

MHKO070006482022



National Dying and Bleaching Works
through Shri. Nitin Hansraj Ved and others
V/s.
Grampanchayat, Udgaon and others

ORDER PASSED BELOW EXH. 5

1] This is an application filed by plaintiffs through their power of attorney, seeking interim injunction under Order 39 Rule 1 and 2 of Code of Civil Procedure, restraining defendants i.e. Grampanchayat Udgaon or the authorized persons on their behalf from acting on their demand notice dtd. 24/03/2022 and to recover the amount of assessed tax mentioned in said notice and from creating any charge over the suit property which is more particularly mentioned by plaintiffs in para No. 1 of the plaint.

2] **Brief facts of the application are as under -**

The property i.e. admeasuring portion of 1H. 34R. situated in C.T.S.No. 1227 situated outside the village Udgaon, Tal. Shirol, Dist. Kolhapur was originally owned by Shri. Hansraj Gokuldas Ved, plaintiff No. 1. Plaintiff Nos. 2

and 3 are sons of plaintiff No.1 who have received said property from plaintiff No.1 in the year 2021.

3] According to plaintiffs, the notice issued by defendant No.1 dtd. 24/03/2022 in respect of recovery of tax amount of Rs. 16,96,499/- in respect of above immovable property situated at Udgaon is the "subject matter" of the suit.

4] According to plaintiffs, plaintiff No.1 started National Dying and Bleaching Works in the suit premises in the year 1971. Said company was running their business till 2003-2004. Due to recession, the work of National Dying and Bleaching works was closed after 2004. At that time, Shri. Hansraj Gokuldas Ved, Shri. Laxmikant Gokuldas Ved, Shri. Shantikumar Gokuldas Ved and Shri. Nitin Hansraj Ved were directors of the said company.

5] According to plaintiffs, above directors of company informed defendant No.1 about closure of companies business. Electricity connection in the company was also disconnected on 09/06/2004. In spite of above facts on 25/02/2003, defendant No.1 have demanded tax amount of Rs. 1,39,744/- from the National Dying and Bleaching works for the year 2001-2003. There was no any detail description in the said notice about assessment of the tax. No any explanation was given to the plaintiffs though they have

demanded such explanation from defendant no.1. Therefore, the then directors of the company Shri. Laxmikant Ved instituted Special Civil Suit No. 191/2003 in the court of Civil Judge, Sr.Dn., Kolhapur. It was dismissed in default during pendency of it. According to plaintiffs, such dismissal means the decision in said suit is in their favour. According to plaintiffs, they have recently got knowledge about entry of Rs. 4,20,230/- on 7/12th extract of the suit property as encumbrance in respect of said tax amount. According to them, the working of company for the period 2004 to 2016 was completely closed. According to plaintiffs, in above period i.e. 2004 to 2016, electricity connection in the suit premises was disconnected. Shed and building in the suit premises were closed. They were in dilapidated condition due to their continuous closure.

6] In the year 2017 when demolition work of dilapidated structure at suit property was started by plaintiffs, defendant No.1's officials reached there and told plaintiffs that though the building was closed and their company was not working, plaintiffs were not having any right to demolish such dilapidated building. They threatened plaintiffs that, they will take action for demolition carried out by plaintiffs.

7] According to plaintiffs, defendant No.1 were having knowledge that, suit property is unused since 2004

therefore, had not taken any action to recover house tax amount from plaintiffs but, surprisingly on 25/04/2016 issued notice for recovery of tax amount of Rs. 8,90,885/- showing them as amount of arrears. According to plaintiffs, they have replied said notice on 12/05/2017 therefore, no any action was taken by defendant in respect of said notice till 2022 or no any counter reply was sent to the plaintiff.

8] The sum and substance of the plaintiffs contention is that, the assessment in the notice dtd. 24/03/2022 is illegal, not based on provisions of Maharashtra Village Panchayat Act, 1959. The arbitrary assessment is required to be canceled by declaring the said notice as illegal. Therefore, they have filed the present suit seeking such declaration as well injunction restraining defendants from acting on such notice dtd. 24/03/2022 or from creating any charge over the suit property on the basis of said notice.

9] According to plaintiffs, suit will take its own time for its decision on merits, till then present interim application be allowed and defendants be restrained from such act. Hence, this application.

