IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1160 OF 2012

M/s Mansingka Industries Ltd.,
A Company duly incorporated under
the provisions of the Companies
Act, 1956 and having its registered
office at 1, Sir Vithaldas Thackersey
Marg No. 1, Maker Bhavan, Bombay
through its Managing Director
Pradipkumar s/o Hanumant Mansingka
Age : 54 years, occu. Business **PETITIONER**

VERSUS

1. The State of Maharashtra,
through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32

2. The Director
Municipal Administration,
State of Maharashtra, having
its office at Sir Pockhanwala Road,
Worali, Mumbai

3. The Divisional Commissioner,
Nashik Division, Nashik

4. The District Collector,
Jalgaon at Jalgaon

5. The Sub-Divisional Officer/
Sub-Divisional Magistrate,
Pachora, Division Pachora,
District Jalgaon

6. The Chief Executive Officer,
Pachora Municipal Council,
Pachora, District Jalgaon **RESPONDENTS**

Mr. C.V. Dharurkar, Advocate for the Petitioner
Mr. A.R. Kale, A.G.P. for respondent Nos. 1 to 5
Mr. P.P. Chavan, Advocate for respondent No. 6

CORAM : T.V. NALAWADE AND SANGITRAO S. PATIL, JJ.

DATE : 13th FEBRUARY, 2017

ORAL ORDER :

Heard both sides.

2. The petition is filed to challenge the action of the respondent No. 6 of putting the property of the petitioner-Company for auction for recovery of arrears of property tax. The petitioner has also prayed for direction to respondent No. 2 to consider the dispute of arrears of property tax of the petitioner-Company afresh as provided under the Maharashtra Municipal Councils (Consolidated Property Tax), Rules, 1969. A relief is also claimed against respondent No. 6 – Council to direct it to stop the action of using coercive methods for recovery of the property tax in view of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985.

3. The learned counsel for the petitioner took this Court through the observations made by this Court and the Hon'ble the Apex Court in following three cases.

(i) ***Gram Panchayat & Another Vs. Shree Vallabh Glass Works Ltd. & others 1990 (3) BOM.C.R. (S.C.) 109***

(ii) ***CMM Limited Vs. Municipal Corporation of Greater Bombay 2004(6) BOM.C.R. 71***

(iii) ***Universal Ferro and Allied Chemicals Limited Vs. State of Maharashtra through its Secretary, Revenue and Forest Department and others 2013 (3) LJSOFT 344***

4. This Court has carefully gone through the ratio laid down in the reported cases. In those cases, the enquiry under the aforesaid Act was going on in respect of sick industry and hence, in view of the facts in those cases, it was held that the proceeding for execution, distress or like proceedings against any of the properties of the sick industry, cannot be initiated in view of the provisions of Sections 16 and 17 of the Act, except with the consent of the Board. It is further held that there would be automatic suspension of such proceedings against the company's properties and section

22(1) of the Act provides for such deemed suspension.

5. There cannot be dispute over the aforesaid observations made by this Court and the Hon'ble the Apex Court. The facts of the present case are, however, altogether different. The learned counsel for the Municipal Council – respondent No. 6 submitted that a proceeding was filed by the petitioner in the Court of Judicial Magistrate First Class, Pachora. It appears that in the year 1990, a proceeding was filed under the aforesaid Act of 1985. However, in the year 1996, it was informed to the Court, where the tax appeal was filed by the petitioner, that the industry was closed by the petitioner in the year 1994 itself. He had claimed the concession in view of these circumstances. The concession of not paying some of the amount of the property tax was given and the instalments were given in respect of the remaining amount of the property tax.

6. The learned counsel for respondent No. 6 – Municipal Council submitted that as the aforesaid concession was not availed and no amount was paid as per

the compromise, respondent No. 6 is entitled to recover the property tax as per the rules.

7. Some record is produced before this Court, which includes photographs and submissions are made that most of the portion of the industry is given on lease basis for its use as godown. It was submitted that there is no machinery of the industry in the premises and the portion adjoining to the public road is being used for shops and that portion is given on lease basis for many shops. These circumstances cannot be disputed by the petitioner.

8. The aforesaid circumstances are sufficient to infer that the machinery is sold and the industry is closed long back. The premises are being used mainly as godown and the frontage thereof is being used for shops and is given on lease to various shop-keepers. In such circumstances,it appears that the petitioner is misusing the provisions of law. Such exercise cannot be allowed to be continued. It can be said that the petitioner is earning money, on one hand, by giving the premises on lease basis for its use as godown and shops and on the

other, it is trying to stop the Municipal Council – respondent No. 6 from recovering the property tax. The petitioner has failed in the tax appeal and that decision has attained finality.

9. Considering the facts and circumstances of this case, discussed hereinabove, we are of the opinion that no relief can be granted in favour of the petitioner. It is unfortunate that the Municipal Council – respondent No. 6 could not take further steps due to the stay granted by this Court.

10. In the result, the Writ Petition is dismissed. The interim relief granted by this Court stands vacated. No costs.

[**SANGITRAO S. PATIL**] **[T.V. NALAWADE]**
JUDGE **JUDGE**

npj/wp1160-2012