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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.23881 OF 2024

HDFC Bank Limited & Ors. .. Petitioners

Versus

State of Maharashtra & Ors. .. Respondents

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Mr.Shirish Gupte, Senior Advocate with Mr.Kevic Setalvad, Senior Advocate, Mr.Dharam Jumani, Mr.Jehan Lalkaka, Mr.Mihir Nerurkar, Ms.Prapti Kedia, Mr.Rushikesh Dusane, Ms.Neha Ravlela, Mr.Amit Singh and Ms.Anasamah Sayed i/b Agama Law Associates for the Petitioners.

Ms.Sheetal Malvankar, AGP for the Respondent/State.

Mr.A.Y.Sakhare, Senior Advocate with Mr.Rohan Mirpury i/b Mr.Yogesh Patil for the Respondent No.2.

Mr.Abad Ponda, Senior Advocate with Mr.Kushal Mor, Mr.Marmik Shah, Mr.Abhishek Prabhu, Mr.Asim Mohd. Mr.Chitlesh Dalmia, Ms.Jyoti Ghag and Mr.Shailesh Prajapati i/b Dua Associates for the Respondent No.3.

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**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATED : 18th SEPTEMBER, 2024

JUDGMENT (Per Bharati Dangre, J.) :-

1. Petitioner No.1, a banking company, incorporated and registered under the Companies Act, 1956 alongwith its Managing Director and Chief Executive Officer, Group General Counsel, Head of Department of Special Operations and an employee, have approached this Court, seeking issuance of

writ of certiorari or a writ, order or direction in the nature of a writ of certiorari for quashing and setting aside the impugned notice dated 23/07/2024 issued by Respondent No.2- Maharashtra State Minorities Commission (hereinafter referred to as, “**Minorities Commission**”), asking them to attend the hearing, scheduled before it on 01/08/2024.

A writ of prohibition or a writ, order or direction in the nature of writ of prohibition is also sought restraining Respondent No.2 from entertaining and/or proceeding with the hearing of the impugned complaint.

2. On the Petition being listed before us on 01/08/2024, the learned senior counsel representing the Minorities Commission informed us that the hearing was re-scheduled to 02/09/2024 and pursuant thereto, upon the affidavits being filed by the Respondents, we have taken up the Petition for hearing.

3. We have heard learned senior counsel Mr.Shirish Gupte alongwith learned senior counsel Mr.Kevic Setalvad i/b Aagma Law Associates for the Petitioners, whereas learned senior counsel Mr.Anil Sakhare alongwith Mr.Rohan Mirpuray has represented Minorities Commission. Respondent No.3-the Complainant, who has lodged the complaint with Minorities Commission, is represented by learned senior counsel Mr.Abad Ponda alongwith Mr.Kushal Mor and Mr.Marmik Shah.

The State of Maharashtra is represented by Ms.Sheetal Malvankar, the learned Assistant Government Pleader.

By consent of the parties, it is agreed to take up the

Petition for final hearing at the stage of admission and the learned counsel are heard in support of their stand adopted in the Petition.

4. On 22/07/2024, Respondent No.3-Mr.Rajesh Mehta, projecting himself to be the permanent trustee of Lilavati Kirtilal Mehta Medical Trust (hereinafter referred to as, "**LKMM Trust**") lodged a complaint with Vice Chairperson of Minority Commission, State of Maharashtra, Mumbai alleging severe harassment and mental torture caused to him and his late father Mr.Kishor Mehta, an eminent person belonging to Jain Minority Community, by the Senior Management and Recovery Department of HDFC Bank, allegedly in collusion with the erstwhile trustees of LKMM Trust and attributing that this harassment caused death of Mr.Kishor Mehta on 20/05/2024.

