

MHAU130000712017**ORDER BELOW EXH.5 IN Spl.C.S. NO.04/2017****(Ajitha Vs. The Commissioner, Municipal Corporation, Aurangabad)**

1. This is an application made by the plaintiff under Order 39 Rule 1 and 2 read with 94 and 151 of CPC for seeking temporary injunction against the defendant from recovering the taxes on the strength of impugned bill no.139513 dated 04-04-2016 and notice bearing no.538/2016 dated 09-11-2016 amounting to Rs.29,94,681/- for the period upto 31-03-2016 and 01-04-2016 to 31-03-2017 in respect of CTS No.12778, plot no. NS-1 situated at Shivajinagar (E), Cidco, Garkheda Area, Aurangabad.
2. Facts giving rise to the present litigation are as under :
Plaintiff is a charitable trust bearing registration no. F-223. Its aim is to provide education to needy persons and for this purpose the plaintiff is running education institution. Plaintiff is exempted from paying general taxes, education taxes and employment guarantee scheme as per Section 132 (1) (b) of B.P.M.C. Act and under Section 7 (e) of the Maharashtra State Education and Employment Guarantee Act. The plaintiff has taken suit property on long lease from Cidco and constructed the building used for education purpose only. The defendant has presented bill no.139513 dated 04-04-2016 of Rs.28,28,191/- upto 31-03-2016 and 2016-2017. The defendant illegally demanding and recovering the general taxes. The plaintiff has made representation on 11-04-2016. The defendant has illegally

sealed the office of principal and one room without any authority. The defendant directed to pay Rs.15,77,794/- towards taxes. The plaintiff has filed Special Civil Suit No.14/2013 in respect of demand bill no.81042 from 2011 to 2014 which is pending. The plaintiff has paid Rs.5,00,000/- towards taxes in pursuance of order below exh.5 in aforesaid suit. The plaintiff paid Rs.1,25,000/- on 15-07-2016 but the officers of the defendant did not open the illegal seal and issued final intimation notice bearing no.538/2016 and directed to pay Rs.29,94,681/- within three days or otherwise they will seal the entire college building. The plaintiff replied the notice on 09-11-2016. The demand of the defendant is illegal as procedure laid down in MMC Act is not followed.

3. Defendant has filed his say vide Exh.18 and contest the application Exh.5 for temporary injunction. Defendant has contended that, suit is not maintainable as appeal is provided under Section 406 of MMC Act. He further contended that, the plaintiff society is audited firm and having income source. He further contended that, the college is private one on grant and plaintiff should proved that building is used for charitable purpose only. He further contended that, the plaintiff has not paid the amount of tax therefore as per consent only office of principal and one unused room was attached and seal on 31-03-2016 under panchanama. He further contended that, since prior to 2011 no taxes are paid by the plaintiff and it is gross defaulter in payment of property taxes. He further contended that, since 23-12-2016 and 23-01-2017 the seal was there and now the plaintiff is showing urgency and due to seal there is no harm to the students. He further contended that, taxes are imposed as per rule and defendant is every right to

recover it. On these amongst other grounds, the defendant has sought for rejection of the application Ex.5 for the relief of temporary injunction.

4. The following points arise for determination and my findings are against each for the reasons stated below:-

S.NO.	POINTS	FINDINGS
1.	Whether the plaintiff has prima-facie case?	Partly affirmative.
2.	Whether the plaintiff would suffer irreparable loss if injunction is not granted as sought for ?	Partly affirmative.
3.	Whether the balance of convenience lies in favour of the plaintiff ?	Partly affirmative.
4.	What order ?	Application is partly allowed.

