear stallage and electric charges along with interest till April

2007. On this writ petition an interim order was passed on 4th March, 2013 whereby a coordinate Bench directed the petitioners to deposit

Rs.35,00,000/- and the same has been deposited. Apart from the aforesaid payments made by the petitioners no payment has been made towards

stallage and other charges.

28. In consideration of the submissions made by the parties and on perusal of relevant records and statutory provisions it appears that contention of

KMC is levying of demand based on letter 14th January, 2011 is as per Section 430 and Section 131 of the said Act of 1980. It was contended by the

petitioners that as per Section 430 KMC is empowered to levy stallage, rent and fee and the rates of such levy is to be determined under Section 131

but the same does not authorize the KMC to levy under other heads which are not contemplated under Section 430. According to the petitioners

identical issue came up before the HonÃ¢â‚¬â„¢ble Division Bench in Asian Leather (supra) and the said judgment was assailed before the HonÃ¢â‚¬â„¢ble

Supreme Court in Special Leave to Appeal being Civil No(s). 14443/2007 but the same was dismissed vide order dated 6th August, 2009 refusing to

grant special leave. In Asian Leather (supra) the HonÃ¢â‚¬â„¢ble Division Bench was considering the validity of the circular no. 08 of 2002-03 by which

provision was made for imposition of Drainage Development Fees while sanctioning the building plan on the anvil of Section 307 and Section 131 of

the said Act of 1980. As per Section 307 the Municipal Commissioner is authorized to levy annual fee for drainage and sewerage at the rate to be

fixed under the regulations made thereunder or as per budget estimate under Section 131(3) on the owner or occupier or the person responsible to pay

property tax on any house or land. It has been clearly discussed and clarified in paragraph 18 of Asian Leather (supra) that if as per Section 307 read

with Section 131 provision is made in the budget estimate disclosing the amount to be received and incurred towards drainage account for the ensuing

financial year, an annual fee may be levied upon the owner of building or land or the occupier or the person responsible to pay property tax on any

house or land but realization of Ã¢â‚¬Å“one time moneyÃ¢â‚¬ as condition precedent for sanction of building plan of a proposed building towards drainage

development of the surrounding area or of the adjoining area and laying demand only on those persons seeking sanction of building plan without

covering other land owners or the building owners or the person responsible to pay property tax by issuing the said circular no. 08 of 2002-03 was

found to be inappropriate by the HonÃ¢â‚¬â„¢ble Division Bench. On juxtaposing the facts of Asian Leather (supra) and the present case it transpires the

demand notice of the KMC issued in the present case ought not to be scrutinized in the light of the ratio of Asian Leather (supra) since in that case

demand of Drainage Development Fees was clamped upon the persons who sought for sanction of building plan for drainage development of the

adjoining area segregating those persons from others who are also responsible to pay property tax since the same was found to be not contemplated

under Section 307. In contradistinction to the issue involved in Asian Leather (supra) in the case at my hand demand notice has been issued in terms

of Section 430 read with Section 131 towards stallage and change of name/transfer of interest first from RPH to son of RPH and subsequently from

son of RPH to third party, regularization of excess area and sub-floor area and penalty. For comprehending the issue this Court finds it apt to quote

Section 430 and Section 432 below:-

Ã¢â‚¬Å“430. Levy of stallage, rent and fee.Ã¢â‚¬"The Municipal Commissioner may Ã¢â‚¬¬

(a) charge such stallage, rent or fee as may from time to time be fixed by the Corporation in this behalf Ã¢â‚¬¬

(i) for the occupation or use of any stall, shop stand, shed or pen in a Municipal Market or municipal slaughter-house;

(ii) for the right to expose articles for sale in a Municipal Market;

(iii) for the use of machines, wiehgts, scales and measures provided for in any Municipal Market; and

(iv) for the right to slaughter animals in any municipal slaughter-house, and for the feed of such animals before they are ready for

slaughter; or

(b) farm the stallage, rent or fee chargeable as aforesaid or any portion thereof for such period as he may think fit; or

(c) put up to public auction, or dispose of by private sale, the privilege of occupying or using any stall, shop, stand, shed or pen in a

Municipal Market or municipal slaughter-house for such period and on such conditions as he may think fit.

432. Power to expel person contravening regulations.Ã¢â‚¬"(1) The Municipal Commissioner may, after giving the parties concerned an

opportunity of being heard and in accordance with such regulations as may be made by the Corporation,--

(a) expel from any Municipal Market, municipal slaughter-house or municipal stockyard, for such period as he may think fit, any person

who or whose servant has been found contravening any regulations made under this Act and in force in such market, slaughter-house or

stockyard,

(b) prevent such person, by himself or by his servant, from further carrying on any trade or business in such market, slaughter-house or

stockyard or occupying any stall, shop, standing, shed, pen or other place thereon,

(c) close the stall or shop of the person found to be in default in payment of the stallages or rents or any other dues to the Corporation till

payment is made or recovered under the provisions of this Act, and

(d) determine any lease or tenure which such person may have in any such stall, shop, standing, shed, pen or place.

