IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 4737 OF 2015

Bankatlal Bherulal Bang … Petitioner

vs

The Dhule Municipal Corporation
and another … Respondents

Mr. Girish Rane, Advocate for petitioner

CORAM : SUNIL P. DESHMUKH, J.
29TH JULY, 2015

ORDER:

1. The petitioner aggrieved by dismissal of his appeal bearing Municipal Appeal No. 3 of 2014, under order dated 13-10-2014 passed by 2nd Joint Civil Judge, Senior Division, Dhule, is before this court.

2. The facts not in dispute are, aforesaid appeal had been preferred against the property tax bill dated 04-02-2014 quantifying tax at Rs. 7,69,325/- and resultant communication confirming the same dated 06-03-2014 issued by the municipal corporation for the period 2012-13 and 2013-14. The tax amount referred to in the same is stated to have been based on earlier notice dated 04-02-2014 for Rs.2,52,439/-.

3. Learned counsel contends that the amount of ₹ 2,52,439/- pursuant to the notice dated 04-02-2014 had been deposited by the

petitioner on 12-3-2014 under protest but in the meanwhile another bill was issued on 04-02-2014 itself for Rs.7,69,325/- and the same was confirmed and directed to be paid by letter dated 06-03-2014 referred to hereinbefore against which petitioner had filed municipal appeal bearing no. 3 of 2014 which has been dismissed under the order impugned and as such, present writ petition.

4. Learned counsel for petitioner contends, rate of enhancement in taxes has not been agreed upon by the petitioner-appellant and purports to challenge the rate at which the taxes are sought to be charged and levied. It is the letter dated 06-03-2014 which is said to be the cause of action for appeal. The amount referred to in the same is the amount payable upto date of filing appeal.

5. The relevant provisions providing for an appeal under section 406 of the Maharashtra Municipal Corporation Act, 1949 read as under;

> “ ***III Appeals against Valuations and Taxes***
> *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)* ....
> *(c)* ....
> *(d)* ....
> *(e) in the case of an appeal against a tax, or in the case of an appeal made against a rateable value or the capital 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 capital value, as the case may be upto the date of filing the appeal has been deposited by the appellant with the Commissioner.* "

6. Sub section 2(A) of Section 406 of the Act dealing with summary dismissal of appeal reads :

> " *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.* "

7. From aforesaid, it is obvious that the statutory provisions put a sort of obligation regulating the exercise of powers by the court of appeal in case of non deposit of taxes upto the date of filing of appeal vide clause (e) of sub-section (1) of section 406 of the Act. The provision further empowers and impliedly imposes a duty on the court to summarily dismiss the appeal if the same is not filed in accordance with clauses (q) to (e) of sub-section (1) of said section.

8. The petitioner under the circumstances has not been able to show as to how the appeal could be entertained in the absence of deposit of amount referred to in the notice. It is not that while appeal had been preferred by the petitioner the same was accompanied with the deposit of amount under the notice appealed from.

9. Looking at the statutory provisions as aforesaid, I do not find any error has been committed by the appellate court while dismissing the appeal.

10. Writ petition, as such, is rejected. In case the amount is deposited within the period prescribed pursuant to the provisions of the Act referred to earlier, it would be open for the petitioner to make an application to the appellate court for revival of appeal and such application shall be dealt with in accordance with law and merits by the appellate court.

SUNIL P. DESHMUKH, J.

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