IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3427 OF 2015

Agricultural Produce Market Committee,
Kille Dharur, Tq. : Dharur, Dist. : Beed,
Through its Secretary,
Shivraj S/o. Damodhar Shingare,
Age : 35 Years, Occu. : Service .. **Petitioner**

Versus

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai – 32

2. The Collector,
Beed, Tq. and Dist. : Beed

3. The Tashildar, Dharur,
Tq. : Dharur, Dist. : Beed .. **Respondents**

Shri Bhagwan R. Sable, Advocate for the Petitioner.
Shri S. M. Ganachari , A. G. P. for Respondents.

CORAM : S. V. GANGAPURWALA AND K. K. SONAWANE, JJ.
DATE : 20TH JULY, 2016.

ORAL JUDGMENT ***(PER S. V. Gangapurwala, J.)*** **:-**

1. Rule.

2. Rule returnable forthwith. With the consent of learned counsel for respective parties taken up for final hearing.

3. The Petitioner challenges the demand notice so also the warrant of attachment issued on account of non payment of the non agricultural tax.

4. Mr. Sable, the learned counsel for the Petitioner states that, in the year, 2012 the Petitioner was issued demand notice to pay non agricultural charges of Rs. 12,322/- the said notice was issued on 13th August, 2012 which was for the assessment year, 2012 – 2013. Thereafter, another demand notice was issued in September, 2013 claiming an amount of Rs. 12322/-. The Petitioner paid the said amount demanded. Further without any show cause notice nor without affording any opportunity to the Petitioner to put forth its stand directly the demand notice is issued on 24.12.2014, thereby demanding arrears of non agricultural tax to the extent of 3,62,370/-. The learned counsel submits that, the Petitioner has regularly paid the non agricultural tax every year as demanded. No arrears existed with regard to non agricultural tax and abruptly demand notice for such a huge amount is issued without following the procedure laid down under the Maharashtra Land Revenue Code, 1966. The Petitioner on receipt of the said demand notice has filed application / representation dated 28.01.2015 with the Respondent / Tahsildar, instead of taking cognizance of the said representation, notice of attachment is issued to the present Petitioner.

5. Mr. Ganachari, the learned A. G. P. for the Respondent submits that, non agricultural charges are calculated as per the Rules the Petitioner is bound pay the same.

6. We have considered the submissions.

7. While assessing the non agricultural tax there is a well laid down procedure from Sections 109 to 120 of the Maharashtra Land Revenue Code, 1966. The non agricultural assessment differs as per the nature of the property, its use.

8. Every year the Petitioner was paying the non agricultural tax as was demanded from the Petitioner by the Respondent which is less than the one demanded by the impugned notice and the impugned notice says that it is arrears on non agricultural tax. The demand notice does not make it clear as to the basis upon which the Tahsildar has determined the said amount as non agricultural tax and even otherwise the same is without notice to the Petitioner.

9. Considering the aforesaid aspect of the matter, the impugned attachment notice is quashed and set aside. The Respondent shall not act upon demand notice dated 24.12.2014 **(Exh. G)** till the Respondent takes into consideration the say filed by the Petitioner and hears the Petitioner in that regard. The Petitioner shall appear before the concerned Tahsildar on 10th August, 2016. The Tahsildar i.e. Respondent No. 3 shall after hearing the Petitioner determine the non agricultural tax.

10. The Petitioner has deposited an amount of Rs. 25,000/- in this court pursuant to the orders of this court. The Respondent is entitled to withdraw the said amount and the same shall be adjusted in the non agricultural tax to be recovered from the Petitioner as may be determined or if, the determined amount is less the same be adjusted in subsequent year.

11. Rule is accordingly made absolute in above terms. No costs.

[K. K. SONAWANE, J.] **[S. V. GANGAPURWALA, J.]**

sam/July.16