(2) If the tenant or the agent of the tenant of the owner or the lessee of any private market or slaughter-house has been convicted for

contravening any regulation made under this Act, the Municipal Commissioner may require such tenant or agent to remove himself from

such market or slaughter-house within such time as may be mentioned in the requisition, and if such tenant or agent fails to comply with

such requisition, he may, in addition to any penalty which may be imposed on him under this Act, be summarily removed from such premises

by the owner or the lessee thereof or by the servant of such owner or lessee.

(3) If it appears to the Municipal Commissioner that in any such case the owner or the lessee is acting in collusion with a tenant or an

agent, convicted as aforesaid, who fails to comply with any requisition under sub-section (2), the Municipal Commissioner may, if he thinks

fit, cancel the licence of such owner or lessee in respect of such premises.Ã¢â‚¬‹

(emphasis supplied)

29. Under Section 430(a)(i) it has been provided that the Municipal Commissioner is authorized to charge stallage, rent or fee as may from time to

time to be fixed by the corporation for the occupation or use of any stall, shop, stand, shade, or pen in municipal market or municipal slaughter house

whereas Section 131 deals with adoption of budget estimate containing estimate of receipts and expenditure of the corporation to be received and

incurred on account of municipal government and sub-Section (3) empowers the corporation to prescribe rates at which various taxes, surcharges,

cesses and fees shall be levied by the corporation in the next ensuing year by presenting budget estimate. Therefore, conjoint reading of Section 430

and 131 demonstrates that it is within the authority of the KMC to levy stallage, rent and fees as may from time to time to be fixed by the KMC for

occupation or use of stall, shop, stand, shade or pen in the municipal market and fixation of rate is to be made on presentation of budget for the next

ensuing year wherein income and expenditure of the KMC to be received and incurred on different accounts is to be stated. Section 432(1)(c)

provides the steps which can be taken against the licensee in connection with a stall and it has been provided therein that Municipal Commissioner

after granting opportunity of being heard may close the stall or shop of those persons found to be in default in payment of stallage or rents or any other

dues to the corporation till payment is made or recovered under the provision of the said Act of 1980. Therefore, in consideration of the provision of

Section 131, 430 and 432 KMC is found to be authorized to levy stallage, rents or any other dues upon the licensee of a stall in a municipal market at

the rate prescribed in schedule of rates, taxes, fees and charges for the relevant year in consonance with Section 131(3). It is also stated in the letter

dated 14th January, 2011 of the Superintendent, SS Hogg Market that the petitioners would be requested to make payment at the earliest based on

demand in connection with charges applicable as per Market Schedule which appears to be pre-condition to approve the proposal submitted by the

petitioners vide letter dated 19th March, 2009 based on the agreement between the son of RPH and the third party dated 15th June, 2007.

Accordingly, this Court does not find it to be appropriate to decide the validity of the demand notice issued by the KMC based on ratio in Asian

Leather (supra). KMC has made an attempt to substantiate that the ratio of Asian Leather (supra) is inapplicable in view of nine judge Bench of the

HonÃ¢â‚¬â„¢ble Supreme Court in Mafatlal Industries (supra) but the said decision has been found to be on the point of recovery of the amount paid and

since it has already been discussed hereinabove that the issue involved in the present writ petition is not akin to the point decided in Asian Leather

(supra) this Court is not required to dilate on the applicability of the decision of Apex Court in Mafatlal Industries (supra). In the backdrop of the order

of the HonÃ¢â‚¬â„¢ble Supreme Court dated 6th August, 2009 on the special leave petition preferred by KMC against the judgment of the HonÃ¢â‚¬â„¢ble

Division Bench in Asian Leather (supra) the judgment of the HonÃ¢â‚¬â„¢ble Supreme Court in Gangadhara Palo (supra) was relied upon by the

petitioners since the Special Leave to appeal was not granted by the HonÃ¢â‚¬â„¢ble Supreme Court vide order dated 6th August, 2009. Proposition laid

down in Gangadhara Palo (supra) is no more a good law in view of the decision in Khoday Distilleries Ltd. & Others reported in (2019) 4 SCC 376

wherein the ratio of Gangadhara Palo was impliedly overruled and the decision in Kunhayammed vs. State of Kerela reported in (2000) 6 SCC 359

was affirmed and followed. However, this Court is not required to discuss further on dismissal of the Special Leave Petition by the order dated 6th

August, 2009 preferred against the decision of the HonÃ¢â‚¬â„¢ble Division Bench in Asian Leather (supra) since it has been discussed above that the

ratio in Asian Leather (supra) does not apply in the present case in view of different fact situation.

