IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 791 OF 1997

1] Rajabhau S/o Manohar Joshi,
Age – Major, Trustee Shri Balkrishna
Maharaj Samadhi (Mandir)
Nageshwarwadi, Aurangabad

2] Balkrishna Maharaj Samadhi (Mandir)
Trust, through Trustees, i.e.
Petitioner no.1 above .. Petitioners

VS.

1] The Rent Controller, Aurangabad

2] Gayasuddin Mohd. Suleman,
Age – 45 years, Occu.-Business

3] Ramabai widow of Dattatraya Joshi,
Age – Major, Occu.- Household,

Respondents no.2 and 3 both
R/o Shri Balkrishna Mandir,
near Zilla Parishad,
Nageshwarwadi, Aurangabad

4] The Municipal Corporation,
Aurangabad through its
Commissioner .. Respondents

None present for the petitioners
Mr. A.R. Kale, A.G.P. for the respondent/State

CORAM : SUNIL P. DESHMUKH, J.
DATE : 09-05-2017

ORAL JUDGMENT:

1. It is being reported that similar matters filed by

petitioners, have already been dismissed for non removal of objections.

2. In this petition, upon some development, in respect of their counsel, it appears that the petitioners were served through court motion. Despite such service, no appearance has been caused on behalf of the petitioners.

3. The petition has been moved, purporting to seek direction for disposal of pending dispute before Rent Controller, Aurangabad and under interim reliefs, restraint is sought on attachment and sale of trust property. The petitioners purport to represent a public trust by name, Shri Balkrishna Maharaj Samadhi (Mandir) Trust, Nageshwarwadi, Aurangabad. It is being claimed by petitioner no.1, that he had been managing the affairs of the trust under a scheme settled and sanctioned by the Assistant Charity Commissioner, on 07-07-1990. The petitioners had been submitting audit reports to the Assistant Charity Commissioner, regularly as also the audited accounts.

4. Respondent no.3 had purported to pose challenge to the sanctioned scheme before additional district judge, Aurangabad and additional district judge had rejected the challenge. On first appeal being preferred before this court, wherein *ex parte* interim relief

granted, came to be later vacated. According to petitioners, there is no stay to the scheme and it is in force.

5. According to petitioners, respondent no. 3 has no concern with the trust nor she is a trustee and under the scheme, only a provision has been made to pay to her, towards maintenance, a sum of Rs.7000/- per year during her lifetime.

6. It is being claimed, respondent no.3 has no right to receive rent of the property of the trust and to interfere with its administration. It is only petitioner no.1, who has authority to run administration of the trust and receive and collect rent from tenants of the property of the trust.

7. Respondent no.3 tried to interfere with in collection of rent from the tenants. Upon the same, the tenants stopped payment of rent from October, 1990. While the petitioner issued notice to the tenants, respondent no.3 purported to issue a letter to the tenants demanding rent.

8. Quite a few tenants, in the circumstances, approached the Rent Controller – respondent no.1, and, deposited certain amounts in said office pursuant to provisions of Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954. All these events had

affected income of the trust from the property, which had been its major source of income. In the circumstances, maintenance of property had run into difficulties and payment of electricity charges, taxes of municipal corporation which were mounting, could not be made

9. As the taxes of municipal corporation could not be paid, the trust property came to be attached for recovery of tax pursuant to provisions of Maharashtra Provincial Municipal Corporation Act, 1949, and, its auction had been imminent. Petitioners' request to allow him to withdraw the amount deposited by the tenants in the office of respondent no.1, had not borne any fruits, as no orders came to be passed in respect of the same. In the situation, writ petition no. 3120 of 1993 and quite a few other writ petitions had been filed by petitioners in this court. The high court had disposed of group of petitions on 06-01-1994, including writ petition no. 3120 of 1993, by passing operative final order to the following effect,

