MHAU130001082023

ORDER BELOW EXH.5 IN SPL.C.S. No. 9/2023
(Mangilal Vs. MCA)

1. Plaintiff has filed this application for grant of temporary injunction to restrain defendant from seizing suit property for property tax amounting to Rs. 14,42,862/- and restraining it from putting the suit property in auction for recovery of taxes.

2. Case of plaintiff in short is that, he has filed this suit for declaration, injunction and recovery of amount, which is pending before this Court. Plaintiff has submitted that, he is owner and possessor of suit property. He has made construction over suit property in the year 2011 and completed it in the year 2013. Plaintiff was paying property tax as per demand bill issued by defendant.

3. Plaintiff has submitted that, he had given ground floor plus some parts of first floor to one Fine Auto Lines partnership firm from 07/03/2014 till 04/02/2019. Said tenant has vacated said premises on 04/02/2019 by executing possession receipt in favour of plaintiff. Employees as well as Officers of Municipal Corporation used to visit suit property every year and used to take information of rented premises. Accordingly, Municipal Corporation had levied commercial / residential

property taxes over suit property.

4. Plaintiff has submitted that, accordingly, he used to deposit the property tax. Plaintiff has submitted that, Municipal Corporation has neither issued demand bill for the period from 01/04/2020 upto 30/03/2023 nor issued any notice under Section 128 of the M.M.C. Act to plaintiff. Without any intimation, directly issued notice dated 17/01/2023 before seizure of suit property for recovery of property taxes amounting to Rs. 14,42,862/- without mentioning the period.

5. Plaintiff has submitted that, said notice is illegal. There is no provision to seize the property for recovery of property taxes. But, Municipal Corporation is forcefully trying to seize the property and auction the same for recovery of property tax. After issuance of notice dated 17/01/2023, plaintiff has given two post dated cheques, total amount to Rs. Ten Lakhs. Plaintiff has prayed that defendant be restrained from seizing suit property for recovery of property tax amounting to Rs. 14,42,862/- and restraining them to put the suit property in auction for recovery of said amount.

6. Defendant has filed reply to this application at **Exh. No. 21**. Defendant has denied all adverse allegation. Defendant has submitted that, there is construction on ground and first floor. Defendant has denied that entire first floor is residential area. Defendant has submitted that plaintiff has suppressed the fact that the tax assessment of ground floor and first floor is done

separately by the Municipal Corporation on the request of plaintiff himself.

7. Defendant has submitted that, plaintiff has not paid any tax towards the first floor area till date. Now, plaintiff should clarify why he has not paid the taxes for first floor inspite of separate assessment of it. Ground floor and first floor is treated as separate property for the purpose of taxation. Even the ground floor was extended by the plaintiff by carrying out additional construction on said floor. Therefore, Municipal Corporation had revised tax assessment in respect of said property.

8. Defendant has submitted that, Municipal Corporation is not bound by mutual arrangement between plaintiff and his so called tenants. Defendant has submitted that, as per request plaintiff and after inspections, Municipal Corporation had levied commercial and residential taxes over suit property. Plaintiff has not paid property tax of residential portion of suit property from the date of assessment till date inspite of having its complete knowledge.

9. Defendant has admitted that, Municipal Corporation had issued no dues certificate to plaintiff on 16/02/2019. But, said no dues certificate was relating only to commercial portion of said property. Assessment number is clearly mentioned in it. Said no dues certificate was not in respect of residential portion of said property. In last four years, plaintiff has never complained that he has not received demand bills. If, at all, plaintiff was law abiding

citizen, he ought to have made inquiry about the taxes in the concerned ward office and ought to have deposited relevant taxes from time to time.

10. Defendant has submitted that, they have issued notices to plaintiff as per procedure under law. Defendant has submitted that, plaintiff is not entitled to claim refund of property tax amount. Defendant has submitted that, Municipal taxes in respect of suit properties were assessed long back. Thereafter, there has been revision of Municipal taxes as per Section 413-A of the M.M.C. Act.

11. Defendant has submitted that, plaintiff has not challenged assessment, rateable value fixed, imposition of taxes and revision of taxes at any point of time. Hence, as per Section 413-A of the M.M.C. Act, said assessment, rateable value fixed, imposition of taxes and revision of taxes have attained finality. Hence, plaintiff is liable to pay taxes demanded as per said assessment and revision.

12. Defendant has submitted that, this suit is not tenable as alternative efficacious remedy under Section 406 of the M.M.C. Act is available to plaintiff. Hence, this application is liable to be rejected.

