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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO.1340 OF 2016**

Ravi Ram Jagtiani

..Petitioner

*Versus*Municipal Corporation of Gr. Bombay
& Anr.

..Respondents

.....

Ms. Priti Shah for the petitioner.

None for the respondents.

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**CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.****DATE : 4TH AUGUST, 2016**

PC.:

1. This petition under Article 226 of the Constitution of India challenges:-

(a) the order dated 23rd December, 2013 passed under Section 165 of the Mumbai Municipal Corporation Act (Act) in respect of M/s. Navjeevan Co-operative Housing Society Ltd.; and

(b) the special notice dated 30th May, 2015 issued under Section 162(2) of the Act to Navjivan Commercial Premises Co.op. Society Ltd.

2. The petition states that the petitioner is a member of Navjivan

Commercial Premises Co.op. Society Ltd.

3. This petition was heard on 27th July 2016 and we were not inclined to entertain the the petition. This was for the reason that the impugned order and notice has not been issued to the petitioner but to the assessee in the record of the Respondent-Corporation. Moreover there was an unexplained delay in moving this petition as the impugned order is dated 23rd December, 2013 and the impugned notice is dated 30th May, 2015 while the petition is filed on 10th May, 2016. Besides the fact that the person in respect of whom the impugned order has been passed has an alternate remedy in the form of an appeal. So also the person to whom the impugned notice is issued would have a statutory appeal from the order that may be/or already passed on the impugned notice dated 30th May, 2015. This appeal from the orders passed under the Act is provided in Section 217 of the Act.

4. Therefore at the request of the counsel it was adjourned to 28th July, 2016 to enable her to take instructions to withdraw the petition. On 28th July, 2016 the petitioner sought time and therefore was adjourned to today to appear on the board under the caption “for dismissal”.

5. However today the petitioner seeks to agitate the issue and urge that he is an aggrieved party and entitled to challenge the impugned order and impugned notice by filing this petition. This on the basis that ultimately as a member of the Society the burden of excess tax would fall on him. Further she seeks an adjournment to amend the petition to make the co-operative society as party respondent.

6. Prima facie, as the impugned order and the impugned notice has been issued to the co-operative society i.e. the assessee in the Corporation records. Therefore the person who can be aggrieved by the same are the two societies. The petitioner may be an affected party but is certainly not an aggrieved party to seek an extraordinary jurisdiction of this Court. The remedy, if any, of the petitioner has, is with the co-operative society of which he is a member. Moreover it may be pointed out that the impugned order dated 23rd December, 2013 is issued to a society in respect of which the petitioner does not claim to be a member. In fact the petitioner in the petition claims to be a member of only Navjivan Commercial Premises Co-operative Society Ltd.

7. In any case the issue of aggrieved party or not is academic in the present facts. This is so as the petitioner has not explained the undue

delay in filing this petition, so as to even hear the petitioner on merits of her challenge. Moreover the petition itself states that it has an alternative remedy but is not exercising it as he would have deposit the tax. For the above reasons we seen no reason to entertain this petition. Consequently, the request of the petitioner to now amend this petition to add the co-operative society cannot be countenanced as the petition itself does not deserve consideration on account of undue delay.

8. Accordingly, petition is dismissed. No order as to costs.

(A. K. MENON, J.)

(M. S. SANKLECHA, J.)