The complaint alleged that his family was engaged in a fierce litigation with erstwhile trustees of LKMM Trust, with regard to the control of LKMM Trust and Lilavati Hospital for last two decades and the legal battle was carried upto the highest Court and pursuant to the order dated 18/09/2023 passed by Hon'ble Supreme Court of India, the Assistant Charity Commissioner vide his order dated 14/12/2023, rejected the claim of trusteeship of the erstwhile trustees, thereby finally giving his family the opportunity to take over the management and control of LKMM Trust and Lilavati Hospital. It is also stated in the complaint that in the year 2002, HDFC Bank Ltd, being part of consortium of banks, had initiated the recovery proceedings against the borrower

company, M/s Beautiful Diamonds Ltd. (now Splendour Gems Ltd.) and his late father Mr.Kishor Mehta, in which he himself, were arraigned as the Defendants. In 2004, HDFC Bank Ltd. was successful in getting the Recovery Certificate for an amount of Rs.14.74 crores from Debts Recovery Tribunal, Mumbai against the borrower company, Mr.Mehtas and other Defendants.

The complaint further alleged that after issuance of the Recovery Certificate, the properties mortgaged by the borrower company came to be auctioned and till date property worth Rs.84 crores approximately, belonging to the borrower company, guarantors and mortgagors have been auctioned and sold by the consortium member banks. It is also alleged that HDFC Bank received an amount of Rs.45 Lakhs, being part of the consortium, which substantiate the contention of the bank that it is entitled to receive or has received money recovered by consortium member banks.

5. It is alleged that despite auction of properties, in the year 2017-18, HDFC Bank started recovery proceedings against the Defendants and several other allegations are further contained in the complaint involving HDFC Bank, by alleging that substantial deposits were made by the illegal trustees with HDFC Bank through LKMM Trust in a clandestine manner, without obtaining mandatory approvals. It is further alleged that the erstwhile illegal trustees, their lawyers and advisors perceived late Mr.Kishor Mehta and his family members as a threat and in order to neutralize this threat, they acted in collusion with HDFC bank and the various acts of the illegal trustees defrauded the LKMM Trust, thereby making the

charitable trust a victim of their endeavours. It is also alleged that the Senior Management of HDFC Bank acted hand in glove with erstwhile illegal trustees to effect severe mental and physical harassment and an application was filed before the Debts Recovery Tribunal, Mumbai, seeking closure of the recovery proceedings on the ground of Recovery Certificate being satisfied, which is still pending.

In paragraphs 16 and 17, the Complainant has specifically pleaded as under :-

“16. Further, HDFC Bank also is not coming forward with the information as to what are the communications exchanged between them and the consortium member banks and why they are not willing to write to the consortium member banks to take their share from the recoveries made through auction and sale of properties if the share is not already received by HDFC Bank. Rather than taking this recourse and making recoveries, HDFC Bank is only hell bent on arresting me even till date.

17. It is further important to mention here that, at the time when HDFC bank was ferociously pursuing litigation against my late father and asking for his arrest and incarceration, Mr.Kishor Mehta was 86 year old individual who was suffering from Gangrene and fibrosis in lungs. In the past he had undergone Triple Bypass Surgeries and spine surgeries and therefore was confined to wheelchair. As on 17.04.2024, he had undergone amputation of his right foot due to the spread of gangrene and is in and out of ICU since past many months. Due to his medical condition, he had not been in any fruitful employment nor had been working otherwise since past more than 15 years. The day to day activities and finances of Mr.Kishor Mehta were supported by his kith and kin and he has no means of income since past more than 15 years.”

6. The complaint preferred by Respondent No.3 to Minority Commission, thus pleaded that the erstwhile illegal trustees and the Senior Management and Recovery Department hatched a conspiracy against late Mr.Kishor Mehta and the Complainant and it is alleged that they were responsible for his demise.

Alleging that HDFC Bank has caused serious mental and physical harassment to the members of the minority community, a request is made to conduct an inquiry for gross professional misconduct by the officers of the Bank and they should be punished, if found guilty of the misconduct and illegalities.

7. On receipt of this complaint, the Minorities Commission through its Secretary, on 23/07/2024, issued a notice to the Managing Director and Chief Executive Officer of HDFC Bank, informing that hearing of the complaint is scheduled on 01/08/2024 in the office of the Commission and, the presence of the Noticee was sought alongwith the necessary papers.