30. In Subhasis Deb (supra) though the coordinate Bench vide order dated 13th May, 2005 refused to interfere with the demand made by the KMC

but it has specifically been recorded in the said order that the decision was taken since the authority of KMC under Section 430 to levy demand was

not questioned but in Nepal Chandra Kar (supra) in the context of applicability of proviso to Section 573 relating to limitation of three years provided

therein for initiation of proceedings for recovery of any sum it has been decided in paragraphs 7 and 8 that Section 573 applies only to the cases of

recovery of amount of any charge, cost, expenses, fee, rate, rent or on any other account for which no mode of recovery is provided in the said Act of

1980. But in connection with demand for arrear stallage Section 573 is not applicable in view of the authority provided under Section 432(1)(c) since it

has been provided therein that the Municipal Commissioner may close the stall or shop when a person found to be in default in payment of stallage or

rents or any other dues to the corporation till payment is made or recovered under the provisions of the said Act of 1980. Therefore, the contention of

the petitioners that the authority of KMC is circumscribed by proviso to Section 573 since it has been provided therein that no proceedings to recover

the dues can be initiated beyond the period of three years from the date on which the amount becomes due, is inapplicable in the present case since

the demand notice was issued against the petitioner towards arrear stallage and other fees. On perusal of the decision in Nepal Chandra Kar (supra)

this Court finds that the case of the KMC relating to the demand notice claiming arrear stallage and other related dues, is fortified.

31. In addition thereto the point urged on the strength of proviso to Section 573 that beyond the period of three years in the present case arrear

stallage cannot be claimed is misconceive contention since based on application dated 19th March, 2009 proposal to induct third party was approved

vide letter dated 14th January, 2011 by the KMC and demand notices were issued on 14th January, 2011 and subsequently on 21st November, 2011.

Therefore, within the period of three years from the date of making application by the petitioner on 19th March, 2009 demand was laid by the KMC

for payment of stallage and other fees/charges. The aforesaid demand notices were questioned by instituting writ petition being WPA 22459 of 2011

which was disposed of vide order dated 31st January, 2012 directing Municipal Commissioner to take decision by passing reasoned order within four

weeks from the date of communication of the said order and in compliance thereof the Municipal Commissioner passed order which is at pages 114 to

117 of the writ petition being Ã¢â‚¬Å“Annexure P-9Ã¢â‚¬. By the order of the Municipal Commissioner the contentions of the petitioners relating to demand

notices were negated and the said order of the Municipal Commissioner is questioned in the present writ petition. It has also been contended by the

petitioners that the said order of the Municipal Commissioner is untenable since the points urged by the petitioners in their written notes of submissions

filed before the Municipal Commissioner were not considered. The Municipal Commissioner in his turn while passing the order decided to waive the

charges for amalgamation under special consideration. Still petitioners were aggrieved by the said order of the Municipal Commissioner which

triggered the present writ petition and challenge is thrown to the order of the Municipal Commissioner since according to the petitioners all points

taken in the written notes of submission filed by the petitioners before the Municipal Commissioner were not considered. The allegation of failure of

considering all the points as agitated in the written notes of submission while order was passed by the Municipal Commissioner pales into

insignificance since parties have elaborately argued the points available to them before this court. But the desperation revealed while argument was

advanced on behalf of the petitioners is deprecated since the judgment of a coordinate Bench in ABL International Ltd. (supra) was relied upon but

the same was set-aside by the HonÃ¢â‚¬â„¢ble Division Bench vide order dated 17th March, 2010 with a direction that the judgment of the coordinate

Bench passed in ABL International Ltd. (supra) shall not be treated as precedent while deciding the cases, if filed, on similar points, in future and no

party shall claim any equity and/or relief on the basis of the judgment and order under the appeals. The relevant part of the order of the HonÃ¢â‚¬â„¢ble

Division Bench dated 17th March, 2010 is quoted below:

Ã¢â‚¬Å“ The Judgment and Order under appeals shall be of no consequence and effect and the same stands set aside. It is, however, made clear

that since this Court has not examined the points raised by the parties in the respective appeals to decide the correctness and/or validity of

the findings of the learned Trial Court, the same issues, if raised in any other case, shall be dealt with afresh and independently without

reference to the Judgment and Order under appeals and the concerned Court while dealing with such cases shall not be influenced by the

findings/observations and/or conclusions as recorded in the Judgment and Order under appeals. In other words, the Judgment and Order

under appeals which is hereby set aside shall not be treated as precedent while deciding the cases, if filed, on similar points, in future and

no party shall claim any equity and/or relief on the basis of the Judgment and Order under appeals.Ã¢â‚¬â€‹

