IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2497 OF 2014

(M/s. Yomax Electronics thr. its Proprietor Shri Ajit Bhagchand Kevalramani vs. NMC thr. its Municipal Commissioner & Ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI &
A.P. BHANGALE, JJ.
MARCH 05, 2015.

Heard Shri Voditel, learned counsel for the petitioner and Shri Kasat, learned counsel for the respondents.

Writ Petition under Article 226 of the Constitution of India challenges the demand notice dated 27.03.2014 by which sum of Rs.85,95,098.56 ps. has been asked for from the petitioner under Section 128 read with Rule 33 of Chapter VIII under Schedule D of Maharashtra Municipal Corporation Act, 1949, (hereinafter referred to as the Act).

This Court while issuing notice in the matter on 20.05.2014 restrained the Municipal Corporation from taking any coercive steps. That order has been modified on 23.09.2014 and after noticing contention of Municipal Corporation that the petitioner had remedy under Section 406 of the Act, this Court directed the petitioner to deposit the sum of Rs.40,00,000/- (Rs.

Forty lakh only) within a period of two weeks in this Court to show bonafides. On 09.10.2014, time of four weeks was granted to the petitioner to comply with it. It appears that this order was questioned by the petitioner before the Hon'ble Apex Court in Special Leave Petition and that SLP was dismissed on 17.11.2014. Thereafter Civil Application No. 70 of 2015 was taken up for recalling the orders dated 23.09.2014 and 09.10.2014. On 27.02.2015, an additional affidavit has been filed pointing out three immovable properties available with the petitioner with a desire to offer the same as security for the demand raised by the Corporation.

In this background, Shri Voditel, learned counsel submits that the amount of Rs. Forty lakh was directed to be deposited only to show bonafides and hence inability of the petitioner to deposit the amount cannot result in non suiting it. He further states that despite best efforts, as the petitioner could not collect that amount, he is constrained to move application for its recall and also offer the immovable properties valued roughly at Rs. Seventy lakh towards the order of this Court. He also submits that in fact an Appeal under Section 406 of the Bombay Provincial Municipal Corporation Act, 1949, was filed and because of condition of pre deposit, same could not be effectively prosecuted, therefore, present petition has been filed. He, therefore, argues that in this situation unless this Court records a finding of availability of alternate remedy, the petitioner cannot be non suited.

On merits he submits that the demand is for alleged imports before 01.04.2013 to 31.10.2013. At that time as Local Body Tax (LBT) was newly introduced, the situation was not very clear. He further submits that the data collected by the respondents does not reflect correct position. Most of the sales have been effected from the shop which the petitioner has got outside Municipal Corporation limit i.e. at Wadi and only part of it is from within limits of Corporation. As such, the demand on entire value of goods worked out at Rs.7,32,29,031/- is erroneous. He further states that only two petitioners before this Court are being harassed by subjecting them to two times penalty and heavy interest. As the provision was new and there was ignorance as also uncertainty, time to file return was extended and most of the traders have been left out only by imposing the penalty of Rs.5,000/-. He, therefore, submits that in this situation, considering these facts, the petitioner cannot be asked to avail alternate remedy.

Shri Kasat, learned counsel appearing for the respondents – Corporation invites attention to reply affidavit. He submits that an employee from the Philips Company had approached the concerned department of Nagpur Municipal Corporation to ascertain whether LBT amount of Rs.5,39,923/- was paid by the petitioner vide challan dated 20.06.2013. Therefore, an exercise of verification was undertaken and it was found that said amount was not deposited in the accounts of Corporation. The Corporation, therefore, suspected foul play and it was found that it was not credited in the accounts of Nagpur Corporation. The petitioner was then served with a notice calling upon him to furnish purchase invoices from 01.04.2013 and to produce Register in Form D and copies of LBT payment challans. The petitioner did not furnish those details and hence a notice in Form 'O' under rule 49(2) was issued on 04.12.2013 for breach of Rule 48(2)(b) of the Bombay Provincial Municipal Corporation (Local Body Tax) Rule, 2010. As the petitioner failed to respond, action of search and seizure against his establishment was taken on 24.12.2013. The statement of proprietor Shri Ajit Kevalramani was recorded and he promised to supply the documents by 27.12.2013. Another notice was then served on 03.01.2014 for oral hearing. He was accordingly heard on 09.01.2014 and on 13.01.2014, he was called upon to furnish relevant challans. Rehearing then became necessary because of transfer of officer and the petitioner was again heard on 31.01.2014. An order dated 24.03.2014 was then passed and the petitioner was found to have committed breach of the Municipal Corporation Act and LBT Rules, more particularly Rules 13, 19, 22, 40 and 48(2)(c)(iii). The penalty was accordingly imposed in accordance with the provisions of the Rules.

In reply, Corporation has denied the

allegations made by the petitioner.

The facts at hand show that after the demand, the petitioner has on 09.04.2014 filed an Appeal under Section 406 of the Bombay Provincial Municipal Corporation Act, 1949, with the Deputy Commissioner and the Additional Municipal Commissioner has on 25.04.2014 passed an order. He noted that the petitioner has sought stay of recovery of the disputed amount but there was no payment thereof as contemplated under Section 406(8). Hence, the application for stay could not have been entertained. He was, however, given time of 10 days from the date of receipt of said order and to file fresh Appeal under Section 406 of the Act. It was observed that if the amount of bill is not remitted within said period, the appeal would stand dismissed. It is thereafter that present writ petition has been filed on 19.05.2014.

In writ petition, up to para 13, all these facts are disclosed. The petitioner has pointed out Article 21 of the Constitution of India and has also taken a ground of harassment or abuse of their power by the authorities. However, he has not stated reasons for not depositing the amount in terms of Section 406(8) of the Act in the petition. Even before this Court, inability to deposit amount was not pressed into service till filing of Civil Application No. 70 of 2015. In para 2 of Civil Application No. 70 of 2015, the petitioner has stated that being not in a position to deposit the amount of Rs.40

lakh as directed by this Court, he has approached the Hon'ble Apex Court.

In additional affidavit filed on 27.02.2015, he has given the details of properties held by him and offered them as security. The respondent – Corporation has filed reply to Civil Application No. 70 of 2015 and in it, opposed any modification. It has also opposed the request of the petitioner to offer properties as security.

The demand for tax here cannot be said to be without jurisdiction. We are, therefore, not in a position to accept that the remedy under Section 406 of the Act is not available to the petitioner in the matter. In fact said remedy has been availed in the instant matter by the petitioner. Not only this, in the petition, there is a prayer in the alternative to direct Respondent No. 3 to adjudicate that appeal without insisting on deposit of amount of Rs.85,95,098.56 ps. expeditiously and to stay that demand till disposal of said appeal. The facts and conduct noted by us supra show that the petitioner is deliberately avoiding to comply with the orders of this Court dated 09.10.2014.

In this situation, as the remedy of filing Appeal under Section 406 of the Act was available and could have been resorted to effectively by the petitioner, we are not inclined to interfere in the matter in writ jurisdiction. Writ petition is, therefore, rejected. However, there shall be no order as to costs.

At this stage, Shri Voditel, learned counsel seeks continuation of interim order for a further period of six weeks. The request is being strongly opposed by the learned counsel for the respondents.

However, in the facts and circumstances of the case, as the interim order has been operating from May 2014 till date, we continue it for a further period of six weeks. The petitioner, however, shall not create any third party interest or any encumbrance on the properties disclosed by him to this Court in the additional affidavit dated 27.02.2015. The interim order shall cease to operate thereafter automatically.

JUDGE **JUDGE**

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