Being aggrieved, the present Petition is filed seeking the reliefs mentioned as above and the premise on which, the argument advanced, is lack of jurisdiction of the Commission to entertain the present complaint.

Our attention is invited to the provisions of the Maharashtra State Minorities Commission Act, 2004 (hereinafter referred to as, “**Act of 2004**”) and, in specific, Section 10 of the Act, which has set out the functions of Commission and in the wake of the said provision, it is urged before us that there is no power conferred upon the Commission to adjudicate upon any dispute or lis or to pass any executable order much less to make an adjudication on legality and validity of a sale transaction.

In Paragraph 4 of the Petition, it is contended that Respondent No.3 is Certificate Debtor No.3 in Recovery Proceedings No.709 of 2004, pending before the Recovery

Officer, Debts Recovery Tribunal-II, Mumbai since 30/11/2004 and against him, an arrest warrant is pending execution since 30/10/2023 on account of his malafide acts set out in the order dated 25/10/2023, passed by Recovery Officer, DRT-II, Mumbai.

Reliance is placed upon the order dated 27/02/2024, passed by this Court, clearly observing that, Respondent No.3 has committed contempt of court and notice under Rule 1035 of the Bombay High Court (Original Side) Rules, 1980 is issued.

8. The Petition has specifically pleaded the background facts to support the contention that the proceedings in form of complaint lodged before the Minorities Commission is only to evade the due process of law and the complaint is wholly untenable, as by no stretch of imagination, it can satisfy the test of deprivation of rights of the minority community. The basis of the complaint that HDFC Bank has been prosecuting the recovery proceedings against Respondent No.3 and previously against his father, which has caused him constant serious and physical harassment is nothing but an attempt to give the recovery proceedings a definite colour and is nothing but an attempt to wriggle out the consequences of the proceedings.

9. Mr.Setalvad, has urged before us that the Maharashtra State Minorities Commission Act, 2004 was enacted for protection of rights of minorities within the State and the attempt of the Complainant is to call upon the Commission to adjudicate as to whether the steps taken by the Petitioners

amounted to physical and mental harassment to Respondent No.3 and his deceased father.

It is submitted before us that Respondent No.2-Minorities Commission cannot sit and adjudicate upon the allegations of harassment and gross professional misconduct, as alleged in the complaint, which is nothing but the steps taken pursuant to the recovery proceedings being instituted and the Recovery Certificate being issued.

It is urged before us that the Minorities Commission do not have jurisdiction to entertain the alleged grievances contained in the complaint, as they are ex facie beyond its jurisdiction and, therefore, issuance of notice is also without jurisdiction and the Petitioners are not duty bound to comply with the same, as by issuing the notice, the Commission has exceeded its limited jurisdiction, conferred upon it under the Act of 2004.

10. Another argument submitted before us is that the Act of 2004 cannot be invoked to precipitate personal vendettas and is not a means to avoid the consequences of a legally binding decree/Recovery Certificate and/or to obstruct the recovery proceedings and orders/warrants issued in course thereof in accordance with law. It is also submitted that the whole object of instituting such a complaint is to avoid payment of amount due under the Recovery Certificate and somehow obstruct the recovery proceedings, by using the machinery available with Respondent No.2.

Entertaining the complaint while the issues raised therein are subject matter of the recovery proceedings, the

issuance of notice is construed by the Petitioners to be without jurisdiction and the action of issuing notice is alleged to be wholly arbitrary and without/beyond jurisdiction of Respondent No.2 and left with no other remedy, the writ jurisdiction of this Court is invoked.

11. The learned senior counsel Mr.Sakhare, representing the Minorities Commission, would raise a preliminary objection about the maintainability of the Writ Petition, as according to him, challenge to issuance of show-cause notice is premature, since no action is purportedly taken against the Petitioners and in any case, Mr.Sakhare would submit that the Commission is quite conscious of its recommendatory power and after the presentation of the necessary document by the Bank and its officials, the Commission may not even exercise its recommendatory power.

