

MHKO070006482022

**ORDER PASSED BELOW EXH. 43**

1] Defendant Nos. 1 to 3 have taken out present application for rejection of plaint under Order 7 Rule 11(d) of the Code of Civil Procedure contending that, the relief claimed by plaintiff is barred by law. According to them, suit is for declaration and perpetual injunction. There is difference between the suit property i.e. Gat No. 1227 admeasuring 1H. 34R. Shown in plaint and in notice dtd. 23/03/2022 issued to defendant No.1, prior to suit, wherein tax amount due is shown as suit claim i.e. Rs. 16,96,499/-. The grievances are made about said tax amount to be recovered.

2] According to defendant Nos. 1 to 3, defendant No.1 is a local government body and defendant Nos. 2 and 4 to 12 are Gram Panchayat members and Sarpanch. Prior to instituting suit against such person prior notice u/s. 180 of Maharashtra Panchayat Act, 1959 was required.

3] According to defendant Nos. 1 to 3, said pre notice u/s.

180 is mandatory to be sent prior to six months of suit. However, said compliance is not done by plaintiff.

4] Moreover, after perusal of plaint it reveals that, they are making allegations about demolition of building but not followed any guidelines of Government Notification (" महाराष्ट्र शासन राजपत्र असाधारण भाग ४ व २१५ कलम १६)

5] In addition to above, defendant No.3 being Village Development Officer, pre suit notice u/s. 80 of Code of Civil Procedure against him was required to be sent by plaintiff. It is not done by him. Moreover the relief claimed by plaintiff are barred by provisions of Section 41(c) of Specific Relief Act, 1963. On all above counts, plaint is sought to be rejected,

6] Plaintiff on the overleaf of application submitted his say and opposed the application contending that, application is frivolous and liable to be rejected. According to plaintiff, he has challenged the illegal activities carried out by defendant, exceeding their authority. Thus, no presuit notice is required to be sent. Secondly defendant No.3 is joined as defendant, after institution of suit so the requirement of pre suit notice u/s. 80 of Code of Civil Procedure against him does not survive. Thirdly all these aspects are known to defendant Nos. 1 to 3, inspite of that they have filed present false

application, so it be rejected.

7] Heard both sides. Gone through record and proceedings. Following points arise for my determination to which I have recorded my findings thereon along with detail reasons to follow.

Sr.No	Points	Findings
1.	Whether plaint is liable to be rejected as per Order 7 Rule 11(d) of C.P.C.?	... In the Negative.
2.	What order?	...As per final order.

REASONS

AS TO POINT NOS. 1 & 2

8] Order 7 of the Code of Civil Procedure, 1908 deals with plaint. Rule 11 provides rejection of plaint. The plaint shall be rejected in the cases provided in Sub Clause (a) to (f) of said Rule 11. Rule (d) provides the ground for rejection of plaint when from perusal of plaint or suit, it appears that it is barred by any law.

9] In this legal background now let us see whether present plaint is barred by law. Needless to mention that, while deciding the application for rejection of plaint, court has to see only averments of plaint, as it is and nothing more. Court is not allowed to go into

defence of defendant or allegations in the application by which rejection is sought by defendants. In this background now let us see what are the averments in plaint, as whole.

10] Plaintiffs have filed suit for declaration, perpetual and mandatory injunction. An area 1H. 34R. Out of Gat No. 1227, situated outside the boundary of village Udgaon, Tal. Shirol, Dist. Kolhapur is the property in dispute, which will be hereinafter referred as "suit property".

11] According to plaintiffs, they are challenging the notice dtd. 24/03/2022 issued by defendants for recovery of Grampanchayat taxes in respect of suit property, for the period mentioned in it i.e. amounting Rs. 16,96,499/- which the subject matter of suit, which will be hereinafter referred as "suit subject".

12] According to plaintiff, suit property was originally owned by plaintiff No.1, Hansraj Gokuldas Ved. Plaintiff Nos. 2 and 3 received it in 2021. Plaintiff No.1 Hansraj Ved started National Dying and Bleaching Works in the year 1971. It is a company. It was working till 2003-2004. Due to recession, business of company was closed. Plaintiff No.1 Hansraj Ved and one Laxmikant Gokuldas Ved, Shantikumar Gokuldas Ved and Nitin Hansraj Ved were directors of said company when it was closed.