10] Defendant Nos. 1 to 3 as well defendant Nos. 2 to 12 resisted plaintiffs application by way of filing their written reply vide Exh. 32 and 33 respectively. The sum and

substance of their contention is that, defendant No.1 has demanded the amount of tax in respect of the suit property which is properly assessed as per Section 129 of Maharashtra Village Panchayat Act, 1959. Defendants submitted that, since 2002 to 2003 plaintiffs have intentionally avoided to pay the amount of tax in respect of suit property. Defendant Nos. 1 to 3 have prepared the detail chart of the plaintiffs arrears and sent it to Block Development Officer as well Tahasildar, Shirol. However, said amount was not paid by plaintiffs. Therefore, then Block Development Officer and Sarpanch had issued notice to plaintiffs on 25/02/2003 and demanded tax amount in respect of suit property. The said notice was disputed by plaintiffs against defendant No.1 by filing Special Civil Suit No. 191/2003. The said suit was for declaration and injunction. It was dismissed in default on 24/11/2005. The dismissal of said suit does not mean that, plaintiffs got liberty to avoid payment of arrears of tax amount in notice dtd. 25/02/2003. Therefore, defendant No.1 by way of mutation No. 9504 as per Resolution No. 86 entered charge of said amount on 7/12th extract of plaintiffs property situated in Gat No. 1227. As per provisions of land revenue Code recovery proceeding was also carried out in respect of said amount.

11] According to defendants, plaintiffs have failed to pay the house property, water and other government taxes

and therefore, defendant No. 1 through defendant Nos. 2 and 3 (who are authorized) repeatedly requested plaintiffs to pay the amount assessed for previous period as well for present period but they have not complied the request of defendants.

12] According to defendants instead of complying defendants request, plaintiff is trying to created third party interest, charge over the suit property, plaintiff is avoiding to pay the amount of taxes inspite of the legal remedies availed by defendant No.1.

13] According to defendants, they have demanded an amount of Rs. 8,90,585/- by their demand notice dtd. 24/04/2016 through their Advocate at first time. In spite of receipt of said notice it was not complied therefore, they again issued subsequent notice dtd. 6/3/2017 which was falsely replied by plaintiffs through their reply dtd. 12/05/2017.

14] According to defendants, the notice in dispute i.e. dtd. 15/02/2022 is proper notice. Details of the assessment of tax in respect of the suit property as well arrears in respect of the suit property tax amount are mentioned by them in said notice.

15] According to defendant No.1, they are local self governing authority. They are doing their work for the

welfare of villagers of Udgaon. Their work is done as per the government resolution and rules prescribed by law. Due to avoidance of plaintiff payment of taxes which is demanded by defendant No.1, huge inconvenience is caused to defendant No.1 for doing their development work and day today maintenance work of village Udgaon for the benefit of villagers.

16] According to defendants, plaintiff has not come before court with clean hands. The suit is barred by provisions of Transfer of Property Act, Specific Relief Act and Maharashtra Prevention of Fragmentation and Consolidation Act. Plaintiffs are trying to develop the portion of suit property by cheating government agencies. They are trying to develop and sale out the suit property and defraud the government for lacs of rupees. By making false statements, cheating government agencies, plaintiffs have obtained permission for development of the suit property from concern authorities. Therefore, defendants are having apprehension that by making development of the suit property, plaintiffs will defraud defendants as well State of Maharashtra. Hence, injunction should not be granted.

17] According to defendants, plaintiffs are seeking cancellation of mutation No. 9504 dtd. 18/07/2008 but not made Tahasildar Shirol as party to the suit therefore, suit is

bad for non-joinder of necessary parties.

18] According to them, suit is also not within limitation as plaintiffs are challenging the notice dtd. 12/05/2017 issued by defendants by filing present suit on 16/04/2022 i.e. after period of three years of limitation. Thus, when suit is not within limitation, necessary parties are not joined in suit and plaintiffs are challenging the lawful assessment of the defendant No.1 in respect of tax of the suit house property, no any injunction can be granted as prayed by plaintiffs. Hence, application be rejected with costs.

19] Heard learned Advocate for plaintiff as well defendant Nos. 4 to 12. Learned Advocate for defendant Nos. 1 to 3 are absent for hearing. Also gone through written submission submitted by plaintiffs. Following points arise for my determination which I have recorded my findings thereon along with detail reasons to follow.