He has relied upon paragraph 3 of the affidavit filed by Sarangkumar Vasantrao Patil, Secretary of Maharashtra State Minorities Commission on 16/08/2024, which reads as under :-

“3. At the further outset, I say and submit that, the present writ petition is premature and not maintainable as such. The Respondent No.2 Commission has received a complaint and as a matter of procedure and propriety provided a copy of the said complaint to the Petitioners and called upon the Petitioners to remain present for a hearing alongwith all the relevant documents that the Petitioners wish to place on record in respect of the allegations made in the complaint. The Respondent No.2 has not adjudicated any aspect of the complaint on merits including but not limited to the maintainability of the complaint and therefore, at this stage the present petition is premature and not maintainable and on this ground alone is liable to be dismissed.”

12. Mr.Sakhare would also place reliance upon Section 10 of the Act of 2004, which has prescribed the functions of

Commission and, in specific, he would rely upon clause (j) to the following effect :-

“(j) to look into specific complaints regarding deprivation of rights and safeguards of minorities and take up such matters with the appropriate authorities.”

In addition, he would also invoke Section 10A of the Act of 2004, which has conferred the powers of the Civil Court, trying a suit under the Code of Civil Procedure, 1908 on the Commission, while performing any of its function under sub-section (1) of Section 10.

13. It is urged on behalf of the Minorities Commission, that there is statutory duty cast upon it to look into the specific complaints *inter alia* regarding the deprivation of rights of minorities and in compliance of the statutory duty, as and when any complaint is received by the Commission, and in compliance of the principles of natural justice, a notice is issued to the persons/parties against whom the complaint is made, so as to afford an opportunity to respond to the allegations made in the complaint. It is submitted by Mr.Sakhare that it is only on receipt of such response and giving an opportunity to both, the complainants as well as the opponent party to put forth their side, the Commission apply its mind to the merits of the matter and if required and deemed necessary, make appropriate recommendations to the concerned authorities.

On hearing both the sides, if it is found that further evidence is required or further detailed inquiry is to be made, then it shall adhere to the procedure in the Code of Civil Procedure, 1908.

In short, the submission of Mr.Sakhare, is that the Commission has only called upon the Petitioners to remain present, to produce such documents, as they may deem fit in response to the allegations made in the complaint and till date, the Commission has not indulged itself in any adjudication whatsoever on the maintainability or merits of the complaint and, hence, the Petition is premature, not maintainable and liable to be dismissed.

14. Mr.Ponda, learned senior counsel representing the Complainant would place reliance upon the decision of the Apex Court in the case of *Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh & Ors.*¹, in support of his submission that the Petition filed by the Petitioners is premature, as the cause of action for filing the same is mere issuance of notice and it is open for the Petitioners to file their say and place relevant material before the Commissioner and only after adjudication of the matter, the Writ Petition could be entertained. In addition, he would also rely upon the decision in the case of *Special Director and Anr. Vs. Mohd. Ghulam Ghouse and Anr.*². He also placed reliance upon the decision of the Andhra Pradesh High Court in the case of *A.P.State Minorities Commission Vs. Osmania University & Ors.*³, to take forward his submission, that the Minorities Commission has authority and jurisdiction to grant the necessary relief to a single individual member belonging to minority community, if the action against him is in violation of his fundamental rights. According to Mr.Ponda, it is open for the Commission to make

1 (1996) 1 SCC 327
2 (2004) 3 SCC 440
3 2003 SCC OnLine AP 156

recommendations with a view to ensure effective implementation and enforcement of all the safeguards and the law enacted to protect the minorities.

He has attempted to demonstrate before us the violation of Article 21 of the Constitution of India, by pointing out that Respondent No.3 is under immense mental harassment caused by the Bank and even when the application was filed by Mr.Kishor Mehta, seeking stay of arrest warrants due to his medical condition and placed the necessary medical document, HDFC Bank kept disputing the affidavits placed by the doctor and referred to the application filed by Mr.Kishor Mehta, as frivolous and continued to mount pressure on the Recovery Officer to arrest Mr.Mehta. It is the case of Respondent No.3 that keeping the sword of arrest hanging, resulted in untimely demise of his father and there is flagrant violation of Article 21.