REASONS

AS TO POINT NO.1 :-

5. Plaintiff has relied on document included copy of certificate of registration, copy of letters issued by municipal corporation, copy of application alongwith order in Spl.C.S. No.14/2013, copy of receipts, copy of demand bill no.139513, copy of letters to corporation, copy of notice bearing no.538/2016, copy of audit report, copy of circular and photographs. Defendant Municipal Corporation has filed copy of minutes of standing committee meeting, authentication certificate, adoption certificate, publications, notices, panchanama of attachment, letter of plaintiff and undertaking.
6. Ld. counsel for the plaintiff submitted that, the corporation is claiming taxes illegally. He further submitted that, the officers of

defendant have not followed any procedure prior to levying taxes and illegally seal the office of principal and one room for recovery of taxes. He further submitted that, if the injunction order is not granted then there are chances of threat of sealing the college. He further submitted that, the plaintiff is ready to follow conditions hence application be granted.

7. Ld. counsel for the defendant submitted that, plaintiff is gross defaulter in payment of property taxes and notice under challenged is correct and in accordance with law. He further submitted that, due to seal there is no harm to the students.
8. As per settled legal position at the stage of deciding the application for temporary injunction the court is not required to go into the merits of the case in detail. The court is required to examine :
 - a. The plaintiff has a prima facie case to go for trial.
 - b. The protection is necessary from that species of injuries known as irreparable before his legal right can be established and
 - c. The mischief of inconvenience likely to arise from withholding injunction will be greater than what is likely to arise from granting it.
9. From the documents it appears that, plaintiff has challenged the act of sealing the office of principal and one room in the present suit. Defendant municipal corporation admitted that, they have sealed the property. In **Bhoomi Construction Projects Vs. Navi Mumbai Municipal Corporation Writ Petition No.2054/2017** the Hon'ble High Court has held that, there is no provision under the Maharashtra Municipal Corporation Act to seal the property.

10. It is a fact that plaintiff has challenged the act of sealing the office of principal and one room by defendant municipal corporation against the recovery of property tax. Defendant has challenged the maintainability of suit. It is settled position of law that, in the matters of dispute arising out of impositions of taxes remedy of appeal is provided under Section 406 of MMC Act. At the same time there is no provision under the Maharashtra Municipal Corporation Act to seal the property against the recovery of tax. Considering the facts and circumstances, submissions advanced and the observations made in **Bhoomi Construction Projects Vs. Navi Mumbai Municipal Corporation** I have no hesitation to hold that defendant municipal corporation has exceeded his jurisdiction and illegally put the seal on the suit property of the plaintiff.
11. The Defendant Municipal Corporation by its bill no.139513 dated 04-04-2016 had demanded the general and other taxes upto the period 31-03-2016 and 2016-2017. On perusal of record, it reveals that the defendant Municipal Corporation issued demand bill no. 139513 amounting to Rs.28,28,191/- upto the period 31-03-2016 and 2016-2017.
12. Ld. counsel for the plaintiff submitted that, the defendant included the taxes for the years from 2011 to 2014 for which temporary injunction is granted in Spl.C.S. No.14/2013. Ld. counsel for the defendant submitted that, since prior to 2011 no taxes are paid by the plaintiff and it is gross defaulter in payment of property taxes.
13. Thus, it is evident that in this case the first question for consideration at the most could be whether despite the earlier order of the Court, the defendant Municipal Corporation has proceeded unauthorizedly

to collect tax from the plaintiff. It is admitted fact that by order dated 12-03-2014 in Spl.C.S. No.14/2013 the court had temporarily restrained the defendant Municipal Corporation from recovering tax vide demand bill no.81042 amounting to Rs.16,53,368/- on depositing 40% amount of above mentioned disputed demand bill within one month from the date of order. The order itself makes it clear that the earlier Tax recovery has been temporarily restrained for the reasons stated in that order and so subsequently issued tax bill after that order cannot be said to be illegal.

