IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9697 OF 2014

Giriraj Enterprises ...Petitioner
vs.
The Commissioner, Sangli Miraj and
Kupwad City Corporation, Sangli & Ors. ...Respondents

Mr. Girish R. Agrawal for the Petitioner.
Mr.Sudhir Prabhu for the Respondents.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 8th November, 2017

P.C.:

. Heard. Rule. Rule is made returnable forthwith with the consent of the parties.

2. Being aggrieved by the order dated 3/7/2014 passed by the Ad-hoc District Judge, Sangli the Petitioner has filed the present writ petition.

3. The Petitioner herein happens to be the original Plaintiff in Regular Civil Suit No.272/2013. The facts of the case are that the Petitioner was transporting tobacco from Sangamner to Sangli. The Petitioner happens to be the owner of Giriraj Enterprise. The goods were purchased at Sangli and were transported through Fast Tract Parcel Ltd on 18/4/2013. When the goods had reached within the jurisdiction of Sangli Miraj Kupwad Corporation, the Petitioner had produced the invoices of the goods. On the basis of the invoices and other receipts octroi was valued at Rs.22,220/-. The Petitioner had paid octroi which was valued by the Octroi Department. It is pertinent to note that in the same truck the Petitioner was transporting his office furniture i.e. computer set, table, chairs and other

office articles. The octroi Officers had collected the octroi @ Rs.22,220/- and had immediately seized the goods and other office articles.

3. On 24/4/2013 the Petitioner was constrained to issue notice to the Commissioner, Sangli Miraj Kupwad Corporation calling upon him to explain as to why goods were seized even after octroi was paid as per valuation. The notice was received by Respondent on 26/4/2013. However, the Respondent had failed to reply the said notice and, therefore the Petitioner was constrained to file a suit for injunction and declaration. The Joint Civil Judge, Junior Division, Sangli upon hearing both the parties had rejected the application seeking interim injunction by order dated 24/5/2013. What was considered by the said Court was that the goods were not properly valued as on 22/3/2013. The Petitioner had purchased tobacco at the rate of 3,873.97 per bag whereas the consignment rate was 1660.79 per bag and, therefore, according to the octroi department the rate of three bags were not valued properly. According to the learned Court the Respondents herein had issued notice dated 28/4/2013 thereby intimating the Petitioner to pay due octroi. The learned Court has observed that only to rescue himself from initiation of criminal proceedings the Petitioner had filed the suit. Learned court has also observed that the Petitioner has not approached the authority nor paid octroi as demanded. The application seeking interim injunction and removal of property was rejected. Being aggrieved by the same the Petitioner preferred an appeal before the Court of ad-hoc District Judge-1, Sangli. The learned Court has observed that the partnership registration number was not mentioned in the invoice and therefore it appears to be bogus.

4. It is apparent on the basis of record that the Respondent has not followed a proper procedure. In fact it is the case of the Petitioner that earlier he had purchased goods from the trader and not from the factory.

Learned counsel for the Petitioner submits that earlier Giriraj Enterprises was purchasing the goods from Raviraj Enterprises. Raviraj Enterprises was a middleman and therefore he had levied commission upon Giriraj Enterprises. However, subsequently Giriraj Enterprises was purchasing the goods directly from Sangamner and in any case consignment was coming from Sangli naturally earlier bills included commission of Raviraj Enterprises and therefore upon direct purchase the price of the consignment had decreased.

5. It was not necessary for the Octroi department to go into as to whether it was a partnership or a proprietorship firm. It is submitted that for the first time Giriraj Enterprises was transporting the goods directly from Sangamner into municipal limits of Sangli i.e. Sangli Miraj Kupwad Corporation. The learned Apex Court has committed a grave error in observing that there is no document. The Respondent had not followed the procedure and has seized the goods immediately even after due octroi of Rs.22,280/- was paid. In fact the Octroi Rules contemplates that the Commissioner has to issue notice and the balance octroi has to be paid within a period of 7 days from the date of the order and the said amount is to be recovered as arrears of land revenue.

6. The Municipal Corporation (Octroi) Rules contemplates as follows:

> "18 (2) When the octroi is recovered by Octroi Naka Officer as per the procedure laid down in the Standing Orders on the basis of the prices of goods determined by the Commissioner and not on the value of goods shown in original invoice or bill of the goods, and importer has produced the original invoice or bill and other papers showing the value of the imported goods in the Office of the Corporation, and if it transpires that the recovery of Octroi made is not proper and or is less than the payable Octroi amount, then the Commissioner shall have a right to demand and recover the

amount of difference in octroi as contemplated in sub-rule (1) above.

7. The learned counsel for the Petitioner submits that the Petitioner had also applied under the Rights to Information Act, 2005 to Sangli Miraj Kupwad Corporation seeking the octroi Rules and photo copy of certain rules were supplied to the Petitioner. That in case there is a doubt about valuation of the goods, the Commissioner shall determine the value and issue demand notice and the same has to be paid to the Commissioner. It also provides that in case of seizure of the goods, notice has to be issued by the Corporation giving intimation to the person that the seized goods be sold in auction in the eventuality that the demand notice is not fulfilled.

8. It also provides that in the eventuality demand notice is fulfilled, the Commissioner is bound to return the same on payment of expenses for retention and calling for auction and otherwise the goods stand confiscated and sold by the Corporation. In the present case there is no demand notice as such nor there was determination of octroi by the Corporation. As of today the Respondent does not have Standing Order to satisfy the Court that upon suspension of being undervalued the Commissioner can seize the goods or confiscate the same immediately.

9. It is apparent on face of record that the Respondent Corporation has not followed the rules and goods which are perishable goods are being in custody of the Respondent Corporation for almost more than 4 years.

10. The learned counsel for the Petitioner submits that the Petitioner would deposit amount of Rs.5,000/- under protest. It is also submitted that the Petitioner reserves his right to prefer for damages to the

Corporation. However, it is made clear that the Petitioner cannot be precluded from exercising his right to claim damages.

11. It is in these circumstances that the impugned order deserves to be quashed and set aside. The Petition is allowed. Order dated 3/7/2014 is quashed and set aside. The Petitioner undertakes to pay amount of Rs.7,000/- to the Corporation within 6 weeks under protest. Upon payment, the Respondent Corporation shall remove the goods of the Petitioner forthwith .

12. The observations made herein above are restricted to interim orders concerning return of property and the learned Court seized with RCS No.272/2013 shall not be influenced by the said observations.

(SMT. SADHANA S. JADHAV, J.)