In addition, it is also alleged that the action of the Bank to recover the money is also violative of Articles 25, 26 and 29 of the Constitution of India and its action has also violated the Socio-Economic Rights.

15. In short, the submission of Mr.Ponda representing Respondent No.3, who has lodged the complaint with the Minority Commission, is clearly spelt out to the effect that the Commission has only asked the Petitioners to come and show material in their possession, denying the accusations levelled against them, but since they have chosen not to report to the Commissioner and show cause, they cannot allege violation of principles of natural justice.

16. Dealing with the preliminary issue about maintainability of the Writ Petition, the law is well settled to the effect that in the matter of issuance of writ, existence of any adequate legal remedy is a factor to be taken into consideration. Where an alternative remedy existed, it would be sound exercise of discretion to refuse to interfere in the writ petition filed under Article 226 of the Constitution. This proposition having been qualified by the significant words, as laid down in the case of ***K.S.Rashid & Son Vs. Income Tax Investigation Commission***⁴, being "unless there are good grounds therefor", which indicate that the alternative remedy would not operate as an absolute bar and the writ petition under Article 226 can be entertained in exceptional circumstances.

17. The power to issue prerogative writ under Article 226 of the Constitution is plenary in nature and can be exercised for enforcement of any of the fundamental rights contained in Part III of the Constitution and also for "any other purpose". Under Article 226 of the Constitution, the High Court having regard to the facts of the case, enjoy a discretion to entertain or not to entertain a writ petition, but by virtue of self imposed restrictions, in case where an effective and efficacious remedy is available, the Court would not normally exercise its jurisdiction. However, the availability of alternative remedy would not operate as a complete bar in three contingencies, namely, where the writ petition is filed for enforcement of any of the fundamental rights or where there has been violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction.

⁴ AIR 1954 SC 207

In *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors.*⁵, while relying upon the precedents of the evolutionary era of the constitutional law holding the field, the Apex Court concluded thus :-

“19. Another Constitution Bench decision in *Calcutta Discount Co.Ltd. Vs. ITO, Companies Distt. I* laid down :

"Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Court will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against Income Tax Officer acting without jurisdiction under 34, Income Tax Act."

20. Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.”

18. A similar objection was dealt with by applying the test in *Kaikhosrou (Chick) Kavasji Framji Vs. Union of India & Anr.*⁶, where the objection raised to the maintainability of a writ petition, challenging the notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was rejected in the wake of long line of decisions and, a writ petition to question the legality and correctness of the notice issued under any Act, is held to be no bar in entertaining the writ petition in appropriate case. The reliance was emphatically placed upon *Whirlpool Corporation* (supra). We have, therefore, no doubt in our mind that the Writ Petition

⁵ (1998) 8 SCC 1
⁶ (2019) 20 SCC 705

filed by the Petitioners, assailing the issuance of notice by the Minorities Commission on the ground that it can not exercise the jurisdiction over the subject matter of the complaint deserve to be entertained, as we are of the view that the Commission has acted beyond its jurisdiction and the basis for our conclusion is clearly highlighted in the paragraphs to follow.

19. The Maharashtra State Minorities Commission Act, 2004 is an Act to constitute a State Commission for minorities and “minorities” is defined in Section 2(d) to mean the communities residing in the State of Maharashtra declared by the Government as minority communities, by order in the Official Gazette, from time to time. What is important to look for is the functions of the Commission and Section 10 of the Act reads thus :-

“10. Functions of Commission

(1) The functions of the Commission shall be as follows:-

- (a) to examine the working of various safeguards provided in the Constitution of India and the laws passed by the State Legislature for the protection of minorities;
- (b) to make recommendations with a view to ensuring effective implementation and enforcement of all the safeguards;
- (c) to monitor the working of the safeguards provided in the Constitution, laws enacted by the Parliament and the State Legislature, and policies and schemes of the State Government for minorities;
- (d) to conduct studies, research and analysis on the questions of avoidance of discriminations against minorities;
- (e) to make a factual assessment of the representation of minorities in the services of the Government, Government undertakings, Quasi-Government bodies, Municipal Corporations, Municipal Councils, Zilla Parishads, Panchayat Samitis and Village Panchayats and in case, the representation is inadequate, to suggest ways and means to achieve the desired level;