13] Those directors have informed all the concerned authority that, they are going to close working of company. As the company was not working in the suit property. Electricity connection in the company was closed on 9/4/2006. In spite of all above facts by issuing notice dtd. 25/3/2003, defendants demanded tax amount of Rs. 1,39,744/- from said company towards taxes of year 2001-03. There was no details about how tax was assessed. No information about assessment of said tax was provided to the plaintiffs. Therefore, the then main Director of company, Shri. Laxmikant Ved instituted Special Civil Suit No. 191/2003 in the Court of Civil Judge, Sr.Dn., Kolhapur. The said suit was dismissed in default. Therefore, it is came to knowledge of plaintiffs that, on 7/12th extract charge of Rs. 4,20,230/- is entered on the 7/12 extract of suit property.

14] According to plaintiffs from 2004 till 2016 company was closed. Electricity connection was disconnected on 9/6/2004. The building and vacant shed in the suit property was in dilapidated condition, it may be collapsed at any time. Therefore, now in the year 2017, when demolition work of said building was going on, the authorities of defendants approached there and restrained plaintiffs from demolishing said building.

15] Thereafter, as defendants were well aware that, suit

property and building existing over there is vacant, unused and therefore, no house tax can be claimed and therefore, it was not claimed. However, surprisingly on 25/04/2016 defendants through their Advocate issued notice and demanded tax amount of Rs. 8,90,885/-. It was properly replied by plaintiffs on 12/05/2017. After receipt of plaintiffs reply no counter reply was given by defendants.

16] According to plaintiffs, the assessment of tax done by defendants from time to time is erroneous. Their demand after 2004, as claimed by their notice dtd. 12/05/2017 is against the provision of law. As per provisions of Limitation Act, defendants can not claim the arrears of taxes, three years prior to 2019.

17] Thus, plaintiffs are seeking declaration that, defendants notice dtd. 24/03/2022 for recovery of tax amount on Rs. 16,96,499/- for the period of 2002-03 to 2021, is void, illegal. Plaintiffs further prayed that, defendants restrained from demanding said arrears as well creating any charge in respect of same in the revenue record of suit property, as well restraining defendants from obstructing plaintiffs development work of the suit property. In addition to this, they are also seeking mandatory injunction directing defendants to provide no objection certificate, consent letters for development of the suit property as well declaration that mutation

No. 95-04 dtd. 18/07/2008 by which charge over the suit property was created as illegal and void.

18] After perusal of recitals of plaint it appears that, suit is instituted by plaintiffs on the ground that, defendants have assessed tax on suit property, arbitrarily. Provisions of Section 124 of Maharashtra Village Panchayat Act, 1959 deals with taxation and recovery of claims. As per said Section level of taxes and fees is done by panchayats. Sub Section (5) of Section 124, reads as under;

Any person aggrieved by assessment, levy or imposition of any tax or fee may appeal to the (Panchayat Samiti) [A further appeal against the order of the Panchayat Samiti shall lie to the Standing Committee, whose decision shall be final][The first appeal shall be made within thirty days after the presentation of the bill complained, and the further appeal within thirty days from the date on which the Panchayat Samiti decides the appeal.

19] After perusal of said Sub Section it becomes clear that, any person aggrieved by such taxation can make grievances about arbitrariness of said local authority as per Section 129 of said Act. Recovery of taxes and other dues are to be done by said local authorities. It appears that, the said Section is a complete code for recovery of due amounts from which panchayat has been given powers. However, on perusal of said provision it appears that, three years limitation is provided u/s. 129(8) of said Act which is

applicable to the cases and demand notices as per said Act.