- 14.The contention that in view of order dated 12-03-2014 in Spl.C.S. No.14/2013, it is illegal and unauthorized demand of the defendant Municipal Corporation and that they are not entitled to recover any tax from the plaintiff is absolutely absurd. Further, it would also not be out of place to state that if it was so then, why did the plaintiff had not initiate contempt proceeding against the defendant Municipal Corporation for not obeying court's order. The point to underscored is that Court's decision is of the suit filed in the year 2013 for the cause of action prior to that and so it has no relevance for deciding this suit concerning subsequent tax bill.
- 15.The Defendant Municipal Corporation by its bill no.139513 for the year 2016-2017 had demanded the general and other taxes. The plaintiff has not specifically stated as to which amount of tax is claimed for the period prior to filing of the suit and is in contravention of the aforesaid order.
- 16.Ld. counsel for the plaintiff submitted that, defendant municipal corporation illegally levied the taxes. To buttress his submission he relied upon :

- (1) Sant Kanwarram Education & Social Welfare Society and others Vs. Municipal Corporation of City of Amravati 2008 (6) ALL MR 384.
- (2) The Puna City Municipal Corporation Vs. Dattatrya Nagesh Deodhar AIR 1965 SC 555
- (3) Municipal Council Aurangabad Vs. Shivaji Sindhi Co-op.Hsg. Society Ltd. 1980 Bom.CR 579.
- (4) Prakash Vishwanath Khute and others Vs. Special Land Acquisition Officers Maharashtra State Buldhana and others 2006 (6) ALL MR 245
- (5) Shamrao Ganpat Chintamani Vs. Kakasaheb Laxman Gorde 2008 (2) Mh.LJ 819
- (6) Gorakshan Sanstha Vs. Akola Municipal Corporation Akola 2018 (5) ABR 227

The ration of any decision, must be understood in the background of the facts of the case. Facts and circumstances in above mentioned citations are different from the facts and circumstances of the present case in hand. Therefore, they are not applicable to the present case in hand.

17.This matter can be looked from an additional angle. I have felt to prudent to consider all aspects for deciding the application of T.I. In the first place, under section 406 of MMC Act, the plaintiff has the alternate and efficacious remedy of appeal is available and that ought to have been resorted before filing this suit.

18.The provisions contained in sub-sections (1), (2) and (2A) of Section 406 of the said Act read as under:

"406. Appeals when and to whom to lie (1) Subject to the, provisions

hereinafter contained, appeals against any rateable value (or the capital value, as the case may be) or tax fixed or charged under this Act shall be heard and determined by the Judge.

(2) No such appeal [shall be entertained] unless-

(a) it is brought within fifteen days after the accrual of the cause of complaint;

(b) in the case of an appeal against a rateable value (or a capitable value, as the case may be,) a complaint has previously been made to the Commissioner as provided under this Act and such complaint has been disposed of;

(c) in the case of an appeal against any tax (including interest and penalty imposed) in respect of which provision exists under this Act for a complaint to be made to the Commissioner against the demand, such complaint has previously been made and disposed of ;

(d) in the case of an appeal against any amendment made in the assessment book for property taxes during the official year, a complaint has been made by the person aggrieved within twenty-one days after he first received notice of such amendment and his complaint has been disposed of ;

(e) in the case of an appeal against a tax, or in the case of an appeal made against a rateable value (or the capitable value, as the case may be), (the amount of the disputed tax claimed from the appellant or the amount of the tax chargeable on the basis of the disputed rateable value (or the capitable value, as the case may be), up to the date of filing the appeal, has been deposited by the appellant with the Commissioner]:

(2A) Where the appeal is not filed in accordance with the provisions

of clauses (a) to (e) of sub-section (2), it shall be liable to be summarily dismissed.

19. In the context of Section 406(2)(c) of the said Act, Hon'ble their Lordships of the Hon'ble Supreme Court in the case of Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the City of Ahmedabad and Ors. (1999) 4 SCC 468 : (AIR 1999 SC 1818) at paragraph 11 observed thus:

"We also note that under clause (c) of sub-section (2) of Section 406, a complaint lies to the Municipal Commissioner against imposition of any property tax and only after that when the complaint is disposed of that appeal can be filed. Appeal to the court as provided in clause (e) may appear to be rather a second appeal."