- (f) to make recommendations for ensuring, maintaining and promoting communal harmony in the State;
- (g) to make periodical reports at prescribed intervals to the Government;
- (h) to study any other matter which, in the opinion of the Commission, is important from the point of view of the welfare and development of minorities, and to make appropriate recommendations;
- (i) to consider the grievances of the minorities and to suggest appropriate solution, from time to time;
- (j) to look into specific complaints regarding deprivation of rights and safeguards of minorities and take up such matters with the appropriate authorities;
- (k) to co-ordinate and supervise the implementation of the Prime Minister's 15 Points Programme for Welfare of Minorities:

Provided that, if any matter specified in sub-section (1) is undertaken by the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992 (19 OF 1992), the State Commission shall cease to have jurisdiction in such matters.

(2) The Government shall cause the recommendations of the Commission to be laid before each House of the State Legislature along with the memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for non-acceptance, if any, of such recommendations.”

20. Section 10A is a provision relating to the powers of Commission and the Commission, while performing any of its functions under sub-section (1) of Section 10, is conferred with the powers of the Civil Court trying a suit under the Code of Civil Procedure, 1908 and, in particular, is authorised to issue summons for enforcing the attendance of any person and examining him on oath, requiring the discovery and production of any document, receiving evidence on affidavits, issuing commissions for the examination of witnesses and documents etc.

21. Keeping in mind the object of the Act, as indicated in the preamble, providing for constitution of State Commission for

minorities, the Commission is entrusted with the function of examining various safeguards provided in the Constitution of India and protection of minorities. It is empowered to make recommendations with a view to ensure effective implementation and enforcement of all the safeguards and also to monitor the working of the safeguards provided in the Constitution, laws enacted by the Parliament and the State Legislature and also contained in the policies and schemes of the State Government for minorities. The Commission is also empowered to make recommendations for ensuring, maintaining and promoting communal harmony in the State and to study any other matter, which in its opinion, is important from the point of view of the welfare and development of minorities and to make appropriate recommendations.

Mr.Ponda as well as Mr.Sakhare has placed reliance upon clause (j) in Section 10(1), which empower the Commission to look into specific complaints regarding deprivation of rights and safeguards of minorities and take up such matters with the appropriate authorities.

22. A plain reading of Section 10 in the Act would reveal that the thrust of the provision is upon ensuring that the safeguards provided for the minorities, in the Constitution of India as well as the laws, either passed by the Parliament or State Legislature, are implemented and enforced. The Commission is also empowered to monitor the working of the safeguards and conduct studies, research and analysis on the questions of avoidance of discrimination against minorities.

In the scheme of this Section, when clause (j) is looked into, it permits the Commission to look into specific complaints regarding deprivation of rights and safeguards of minorities as a whole and we are really doubtful, whether the Legislature intended to cover an individual complaint like the one, before us, which is nothing but an attempt to short-circuit the procedure adopted by HDFC Bank against its borrowers and to face an action as a debtor, who was jointly and severally liable to pay an amount of Rs.14,74,51,929.35 (Rupees Fourteen Crore Seventy Four Lakh Fifty One Thousand Nine Hundred and Twenty Nine and Paise Thirty Five only) with interest at the rate of 16% from the date of filing of the Original Application before the Debts Recovery Tribunal (“DRT”) against the Respondent No.3. It is not in dispute that Respondent No.3 or any of the Certificate Debtor never raised challenge to the judgment dated 26/10/2004, declaring that they are liable for making the payment and it has thus attained a finality. It is only post issuance of Recovery Certificate, various applications were filed by the Bank before the Debts Recovery Tribunal, seeking to recover the outstanding dues and despite passing of over twenty years, the principal borrower and/or guarantors, including Respondent No.3 had failed to discharge the debt and continued with his spree of filing frivolous proceedings, thus frustrating the recovery on one or the other pretext.

