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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 378 of 2017

Ratnakar S/o Domaji Chaudhari,
age 64 years occupation Manager,
R/o Ashok Talkies, Jalgaon Taluka and Dist. Jalgaon

...APPELLANT

VERSUS

The Commissioner,
Jalgaon Municipal Corporation, Jalgaon.

...RESPONDENT

Mr R.G. Borade and Mr D.A. Bide, Advocates for appellant
Mr P.R. Patil, Advocate for respondent sole

CORAM : NITIN W. SAMBRE, J.

DATE : 8th November, 2017

ORAL ORDER :

Against levying of property tax by the respondent/Municipal Corporation, the petitioner, a theater runner filed suit being Regular Civil Suit No. 56 of 2005 seeking declaration and permanent injunction that he is not liable to pay the tax and the respondent be restrained from recovering the same.

2. In response to the stand raised by the Municipal Corporation, issue No.5 was framed by the Trial Court at Exh. 134

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about jurisdiction of Civil Court to try and entertain the suit, which was answered in negative. The present appellant feeling aggrieved, preferred an appeal being Regular Civil Appeal No. 149 of 2013. The Appellate Court endorsed the finding recorded by the Trial Court that the Civil Court has no jurisdiction to entertain the suit. As such, this Second Appeal.

3. Shri Bide, learned Counsel for the appellant, while questioning the findings recorded by both the Courts below and while inviting attention of this Court on the judgment of the Apex Court in the matter of **Dhulabhai and others Vs. The State of Madhya Pradesh and another (AIR 1969 SC 78)**, would urge that jurisdiction of the Civil Court is not ousted. According to him, if the order is amenable to the jurisdiction of the Tribunal specially constituted for the said purpose and such order of Tribunal attained finality by a statute, then only a writ petition is maintainable and the Writ Jurisdiction is not ousted. According to him, the remedy of filing a civil suit is very much available when the respondent imposed and collected the tax without any authority of law .

4. Considered the said submission in the light of resistance demonstrated by learned Counsel for respondent Shri Patil. Shri

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Patil would invite attention of this Court to the provisions of section 406 of the Bombay Provincial Municipal Corporation Act so as to submit that the statutory remedy of an appeal is provided if a person is aggrieved by the quantum of levy of tax. According to him, since the statute provides for a remedy, the suit is not maintainable.

5. He would also invite attention of this court, to the law laid down by the Bombay High Court in the case of **Chief Officer, Sangamner Municipal Council Vs. Narayandas (1989 Mh.L.J. 26); and Commissioner Sangli Miraj Kupwad Cities Municipal Corporations Vs. M/s. Bhide & Sons {2007(2) ALL MR 395}**. According to him, both the judgments are taken into account while holding that the suit is not maintainable.

6. Considered rival submissions.

7. It is not in dispute that the statute provides for a remedy of appeal under Section 406 of the Act and in the peremptory provisions of the Maharashtra Municipal Nagar Panchayats and Industrial Township Act, 1965. Under the present statute and also the said statute, the issue is already decided interpreting provision of

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appeal remedy, as is available under the Act. It is held that the suit is not maintainable for the cause as sought to be canvassed.

8. As the issue is already settled by catena of judgments, this Court need not to go into the entire gamut of the provisions of both these statutes. However, suffice it to say that the present appeal is against concurrent findings of both the Courts below.

9. For the aforesaid reasons, the Second Appeal deserves to be dismissed and is accordingly dismissed.

(NITIN W. SAMBRE, J.)

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