20. Hon'ble Lordship of the Hon'ble Bombay High Court in the case of Elora Construction Co. v. Municipal Corporation of Greater Bombay, AIR 1980 Bom 162 upheld an almost similar provision contained in Section 217(2)(d) of the Bombay Municipal Corporations Act, 1888. This Section provided that in the case of an appeal against a tax, or in the case of an appeal made against a rateable value the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value, up to the date of filing of the appeal, has been deposited by the appellant with the Commissioner. The aforesaid clause (d) is in similar terms as clause (e) of Section 406(2) of the said Act.

21. The judgment in the case of Elora Construction Co. (AIR 1980 Bom 162) (supra) was noted with approval by the Hon'ble Supreme Court in the case of Gujarat Agro Industries Co. Ltd. (AIR 1999 SC 1818)

(supra).

22. A Division Bench of Hon'ble their Lordships of the Hon'ble Bombay High Court in the case of Peninsula Land Ltd. v. Brihan Mumbai Mahanagarpalika and Ors., 2008 (6) All MR 519 has upheld the constitutional validity of Section 217(5) of the Bombay Municipal Corporation Act, 1888 which provided that in case of any appeal against any rateable value or property tax fixed or charged under the said Act which may have been entertained by a Chief Judge before the commencement of the Act or which may be entertained by him after the said date, the Chief Judge shall not hear and decide such appeal unless the property tax, if any, payable on the basis of the original rateable value plus eighty per centum, of the property tax claimed from the appellant on the increased portion of the rateable value of the property out of the property tax claimed under each of the bills which may have been issued, from time to time, since the filing of appeal, is also deposited with the Commissioner within a period prescribed under the Act. In case of default by the appellant on getting an intimation to that effect from the Commissioner at any time before the appeal is decided, the Chief Judge shall summarily, dismiss the appeal. In this case the Hon'ble Division Bench noted that the decision in the case of Elora Construction Co. (AIR 1980 Bom 162) (supra) was approved with specific reference by the Hon'ble Supreme Court in the case of Shyam Kishore v. Municipal Corporation of Delhi, 1993 (1) SCC 22 : (AIR 1992 SC 2279) and Government of Andhra Pradesh and Ors. v. P. Laxmi Devi (Smt.), 2008 (4) SCC 720 : (AIR 2008 SC 1640)

23. That apart, it could be profitable to make reference to the decision by the Hon'ble High court in, M/s. Harsiddha Developer Vs. Municipal Corporation of Kalyan Dombivali &ors (W.P.No.392/2018). In that case, it was dismissed holding that the petitioners are having an efficacious remedy of preferring an appeal under section 406 of the MMC Act. That being so the plaintiff has absolute no prima facie case.

24. It would be pertinent to note here that while deciding the applications for temporary injunctions reference has to be made to decision of the Hon'ble Apex Court in the case of Seema Arshad Zaheer v. Municipal Corporation of Greater Mumbai,(2006) 5 SCC 282, at page 294, wherein it is observed thus:-

"30. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and (iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.

25. In present case in hand the plaintiff has not make out a prima facie case for grant of an injunction.

26. In Shiv Kumar Chadha v. Municipal Corporation of Delhi [1993]

3SCR522, Hon'ble their Lordships of the Apex Court held that,

"a party is not entitled to an order of injunction as a matter of course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles-ex debito justitiae. Before any such order is passed the court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him. Further the court should be always willing to extend its hand to protect a citizen who is being wronged or is being deprived of a property without any authority in law or without following the procedure which are fundamental and vital in nature. But at the same time the judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the court."