On 05/02/2020, the Recovery Officer passed an order directing civil imprisonment of Respondent No.3 and his father, Kishor Mehta and this order was assailed in the writ petition filed before this Court and the Recovery Officer was

directed to decide as to whether to confirm, modify or set aside the order. On 25/10/2023, the Recovery Officer confirmed the order dated 05/02/2020, directing civil imprisonment of Respondent No.3 on account of various mala fide and wrongful acts and omissions.

Pursuant to this, arrest warrant was issued on 30/10/2023 against Mr.Rajesh Mehta and once again, after a round of litigation to the Apex Court, the order attained finality.

By order dated 25/10/2023, Mr.Rajesh Mehta was restrained from travelling outside India and if he has to do so, he shall deposit 25% of due amount as on the date of visit and file an undertaking to return back and also obtain permission from the Recovery Officer. On several such applications being filed, they were rejected as he avoided to make payment under the Recovery Certificate.

23. The Petition has given the list of the proceedings that are filed by Respondent No.3-Mr.Rajesh Mehta and his family members and this includes fifteen proceedings filed before the Bombay City Civil Court, Bombay High Court as well as the Supreme Court.

When Mr.Mehta was unable to taste success in either of the proceedings, to short-circuit the payment of the amount due under the Recovery Certificate and to avoid the arrest, the present complaint is filed before the Minorities Commission, constituted under Section 3 of the Act of 2004.

True it is that normally a Writ Court would not exercise its jurisdiction when a show-cause notice is assailed before it,

but when this show-cause notice is issued by a forum/an authority, which lacks jurisdiction or it is in violation of principles of natural justice, definitely the High Court shall entertain the Petition, as the former ground raised is a jurisdictional issue.

If an authority has no jurisdiction to entertain a complaint and despite this, merely stating that it has issued a notice, so that a response can be received and, thereafter, it will decide whether to proceed ahead or not, definitely cannot assume jurisdiction. Either the authority has jurisdiction to entertain the complaint/proceedings or it lacks the jurisdiction and if it lacks the jurisdiction, it cannot proceed ahead and even issue a notice.

24. Looking to the complaint, which is lodged by Respondent No.3 in the backdrop of the factual narration of the proceedings before the Debts Recovery Tribunal and its aftermath, we are in agreement with the learned senior counsel appearing for the Petitioners that the filing of a complaint, before the Minorities Commission is nothing but another attempt to wriggle out of his responsibilities.

The Minorities Commission, which is constituted for the avowed object of safeguarding the rights of minorities and to make recommendations with a view to ensure the effective implementation and enforcement of all the safeguards, definitely cannot be usurped by the Complainant, who wants to shirk the liability fastened upon him by the Debts Recovery Tribunal, a competent authority to pronounce upon the default in Recovery Proceedings and who has a warrant

awaiting him and also face an action under the Contempt of Courts Act, 1971.

On the pretext that since he is a member of Jain community, he cannot knock the doors of the Commission and get the orders passed in lawful manner, either set aside or circumvented and since this is not an option available to him and the Commission, definitely, has no power to set aside such orders, but what it is empowered to do is, to make recommendations to the competent authority. But, definitely if a liability is fastened upon him by an appropriate forum, he cannot take benefit of he being a member of minority community.

25. Learned senior counsel for the Petitioners, has placed reliance upon a decision of this Court in the case of *Darul Falah Educational & Welfare Trust Vs. State of Maharashtra & Ors.*⁷, where the Educational Trust acquired certain lands under the Deed of Conveyance and its name was mutated in the Revenue Records, which was certified by the Circle Officer. Respondent Nos.5 to 7 were the vendors under the said Deed of Conveyance, who file an appeal before the Commission, challenging the mutation entry recorded as per the Maharashtra Land Revenue Code, 1966.

The Chairperson of the Commission purported to issue direction to the Divisional Commissioner to hold an enquiry into the matter through the Additional Divisional Commissioner.