Sr.No	Points	Findings
1.	Whether plaintiffs has made out prima facie case in their favour ?	... In the Negative.
2.	Whether balance of convenience lies in favour of plaintiffs?	... In the Negative.
3.	Whether plaintiffs will suffer irreparable loss, if injunction is not granted in their favour ?	... In the Negative.

4.	What order?	As per final order.
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REASONS

AS TO POINT NOS. 1 TO 3

20] In order to establish their claim, plaintiffs have relied on various documents. The copy of assessment in respect of the suit property for the year 2006 to 2008, 2009 to 2010, 2012 to 2016 at Exh. 31/1 to 3 respectively. The copy of assessment register kept with office of defendant No.1 as per Rule 32(1), Form No.8 for the year 2015-2016 to 2018-2019, 2019-2020 to 2022-2023 is at Exh. 31/4 and 6. The copy of register for demand of tax for the year 2015-16, 2016-2017, 2017-18, 2019-20 at Exh. 31/5, 7, 8 and 9. Receipt of tax demand for the year 2021-22 at Exh. 31/10.

21] The 7/12th extract of Gat No. 1227 i.e. suit property for the year 2022 is at Exh. 31/11. The copy of letter dtd. 292/04/2022 issued by defendant No.1 to Tahasildar Shirol requesting to create charge over the suit property belonging to plaintiffs in respect of arrears of tax is at Exh. 31/12.

22] The photographs at Exh. 31/14 to 16 shows the situation over the suit property. The copy of resolutions dtd.

12/04/2022 passed by members of defendant No.1 i.e. defendant Nos. 4 to 12 is at Exh. 31/17 shows that, it is resolved by them to create charge on 7/12th extract of the suit property of the plaintiffs in respect of total amount of tax demanded by them in their notice i.e. for the Rs. 16,96,499/-. It appears that, the said authority has resolved not to make any further assessment in respect of tax of the suit property, without inspection of the suit property, after 01/04/2022.

23] The copies of notice Exh. 28/1 dtd. 4/7/2022 shows that, defendant No.1 has informed plaintiffs to stop their construction in the suit property i.e. situated in Gat No. 1227 and bearing Grampanchayat Property No. 2206. As per said notice, plaintiffs are doing illegal construction over their property without permission of defendants. The notice dtd. 27/07/2022 at Exh. 28/3 is for same reason. The last notice dtd. 27/07/2022 at Exh. 28/4 is requesting plaintiffs to pay all the arrears of tax amount in respect of the suit property up to year 2022-23. The said notice issued by defendant No.1 to plaintiffs is alongwith detail description of the tax (house property + open place + health tax + power tax). Those notices states that, plaintiffs are liable to pay the amount of Rs. 18,09,421/- till 27/07/2022 to defendant No.1 in respect of the suit property, as assessed by defendant No.1. It is matter of record that all these notices are replied by plaintiffs vide Exh. 28/2, 5 and 6 respectively. They have disputed the

amount of assessment. According to them, till decision of suit, said amount can not be recovered by office of defendant No.1.

24] The documents at Exh. 37 and 39 shows that, the development work in respect of the suit property is being proposed by plaintiffs. They have applied for development of the suit property to the Town Planning Authority who have given temporary permission for development of the suit property as per their letter dtd. 09/06/2021 at Exh. 39/2.

25] According to plaintiffs, their business is closed, they want to demolish the structure in dilapidated condition existing over the suit property. However, defendants are obstructing for demolition work. They are also obstructing plaintiffs plan for development of suit property, which is temporarily sanctioned by The Town Planning Authority. Thus, merely on the basis of such false and erroneous notice of recovery of tax by defendants, they can not restrain plaintiffs development work over the suit property and can not create any charge on the suit property for the amount disputed by plaintiffs and which is claimed by defendant No.1 till disposal of suit.

26] The sum and sub stance of the plaintiffs argument is that, the notice which is subject matter of the suit itself is

illegal, the mutation No. 9504 at Exh. 3/3 is erroneous. Plaintiffs have informed the office of defendant No.1 vide Exh. 3/7 that they are not liable to pay the demand made by them vide their notice dtd. 24/03/2022 hence, till decision of suit temporary injunction be granted as claimed by them.