27. In Woodroffe's "Law Relating to Injunctions, Second revised and enlarged edition, 1992, at page 56 in para 30.01, it is stated that "an injunction will only be granted to prevent the breach of an obligation (that is a duty enforceable by law) existing in favour of the applicant who must have a personal interest in the matter.

28. There is yet another dimension to the issues arising in the present suit. The interim relief asked for by the plaintiff is that, temporary injunction may be passed restraining the defendant not to recover the taxes on the strength of impugned bill no.139513, dated 04-04-2016 for the period upto 31-03-2016 and 2016-2017 till disposal of suit.
29. The court cannot help a party who has not come before Court with clean hands has to be deprived of an injunction as in such a case on general equitable principles under which factors such as the public interest may, in an appropriate case, be relevant. It is common experience that injunction normally is not be granted to prevent the public authorities alike the defendant Municipal Corporation to recover taxes. Public interest is, therefore, one of the material and relevant considerations in either exercising or refusing to grant interim injunction. Tax collection is a Public purpose and by orders of temporary injunction, the public purpose, would be certainly stalled in the present case in hand. Therefore the effect on public purpose thereof if considered the plaintiff is not entitled for the discretionary relief and as such the plaintiff does not had a prima facie case against the defendant Municipal Corporation as far as injunction to recover the taxes are concerned. Hence point No.1 is answered partly affirmative.

AS TO POINT NO. 2

30. The most significant aspect of the matter is that the plaintiff is being asked to pay taxes and so the damages are susceptible to monetary evaluation. Therefore, it cannot be said that the plaintiff would suffer irreparable loss, if injunction is not granted in his favour restraining the defendant Municipal Corporation from recovering the taxes.

Even otherwise the plaintiff could deposit the taxes under protest and in course of time establish how the tax demanded is unauthorised. That being so the plaintiff by no stretch of imagination would suffer irreparable loss as far as injunction to recover the taxes are concerned. As discussed above, there is no provision under the Maharashtra Municipal Corporation Act to seal the property against the recovery of tax and the observations made in **Bhoomi Construction Projects Vs. Navi Mumbai Municipal Corporation** I hold that defendant municipal corporation has exceeded his jurisdiction and illegally put the seal on the suit property of the plaintiff. Hence point No.2 is answered partly affirmative.

AS TO POINT NOS. 3 AND 4 :-

31. The balance of convenience is not in favour of granting injunction in given facts and circumstances of the present case. This because it cannot be said that any substantial mischief or injury is likely to be caused to the plaintiff, if the injunction is refused as compared it with that which is likely to be caused to the other side, if the injunction is granted since the injunction granted to recovery of arrears of taxes not paid would result into miscarriage of justice and no more than backing up abuse of due process of law. The object of such provisions like 406 of the Maharashtra Municipal Corporation Act are to keep in balance the right of appeal conferred upon a person aggrieved with a demand of tax and the right of the Corporation to speedy recovery of the tax. Therefore, by no means the plaintiff could be said to have balance of convenience in his favour as far as injunction to recover the taxes are concerned. Balance of convenience lies in favour of the plaintiff in respect of seal put by the

defendant to office of principal and one room. Hence point No.3 is answered partly affirmative. In result following order is made.

ORDER

1. The application is partly allowed.
2. Defendant municipal corporation is hereby directed to remove the seal forthwith from the office of principal and one room till the disposal of main suit or the order is modified.
3. Plaintiffs prayer of restraining the defendant from recovering the taxes on the strength of bill no.139513 is hereby rejected.
4. Cost in cause.

Date :- 30-01-2019

Sd/-
(Smt. A. S. Badgujar),
Civil Judge Senior Division
(Corporation Court), Aurangabad.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer : Miss Manjushri S. Salve.
Court : C.J.S.D. (Corporation Court), Aurangabad
Date : 30.01.2019
Judgment/Order signed by the
presiding officer on : 01.02.2019
Judgment/Order uploaded on : 01.02.2019