IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5363 OF 2016

M/s. Abhay Auto ... Petitioner

Vs

The Sangli-Miraj & Kupwad Municipal Corporation & Anr. ... Respondents

Mr. Pradeep J. Thorat for the Petitioner.

Mr. G.H. Keluskar for the Respondent Nos.1 and 2.

Mr. Gani Sayyad, LBT Officer, Sangli-Miraj & Kupwad Corporation present.

CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKARJOSHI, JJ.

TUESDAY, 21ST JUNE, 2016

P.C. :

1. By this petition under Article 226 of the Constitution of India, an order of assessment dated 15th March, 2016, for the period 1st April, 2014 to 31st March, 2015, and another order of identical nature for the period 22nd May 2013 to 31st March, 2014, are challenged together with the notices of demand. The ground that is taken before us at the stage of ad-interim relief was

that the petitioner is a dealer in two-wheeler vehicles. That is for Sangli District. The local body tax was to be levied and insofar as that levy is concerned, the Corporation has deputed an officer. That officer visited the establishment of the petitioner and it is the case of the petitioner that having been called upon to attend the office of the respondent for assessment, it had deputed one Chartered Accountant. He was engaged by the petitioner for some time and later on he was replaced by another Chartered Accountant.

2. The earlier Chartered Accountant of the petitioner was engaged by the Corporation and that is how the assessment proceedings commenced. They were finalized without hearing the petitioner. Thus, the essential argument is that the principles of natural justice have been flouted in making ex-parte assessment.

3. On notice, the respondent appeared and an affidavit has been filed in which they have taken a categorical stand that enough opportunity was given to the petitioner. The matter was stood over on the initial occasion because it was stated that the

petitioner's partner / representative has some medical problem. The adjournment was granted. However, on the adjourned date the petitioners once again sought time to produce additional documents and which time also came to be granted according to the respondent. Two repeated notices directing the petitioner to attend the office for assessment resulted in the eventual order passed on 16th March, 2016.

4. After hearing both sides, we are of the view that it is not possible to entertain a factual dispute and of the nature raised before us. We are not here to find out what was the medical ailment and what prevented the petitioner from attending the office and from producing the documents though the matter was adjourned. However, in the larger interest of justice and the petitioner desiring a last opportunity to satisfy the authorities that it is not liable to pay the tax, that we set aside both the orders of assessment. They are set aside on the following conditions :

(i) The petitioner has deposited in this Court, fifty percent of the amount demanded and in relation to the assessment years in question. For the balance fifty percent, the petitioner has furnished a security. It is too well settled to require any reference to a precedent that Municipal Corporations and local bodies do not run on bank guarantees. We cannot, therefore, allow the petitioner a luxury of continuing the deposit in this Court and which is also not to the extent of the total demand. We do not subscribe to the request of Mr. Thorat that the deposit already made would suffice and should remain in this Court till the fresh assessment order is passed. Hence, we allow the Corporation to withdraw the sum deposited in this Court with accrued interest on production of an authenticated copy of this order.

(ii) We direct the petitioner to pay the balance demand within a period of four weeks from today. If this sum is deposited with the Corporation, then, the orders under challenge to stand set aside. No extension of time would be granted and in default, the assessment order as impugned in the petition stands and can be enforced in accordance with law.

(iii) Thereupon, a fresh assessment order can be passed by the

Corporation and that would be passed within a period of four weeks. If the petitioner does not attend any hearing, the Corporation is free to proceed in accordance with law. Needless to clarify that in the event the petitioner complies with this direction, the fresh assessment order shall be made by considering all the contentions of the petitioner and without being influenced by any earlier exercise.

(iv) Our order and direction in relation to deposit and payment is without prejudice to the rights and contentions of both sides.

4. We clarify that we have not expressed any opinion on the rival contentions on merits of the matter.

5. The Registry to return the original title deeds in relation to any immovable property furnished as security to the Registrar of this Court on production of an authenticated copy of this order.

DR.SHALINI PHANSALKAR-JOSHI, J. ***S.C. DHARMADHIKARI, J.***