32. In M/s. Shrey Merchantile (supra) [(2000) 2 CLJ161] the HonÃ¢â‚¬â„¢ble Division Bench was considering whether the KMC in the guise of imposing

Ã¢â‚¬Å“feeÃ¢â‚¬ in effect is authorized to impose tax without any sanction of law in consideration of Section 170 of the said Act of 1980 whereunder the

KMC is empowered to levy taxes in relation to the matters stated therein. The case which is considered now does not have semblance of the

aforesaid case in view of authority conferred upon KMC in terms of Section 430 read with Section 131. The principle which has been laid down in

M/s. Dwarkadas Marfatia (supra) is inapplicable in the present fact situation since in that case the Apex Court was considering exercises of discretion

or power by public authorities like Board of Trustees for the Port of Bombay in respect of dealing with tenants since such authorities have been

treated separately and distinctly from other landlords on the assumption that such public authorities would not act as private landlords. The principle of

reasonableness on the touchstone of Article 14 was enunciated by the Apex Court in the context of issuance of termination notice against the party

who alleged that the premises had been acquired and used for rice mill for 40 years. Similarly, in Jamshed Hormusji (supra) the Apex Court has held

that while enjoying exemption from rent control legislation the state or the public authority is not exempted from honoring constitution itself and they

continued to be ruled by Article 14 in the backdrop of dealing with the lessee under such authorities including their eviction. The Apex Court laid

emphasis on reasonableness of the state or the instrumentalities of the state while enjoying exemption from rent control legislation. Reasonableness

which needs to be reflected from the acts and actions of the state authorities was envisaged in the context of evicting the lessee/tenants but in the

present case KMC has made a demand which the authority is empowered under the relevant provisions of the statute. The judgment of the

HonÃ¢â‚¬â„¢ble Division Bench in Sahujain Charitable Society (supra) deals with facts which do not resemble the present fact situation. The HonÃ¢â‚¬â„¢ble

Division Bench while applying the limitation as contained under Section 573 of the said Act of 1980 by reading down the relevant provisions under

Section 179(2) made the said provisions reasonable and has restrained the KMC to make assessment for the period which goes beyond the period of

limitation in terms of proviso to Section 573. But in the case at my hand demand has been raised by the KMC for realization of stallage which is

permissible in terms of Section 430 read with Section 131 in view of the specific powers conferred on the KMC as per Section 426, Section 427 and

Section 432.

33. Schedule of rates, taxes, fees and charges of the relevant year is relatable to Section 131(3) of the said Act of 1980. In the said Schedule the

methodology of calculation of stallage in connection with stall in municipal market, fee/charge for transfer of interest/change of name of third party,

fee/charge for regularization of excess area, fee/charge for regularization of sub-floor area are provided in details. On perusal of notice demanding

Rs.2,05,81,725/- which is at pages 35 and 36 of the supplementary affidavit affirmed on 7th July, 2023 it appears that on application of the

methodology as contained in Schedule of rates, taxes, fees and charges calculations have been made by the KMC while arriving at the aforesaid sum

which is required to be paid by the petitioners in terms of the letter dated 14th January, 2011 of superintendent, SS Hog Market. Nothing is shown

from records available that applying wrong methodology charges/fees are levied excepting stray argument is made on behalf of the petitioners that

multiplier cannot be applied and such demand is unreasonable.

34. However, on perusal of the final demand notice which is at pages 35 and 36 of the supplementary affidavit filed on behalf of the KMC it appears

penalty/fine for transfer of interest without prior approval to the tune of Rs.17,28,000/- has been levied upon the petitioners. In view of approval

accorded by KMC vide letter dated 14th January, 2011, being post facto approval, the said penalty/fine for transfer of interest need not be paid by the

petitioners and KMC is restrained from recovering the penalty/fine against serial no. 5 as contained in the demand notice which was approved by the

Municipal Commissioner on 4th July, 2012.

35. By interim order dated 4th March, 2013 the coordinate Bench directed the petitioners to deposit Rs.35,00,000/- which since has been deposited by

the petitioners the said sum of Rs.35,00,000/- shall be adjusted while recovering dues from the petitioners in terms of the demand notice which was

approved by the Municipal Commissioner on 4th July, 2012. However, the interim order of the coordinate Bench dated 4th March, 2013 stands

vacated. The concerned authority of KMC shall be at liberty to recover the dues as indicated in the demand notice approved by the Municipal

Commissioner on 4th July, 2012 whereby claim has been laid to the tune of Rs.2,05,81,725/- excluding penalty as indicated hereinabove.

36. With the aforesaid observations and directions the writ petition stands disposed of and there shall be no order as to costs.

37. Urgent photostat certified copy of this order, if applied for, shall be supplied to the parties expeditiously.