27] After going through the record and proceedings and submissions advanced by both sides, in my opinion, it appears that, the charge at exh. 3/3 in respect of suit property was created by defendant No.1 on 18/07/2008 for the amount of Rs. 4,20,230/-. It was never challenged by plaintiffs though they were having knowledge about above charge on the suit property created by mutation entry NO. 95060 by the office of defendant No.1. This fact seems to be within knowledge of plaintiffs on 12/05/2017 as per recitals in notice Exh. 3/11. However suit was not filed within three years of limitation, challenging said mutation which is alleged to be based on erroneous assessment of the defendant No.1.

28] Neither pleadings of the plaintiff nor documents in support of it, filed by plaintiffs shows that, they have informed office of defendant No.1 that suit property is unused for relevant period and therefore, tax can not be levied on such unused property.

29] I have carefully gone through the provisions of Chapter IX of the Maharashtra Village Panchayat Act, it deals with taxation and recovery of claims. It shows that, the aggrieved person by assessment of the Grampanchayat, has to challenge it in appeal before Block Development Officer of the panchayat samiti within statutory period as per Section 124(5) of the Maharashtra Village Panchayat Act. However, it is contention of plaintiffs that, such jurisdiction is vest with this court. They have challenged defendant No. 1's notice dtd. 24/03/2022 which is arbitrary, illegal, issued without following procedure established by concerned act so, this court itself is having jurisdiction to decide the suit.

30] In support of this they relied on case of **Zishan Husain V/s. State of Maharashtra and others, reported in 2019, DGLS (Bom) 898**, wherein Hon'ble Bombay High Court has held that, illegal resolution of taxation can be challenged in civil court.

31] In my opinion, whether the suit is within limitation, whether this court is having jurisdiction to try and entertain the validity of notice dtd. 24/03/2022 are questions which can only be decided during trial. At this juncture, no prima facie material is brought on record by plaintiffs showing that, defendants are charging excess of arbitrary tax on the suit property. Infact record shows that, charge is already

created in respect of previous amount of arrears. That was not challenged by plaintiffs within time. Unless and until, it is decided that, this court is having jurisdiction to decide validity of suit notice dtd. 24/03/2022 and assessment of tax in it is erroneous on the face of record so notice is required to be canceled being illegal, in my opinion, it would not be just and proper to restrain defendants from recovery of tax amount in said notice from plaintiffs.

32] As on today, the assessment of tax in the suit notice dtd. 24/03/2022, issued by defendant No.1, is not held as erroneous. As on today no any conclusion can be drawn about the validity of notice dtd. 24/03/2022. Thus, in my opinion, this court can not held that, plaintiffs have established their prima facie case showing that, defendant No.1 is having no right to recover tax in notice as the notice is apparently illegal.

33] Considering the nature of dispute between the parties, prayer in the main suit, if injunction will be granted against defendants, it will be unnecessary interference of the court in the affairs of local self government who are doing their work for welfare of villagers of Udgaon by the amount which will be received by them by way of tax in the notice dtd. 24/03/2022 from plaintiff. Thus, in my opinion, no balance of convenience lies in favour of plaintiffs because

unless and until they establish the erroneous or arbitrary nature of notice dtd. 24/03/2022, they can not be exempted from paying the amount of tax with the office of defendant No.1, who is the local self authority, doing their day today work as per procedure prescribed by law for the welfare of villagers.

34] In my view, due to reasons recorded above plaintiffs will not suffer any loss of irreparable nature, if injunction will be refused because on their success in the suit, they can recover the amount paid by them to the office of defendant No.1 as per Section 144 of the Code of Civil Procedure. As said section provides remedy of restitution on reversal of decree, judgment or order.

35] On the contrary, if injunction will be granted, defendants will suffer irreparable loss. They will be restrained from receiving the amount of tax levied on property of plaintiffs for doing their public work. Ultimately due to interference of court in the work of defendant No.1, which they are doing as per rules established by law could not be completed and the tax payer, villagers will suffer loss. The defendants will be unable to do their welfare work by spending the amount of tax which they are going to recover from plaintiffs.

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Special Civil Suit No. 27/2022
CNR NO.: MHKO07000648-2022

36] For all above reasons, I am incline to answer point Nos. 1 to 3 in negative and answer to point No.4, I proceed to pass following order.

ORDER

- (1) Application Exh. 5 stands rejected.
- (2) Parties to bear their own costs.

Date : 17/07/2023.

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