

HIGH COURT OF BOMBAY**Bench: Justices M.S. Karnik and Kamal Khata****Date of Decision: 16th May 2024**

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10481 OF 2022

Pradip s/o Prabhakar Kolhe ...Petitioner**Versus**

- 1. The State of Maharashtra**
- 2. The Commissioner, Municipal Corporation of Gr. Mumbai**
- 3. Chief Fire Officers, Mumbai Fire Brigade**
- 4. Deputy Chief Fire Officer, Mumbai Fire Brigade ...Respondents**

Legislation:

Article 226 of the Constitution of India

Articles 14, 19(1)(g), and 21 of the Constitution of India

Subject: Writ Petition seeking refund of Rs. 2,57,405/- deposited with the Sub-Divisional Officer (SDO), Mumbai Metropolitan Region Development Authority (MMRDA), as temporary Non-Agricultural charges for organizing an event at the MMRDA Grounds, which was cancelled due to refusal of permission by the Police Department. The Petitioner also claimed interest on the refunded amount.

Headnotes:

Refund of Deposits – Non-Agricultural Charges – Cancellation of Event – Writ Petition under Article 226 – Petitioner, a Reverend and Christian Religious Leader, deposited Rs. 2,57,405/- with the SDO as temporary Non-Agricultural charges for an event at MMRDA Grounds. The event was cancelled due to refusal of permission by the Police Department. Despite refunds from other authorities, SDO withheld the deposit without legal basis. Court directed refund, citing lack of forfeiture provision and potential unjust enrichment. Held that refusal to refund violated constitutional rights under Articles 14, 19(1)(g), and 21. [Paras 1-19]

Unjust Enrichment – Legal Authority to Withhold Funds – Lack of Policy – Respondents failed to provide any legal basis for withholding the refund. Absence of terms or conditions allowing forfeiture deemed unjust enrichment. Authorities obligated to refund deposits upon cancellation of events without permission. [Paras 10-14]

Interest on Refunded Amounts – Equity Considerations – Though Petitioner entitled to interest on the withheld amount, interest claim not pressed due to insignificance. Court acknowledged interest as a normal accretion on capital, citing Supreme Court precedent. [Para 16]

Decision – Petition allowed. Respondents directed to refund Rs. 2,57,405/- within two weeks. No order as to costs. Stay request by Respondents denied but four weeks granted for compliance due to officers on election duty. [Paras 17-21]

Referred Cases:

- Hongkong and Shanghai Banking Corporation vs Union of India (2024) 124 GSTR 267; 2023 SCC OnLine Mumbai 2535
- Grasim Industries Ltd vs Assistant Commissioner of Income Tax 2023 SCC OnLine Bom 2814
- Kesar Corporation v Municipal Corporation of Greater Mumbai 2024 SCC OnLine Bom 765
- Alok Shanker Pandey v Union of India and Ors 2007 AIR SCW 1233

Representing Advocates:

Mr. Vinod P Sangvikar for the Petitioner

Ms. MP Thakur, AGP, for the Respondent-State

Ms. Vaishali Chaudhari, with Mr. Aslam Tadvii, Anand Khairnar, & Santosh Parad with Ravindra Shirsekar, for the Respondent-BMC

JUDGMENT (PER KAMAL KHATA, J.):-

1. **Rule.** Rule returnable forthwith. By consent of parties, taken up for final hearing.
2. Remarkably, this Petition seeks a refund of Rs 2,57,405/-, an insignificant amount by Mumbai standards, along with interest at 18% p.a. from the Brihanmumbai Municipal Corporation (“**BMC**”). This amount, along with other charges/deposits, was collected by the BMC as temporary Non-Agricultural charges, subject to grant of permission from the Police Department, for organizing an event in the MMRDA Grounds at Bandra Kurla Complex and was necessarily required to be refunded on account of refusal of permission by the Police Department and consequently cancellation of the proposed event.

BRIEF FACTS:

3. The Petitioner is a 'Reverend' in other words a Christian Religious Leader by profession. He desired to organize an event being "Mumbai Shanti Mohotsav 2022. A Prayer Meet" at the Mumbai Metropolitan Region Development Authority ("**MMRDA**") ground on Plot No. G-17 to 19 G-TXT-22, popularly known as the MMRDA Ground, situate at Bandra Kurla Complex, Bandra East, Mumbai on 12th May 2022.
4. Procedure demanded and the Petitioner did apply to Bandra Kurla Complex (BKC) Police Station, the Sub Divisional Officer, Mumbai Western Suburbs - Respondent No.1 ("**SDO**"), and the two Fire Officers namely Chief and Deputy Fire Officers - Respondent Nos 3 & 4 ("**CFO & DyFO**") for their permission to conduct the event. The Petitioner was required to deposit, and he deposited Rs. 18,23,913 with the MMRDA, Rs. 2,57,405 as temporary Non-Agricultural charges with SDO, Rs. 8,03,150 as scrutiny fees for fire safety requirement and Rs. 57,850 as Hire Charges for fire Engine and Staff with the CFO & DyFO. The receipts annexed at pages 16, 19 and 20 of the Petition evince the same.
5. By a letter dated 18th May 2022, annexed at page 25 of the Petition, the B.K.C. Police Station refused to grant permission for the reasons stated therein. That is not the grievance in this Petition.
6. It is the Petitioner's case that all authorities except the SDO have refunded the amounts deposited with them on account of refusal of permission by the BKC Police Station. However, for the reasons unknown to the Petitioner the amount of Rs. 2,57,405 is not being refunded by the SDO. The fact that all others had refunded the amounts so deposited was recorded by the Petitioner's Advocate in the notice dated 29th July 2022 addressed to the SDO annexed at page 32 of the Petition. Since the SDO neither paid nor communicated any reasons for the refusal to refund the amount, the

Petitioner was compelled to file this Petition under Article 226 of the Constitution of India.