13. **The following points arise for my consideration and I record my findings with reasons :**

Sr.No	POINTS	FINDINGS
1.	Does plaintiff prove that prima-facie case is in his favour ?	Partly in affirmative.
2.	Does plaintiff prove that balance of convenience is in his favour ?	Partly in affirmative.
3.	Does plaintiff prove that he will suffer irreparable injury in case injunction is not granted in his favour ?	Partly in affirmative.
4.	What order ?	As per final order.

REASONS

AS TO POINT NO.1 TO 3 :-

14. I have heard learned counsel for parties.

15. I have perused pleading of both the parties and documents, filed by them. I have perused record of this case. In this case, plaintiff is seeking temporary injunction to restrain Municipal Corporation from sealing his property and auctioning it till disposal of this suit.

16. As per Section 406 of the M.M.C. Act, appeal is to be preferred against any order passed by the Municipal Corporation in respect of property taxes. Section 406 of the M.M.C. Act lays

per-requisites for said Municipal appeal. Municipal appeal is to be brought within 15 days after accrual of cause of action. Applicant should make complaint against imposition of tax before Municipal Commissioner and said complaint has been disposed off. Said appeal is not tenable unless applicant deposit the disputed property tax amount in the office of Municipal Corporation.

17. When Municipal appeal under Section 406 of the M.M.C. Act is available to plaintiff, jurisdiction of this Court to try this suit is impliedly barred. In this case, plaintiff has failed to show that he has preferred an appeal under Section 406 of the M.M.C. Act before the Municipal Commissioner and deposited disputed tax amount. This shows that plaintiff is not ready to abide by provisions of law. If, plaintiff is seeking equitable relief of injunction from this Court, his conduct should be bonafide and law abiding.

18. Learned counsel for defendant has submitted that it is a public institution and providing essential amenities to the public at large. Property tax is their main source of income. Hence, learned counsel of defendant has prayed that plaintiff be directed to deposit remaining property tax amount. He has submitted that, defendant has rightly attached the property of plaintiff. Hence, this application is liable to be rejected.

19. In the present case, plaintiff is using suit property for residential purpose as well as commercial purpose. In this case,

even as per pleading of plaintiff, disputed property tax is Rs. 14,42,862/-. Learned counsel for plaintiff has shown his willingness to deposit some amount if, temporary injunction is granted in favour of plaintiff.

20. If plaintiff wants equitable relief of injunction from this Court, he must show his bonafide by depositing at least part of property tax. At present, this case is at the stage of hearing on temporary injunction application. Merits of the claim of plaintiff can be considered after both parties have adduced their evidence.

21. I consider that in the mean time, it is necessary to grant partial relief to the plaintiff subject to deposit of part of property tax amount, which he is liable to pay. Therefore, I consider that prima-facie case is partly in favour of plaintiff. Plaintiff will suffer irreparable injury partly. Balance of convenience is partly in favour of plaintiff. Therefore, I decide point No. 1 to 3 is partly in favour of plaintiff.

<u>As to Point No.,4</u> :-

22. In view of findings give above, it is clear that plaintiff has proved his case partly. I consider that plaintiff is entitled to get temporary injunction to restrain Municipal Corporation from sealing and auctioning suit property subject to deposit of property tax amount as mentioned in final order. Therefore, I pass this order.

Order

1. This application is partly allowed.

2. Temporary injunction is granted in favour of plaintiff subject to deposit of Rs. 8,70,000/- (Rs. Eight Lakhs Seventy Thousand only) of property tax amount in the office of Municipal Corporation within 3 (three) days from today.

3. Temporary inunction order shall come into force only after deposit of Rs. 8,70,000/- (Rs. Eight Lakhs Seventy Thousand only) in the office of Municipal Corporation within 3 (three) days from today. If, plaintiff fails to comply conditions for grant of temporary injunction within stipulated period, this application shall be deemed to have been rejected.

4. After plaintiff has deposited above mentioned amount within stipulated period, Municipal Corporation will be restrained from sealing and auctioning suit property till disposal of this suit.

5. Rest of the prayers of plaintiff are hereby rejected.

6. Costs to abide by the result in the suit.

sd/-

Date : 26.02.2024.

(Smt. S. N. Morwale)
Civil Judge (Senior Division)
(Corporation Court) Aurangabad.

CERITIFICATE

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 : R.S. Chaudhari.
Court :C.J.S.D.(Corporation Court), Aurangabad
Date : 26.02.2024.
Order signed by the presiding officer on : 26.02.2024.
Order uploaded on : 26.02.2024.