The argument was advanced on behalf of the petitioner

⁷ 2017 SCC OnLine Bom 1327

that no power was conferred by the Act of 2004 on the Chairperson of the Commission to make any such adjudication about illegality of a sale transaction and reliance was placed upon Section 10A of the Act to invoke the powers conferred on the Commission that of the Civil Court. By examining the statutory scheme, the Division Bench specifically observed thus :-

“12. On plain reading of Section 10, it is crystal clear that there is no power conferred on the Respondent No.4 (the Commission) to adjudicate upon any dispute or a lis and to pass any executable order much less to make an adjudication on legality and validity of a sale transaction. Under clause (i), the Commission gets power to consider the grievances of the minorities and to suggest appropriate solution, from time to time. The power under clause (j) of Sub-Section (1) is conferred to look into specific complaints regarding deprivation of rights and safeguards of minorities and take up such matters with the appropriate authorities. As far as the power to make recommendations is concerned, it is only in clauses (b) and (f) of Sub-Section (1) of Section 10. Clause (a) of Sub-Section (1) confers power to examine the working of various safeguards provided in the Constitution of India and in the laws passed by the State Legislature for the protection of minorities. Clause (b) confers power to make recommendations with a view to ensure effective implementation and enforcement of all the safeguards. Clause (f) confers power to make recommendations for ensuring, maintaining and promoting communal harmony in the State. Sub-Section (2) provides that the recommendations of the Commission shall be laid before each House of Legislature along with a memorandum explaining the action taken or proposed to be taken on the recommendations.

13.

17. Merely because certain powers of the Civil Court under the Civil Procedure Code, 1908 are conferred on the Commission, it does not mean that the Commission gets power to adjudicate as if it is a Civil Court. Certain powers are conferred on the Commission under Section 10. Powers under Section 10-A are to be utilised for exercising the powers under Section 10. That is the only significance of the Section 10-A of the said Act.”

26. Recently, the Delhi High Court in *Balaji Medical and Diagnostic Research Centre Vs. Delhi Minorities Commission*,

Government of National Capital Territory of Delhi & Anr.⁸, dealt with a writ petition praying for quashing and setting aside the complaint case bearing number 595 of 2019 and for quashing of all consequential orders. Respondent No.2 therein was involved in a road accident and has sustained abdominal injuries and broken bones and the patient was referred to the Hospital, where the treatment commenced as per ICU protocol.

A complaint was filed by his uncle alleging that he was not provided appropriate treatment and sought direction to the petitioner, a Medical and Diagnostic Research Centre to continue to provide him treatment.

The Commission passed an ex-parte mandatory injunction, directing the petitioner to continue the treatment and when the petitioner raised the bill on the patient in lieu of the medical services and even given the discount, the petitioner was asked to waive all the balance amount.

It is in this background, with reference to the Delhi Minorities Commission Act, 1999, the Delhi High Court observed thus :-

“9. The present case does not involve any deprivation of the rights of the minority community. The respondent no.2 was treated by the petitioner as a patient who sustained injuries during the road accident. There is no complaint on behalf of the respondent no.2 being a member of minority community that his rights were breached by the petitioner. If the respondent no. 2 or his family members were not happy with the treatment given by the petitioner or the medical bill raised by the respondent no.2, it does not involve deprivation of any right of the minority communities within the mandate of the DMC Act. It is also pertinent to mention that a letter dated 23.08.2023, has already been written on behalf of the respondent no.2 requesting for withdrawal of the complaint dated 13.08.2019 and consequential proceedings arising out of complaint dated 13.08.2019.

10. The respondent no.1 did not have the statutory power to

⁸ W.P.(C) 12394/19 & CM Appl.50643/19 decided on 16/02/2024

pass the order dated 13.08.2019, and the respondent no.1 while passing the order dated 13.08.2019 exceeded the powers given to the minority commission in pursuance of the DMC Act.”

27. In the wake of the aforesaid decision emanating from the factual and legal position holding the field, by entertaining the Petition, we record that the issuance of notice to the Petitioners is beyond the jurisdiction of the Minorities Commission and, hence same is quashed and set aside. The Commission is hereafter restrained from proceeding with the complaint by summoning the Petitioners.

The Writ Petition is made absolute in the aforesaid terms, by quashing and setting aside the impugned notice dated 23/07/2024, issued by Respondent No.2-Maharashtra State Minorities Commission.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)