20] Learned Advocate appearing on behalf of defendant Nos. 1 to 3 submitted that, the jurisdiction of this court is barred to entertain the suit as per Section 41 of Specific Relief Act, 1963. However, on perusal of plaint as whole, it appears that, plaintiffs are seeking relief of declaration u/s. 34 and perpetual injunction u/s. 38 as well mandatory injunction u/s. 39 of The Specific Relief Act, 1963. The grievances of plaintiffs are that, their civil rights are breached due to the arbitrary act of defendants i.e. levy of excessive and arbitrary taxes on suit property. According to them, the assessment of taxes of suit property done by defendant authority is not in accordance with provisions of law. It is arbitrary, therefore, the jurisdiction of this court to try and entertain the suit of plaintiff for relief claimed is not barred by provision of Section 41 of Specific Relief Act, 1963 but is well maintainable as discussed above.

21] According to defendant Nos. 1 to 3, second ground for rejection of plaint is non-compliance of notice u/s. 180 of Maharashtra Village Panchayat Act, 1959. The provisions of Section 180 of the Maharashtra Village Panchayat Act, 1959, is reproduced for the sake of convenience as under -

<p>S.180 – (1) <i>No action shall be against any member, officer, servant or agent of panchayat acting under its direction, in respect of anything in good faith done under this Act or any rule or by-law.</i></p> <p>(2) <i>No action shall be brought against any panchayat or any</i></p>
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member, officer, servant, or agent of such panchayat acting under its direction for anything done or purporting to have done by or under this Act, until the expiration of three months next after notice in writing has been left or delivered at the office of the panchayat and also at the residence of the member, officer, servant or agent thereof against whom the action is intended to be brought. The notice shall state the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the person who intends to bring the action.

(3) Every such action shall be commenced within six months after the accrual of the cause of action, and not afterwards.

(4) If any panchayat or person to whom a notice under subsection (2) is given shall, before an action is brought, tender sufficient amends to the plaintiff and pay into court, the amount so tendered, the plaintiff shall not recover more than the amount so tendered. The plaintiff shall also pay all costs incurred by the defendant after such tender.

22] It appears that, present plaintiffs had not joined concern officials of defendant No.1, initially at the time of filing suit. They all are joined by court by using powers under Order 1 Rule 10 of Code of Civil Procedure, during pendency of suit. Moreover plaintiffs are seeking reliefs for both past as well future actions of the Grampanchayat which are alleged to be arbitrary by them. Thus, in view of ratio laid down by Hon'ble Bombay High Court in case of **Gram Panchayat, Kuhi and another V/s. Vijaykumar Radheshyam Bhalotiya, decided on 4/3/1986 in C.R.A.No. 47 of 1986** which is relied by plaintiffs, plaint can not be rejected merely on the ground of non compliance of notice u/s. 180(2) of the said Act.

23] The Hon'ble Bombay High Court in above case has observed that, *"Be that as it may, it is clear from the phraseology "anything done or purporting to have done" used in Section 180(2) of the Act that the action contemplated is an action which has taken place unlike the expression purporting to be done" used in section 80 of Civil Procedure Code which is indicative of future actions also. There is, therefore, no merit in the contention raised on behalf of the applicants that the notice under section 180(2) of the Act was necessary"*.

24] After going through the ratio in above cited case as well facts of case in hand, in my opinion the ratio in above case, is perfectly applicable to our case, as facts are identical with case cited above. Moreover present defendant No.2 to 12 are joined as defendants, after institution of suit by court itself by using powers under Order 1 Rule 10 of Code of Civil Procedure, thus it can not be said that suit is barred by non-compliance of mandatory provision u/s. 180 of The Maharashtra Village Panchayat Act, 1959.

25] On the basis of above reasons recorded by me and the legal propositions discussed above, I am of the view that, plaintiffs suit from recitals of plaint is for declaration and injunction, challenging suit notice issued by defendants on the ground of their arbitrariness and hence is well maintainable before this court so it

can not be held to be barred by law as alleged by defendant Nos. 1 to 3.

26] Accordingly. I answer point No.1 in negative and in order to answer point No.2, proceed to pass following order;

ORDER

- (1) Application Exh. 43 is hereby rejected.
- (2) Parties to bear their own costs.

Date : 13/01/2023.

(B.A. Gaikwad)
Civil Judge Senior Division,
Jaysingpur.