

MHAU130000712017



ORDER BELOW EXH.21 IN SPL.C.S. NO.04/2017

1. This is an application filed by the plaintiff under Order XI Rule 1 of the C.P.C. to deliver interrogatories for examination of defendant. The defendant has not filed its say.
2. It is the contention of the plaintiff that, all the documents and record is in the custody of the defendant who is avoiding to file the documents. It is further contended that, the burden is of the defendant to prove that it has levied the taxes legally by following rules and procedure. Therefore, it is necessary to curtail oral evidence as such the plaintiff be allowed to deliver interrogatories for the examination of the defendant.
3. Ld. counsel for the plaintiff submitted that, defendant has levied the taxes illegally and documents are in custody of the defendant. Hence, plaintiff be allowed to deliver interrogatories for examination of the defendant.
4. On perusal of record and considering arguments advanced by the parties it reveals that, present suit has been filed in the year 2017 for declaration that plaintiff is exempted to pay General Taxes under Section 132 (1) (b) of the M.M.C. Act and Education Taxes and Employment Guarantee Tax as per Section 7(e) of the Maharashtra State Education and Employment Guarantee Act and also for injunction restraining the defendant from recovering taxes on the strength of bill no.139513 dated 04-04-2016 and notice 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. Issues have been framed on 02-03-2019 vide Exh.20. Case has been posted for evidence of plaintiff. On 24-04-2019 present application has been filed.

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

6. 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."

7. In a Constitution Bench judgment in the case of Dhulabhai and others V. The State of Madhya Pradesh and another, 1968 (3) SCR, 662), it has been recorded as follows :-

"Neither of the two cases of Firm of Illuri Subayya of Kamla Mills can be said to run counter to the series of cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows :-

(1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the

fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the

authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply."

8. 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.
9. 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*).
10. 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 Mahanagarपालिका 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 Government of Andhra Pradesh and Ors. v. P. Laxmi Devi (Smt.), 2008 (4) SCC 720 : (AIR 2008 SC 1640)

11. 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.
12. It is appropriate at the outset to consider the provisions of the Code. The substantial provision which is relevant in the context is Section 30 of the Code. It authorizes the court to make such orders as may be necessary or reasonable either of its own motion or on the application filed by the party for delivery and answering of interrogatories, the admission of documents and facts and discovery, inspection, production, impounding and return of documents or other material objects

producible as evidence. Such orders however, are subject to the conditions and limitations that may be prescribed in schedule appended to the Code.

13. In the present suit plaintiff is challenging the imposition of tax and there is a mechanism provided under the M.M.C. Act whereby a person aggrieved by imposition of property tax or valuation thereof can approach the authorities specified under the said Act. A perusal of Section 406 of M.M.C. Act shows that an appeal shall be heard and determined by the Judge on questions pertaining to rateable value or capital value or tax fixed or charged under the said Act. As discussed above appeals against any rateable value or tax fixed or charged under M.M.C. Act shall be heard and determined by the Judge as mentioned in Section 406 of the M.M.C. Act. The questionnaire so placed it is apparent that plaintiff has tried to collect the evidence. Obligation lies upon plaintiff to prove its case and the purpose of interrogatories is not for collecting evidence nor it can be replica of plaint. In such circumstances it is not justifiable to allow the application. Hence, following order is passed.

ORDER

Application is rejected.

Date :- 29-01-2020
Place :- Aurangabad.

(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	: 29-01-2020
Order signed by the presiding officer on	: 29-01-2020
Order uploaded on	: 29-01-2020