> " *4. I, therefore, pass following order:*
>
> *The amount deposited with the Rent Controller in respect of House No. 4-126, Nageshwarwadi, Aurangabad be sent to Municipal Corporation, Aurangabad, within a period of two weeks from today, to be adjusted towards demand of property tax made by demand notice dt. 17-9-1993, for Rs.45,842/-, against this property. Tenants, above referred, shall continue to make deposit of their rent in the office of the Rent Controller every month on or before 10th of each English calender month and the*

Rent Controller shall accept these amounts and arrears, if any, if voluntarily deposited by the tenants. Tenants who want to deposit the arrears, they may do so without prejudice to the rights of the landlords, if any. All these deposits should be sent by the Rent Controller every month to the Municipal Corporation, Aurangabad, to be adjusted against the property tax demand till the whole demand of the property tax is cleared. This order is without prejudice to the contentions raised either by the petitioner or any of the member of the trust or by the respondent no. 3 Ramabai. ”

10. A copy of full text of said order dated 06-01-1994 has already been annexed to present petition at Exhibit "P-2".

11. It has been referred to in this petition that although, this court had passed an order on 06-01-1994, it was in respect of the taxes of local authority of certain period. Thereafter, the taxes for every year had been falling due and payable.

12. It is being contended by the petitioners that matter before respondent no.1 was pending and petitioners had not been receiving rent from the tenants. In the circumstances, the taxes for the period from 1994 – 95 to 1996 – 97, had been due and payable and accordingly, a notice came to be issued on 15-02-1997 for recovery of tax. Further notice had been issued on 21-02-1997 requiring petitioners to deposit the taxes or else further action of attachment of trust property and auction sale would take place.

13. The petitioner purports to point out that non receipt of rent from the tenants at their end, has given rise to multifaceted problems and difficulties for them. In the circumstances, direction for disposal of the proceedings before respondent no.1 along with the interim relief, restraining municipal corporation from proceeding with intended auction for recovery of property tax, had also been sought.

14. While the matter came up before this court, the court passed an order on 17th April, 1997, as under :-

> " *Heard advocates.*
>
> *Rule.*
>
> *However, a specific direction is given to the Rent Controller that the amount of rent which is deposited with the Rent Controller by each of the tenants shall be remitted by him towards the municipal taxes to the Municipal Corporation, Aurangabad i.e. respondent No.4 in the present matter, which are to be recovered by the Corporation from the trust property i.e. from the petitioners.*
>
> *By way of interim arrangement, it is directed that the Respondent No.2 / tenant Gayasuddin shall hereafter deposit the rent with the Rent Controller and Rent Controller shall accept the same and shall issue due receipt through his office for the same to the tenant.*
>
> *It is further made clear that the Rent Controller shall remit the amount to the Municipal Corporation, Aurangabad as mentioned*

above, to the tune of Rs.39,968/- in pursuance of the demand notice dated 15-2-97. Rest of the amount shall be kept with the Rent Controller and the said amount shall be kept in the same account in which he has already kept the earlier amount and shall not deal with that amount until further orders or directions from this court. ”

15. The efficacy of the writ petition, under the interim order, it appears may have been worked out.

16. In the event it has not and if the proceedings are yet pending before respondent no.1, it would be worthwhile that tenants shall continue to make deposit of rent in the office of rent controller on or before 10^{th} day of English calender month. The rent controller shall accept the arrears, if deposited by the tenants. Tenants who deposit arrears, they would be doing so without prejudice to the rights of the parties. Deposits so made by tenants shall be sent by the rent controller every month to the Municipal Corporation, Aurangabad till amount of demand of the property tax under the notices is cleared.

17. If the decision is not rendered by respondent no.1 or by any other authority or forum, it would be expedient to go ahead with the proceedings, and, dispose of the same as early as possible, preferably within a period of six (6) months from the date of receipt of this order.

18. Further pendency of this writ petition is not likely to serve any fruitful purpose. Writ petition is accordingly disposed of. Rule made absolute accordingly.

19. This order is being passed without prejudice to the contentions raised by the petitioners or any member of the trust or of respondent No.3 or the tenants.

[SUNIL P. DESHMUKH]
JUDGE

arp/