PETITIONER'S CONTENTION:

7. Mr. Sangvikar for the Petitioner submits that the Petitioner sent several representations seeking the release of the deposits both through representatives and telephone. But for the reasons unknown to the Petitioner, the SDO has failed to refund the deposit on one pretext or the other. Mr Sangvikar submits that the refusal to refund the deposited amounts are a violation of Articles 14, 19(1)(g) and 21 of the Constitution of India. He submitted that the refund of the deposit collected from the Petitioner is mandatory and the Respondents have no authority in law to withhold these amounts. He accordingly submits that the Petition be made absolute with costs.

RESPONDENTS CONTENTIONS:

8. Ms Chaudhari for the Respondent No 2 to 4 referring to the affidavit in reply dated 29th September 2022 hesitatingly submitted that the refund was withheld as there is no policy which permitted the Respondents to refund these charges deposited by the Petitioner in the event for cancellation of a program/event. Ms Chaudhari does not dispute that these amounts mentioned in the Petition were deposited with the Respondents. Ms Chaudhari submitted that the Respondents were willing and did refund a sum of Rs. 57,850/- deposited by the Petitioner toward Hire charges for fire Engine along with Officer and Staff and the scrutiny fees in the sum of Rs. 8,03,150/- .
9. In response to the claim of the Petitioner towards interest at 18% p.a. Ms Chaudhari submitted that since there is no policy of refund of these charges, no question of payment of any interest whatsoever to the Petitioner arises.

She, therefore, submits that the Petition is not maintainable and liable to be dismissed.

REASONS AND CONCLUSION:

10. Heard counsel for a reasonable length of time.
11. We are to say the least, baffled by the stand taken by the Respondents. *Assuming there is no policy of refund, there also is no term, provision, or condition in the 'application for permission' to forfeit the amounts so deposited for seeking permission in the event the same is refused. A refund would obviously be an entitlement of the Petitioner commonsensically. A forfeiture of such amounts would clearly and unambiguously amount to unjust enrichment in the hands of the Respondents.*
12. The Respondents did not show any term, condition, provision or a circular based on which they refused to refund and eventually forfeited the amount so deposited.
13. The Respondents are unable to show any authority in law to withhold the admitted deposited amounts in view of the cancellation of the event. It is therefore appropriate for the Petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution of India praying for a Writ directing the Respondents to refund the money illegally retained/withheld or forfeited.
14. In our view, the absence of any such term or condition in the application/contract/agreement, or statutory provision or circular would clearly disentitle the Respondents to withhold or forfeit the amounts received for permissions sought to conduct an event. The Petitioner ought not to have been compelled to file this Petition in the first place. It was obligatory on the part of the SDO to apply his mind and the law and refund the amount to the Petitioner.

15. A Division Bench of this Court in *Hongkong and Shanghai Banking Corporation vs Union of India* drawing support from another decision of this Court in *Grasim Industries Ltd vs Assistant Commissioner of Income Tax* in paragraph 33 has held that if *ex facie* the department has no authority to retain an amount, the same ought to be refunded and if it is not refunded, it would amount to unjust enrichment. Moreover, in *Kesar Corporation v Municipal Corporation of Greater Mumbai* paragraph 28, this Court observed that MCGM is an instrumentality of the State and thus cannot withhold an amount collected without the authority of law. Such an action or even an argument is dangerously close to every principle of unjust enrichment apart from transgressing all manner of vices under Article 14 of the Constitution of India.
16. Mr Sangvikar relied upon the decision of the Supreme Court in the case of *Alok Shanker Pandey v Union of India and Ors* to contend that interest is not a penalty or punishment but a normal accretion on capital. He submits that the Respondents earned interest on the principal sum that they refused to refund since the past two years. Accordingly, he submits that equity demands' the refund be granted along with interest. Thus in our view, the Petitioner would be entitled to claim a refund along with interest. However since the amount of interest would be insignificant Mr Sangvikar leniently did not press for the interest.
17. In view of the aforesaid we are inclined to direct the Respondents concerned to refund the sum of Rs. 2,57,405/- to the Petitioner forthwith and in any event within a period of two weeks from the date of this order.
18. Though the Petitioner would be entitled to costs, in all fairness and magnanimously the Petitioner's Advocate does not press for it.
19. Petition disposed with no order as to costs.
20. All concerned to act on the authenticated copy of the Order.

- 21.** Upon pronouncement, Mr Santosh Parad for the Respondent BMC sought stay. We do not find any merit for seeking stay. The request for stay is rejected. However, we grant four weeks time to comply with the order in view of the officers being on election duty.

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