IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1081 OF 2018

RAJKAMAL TALKIES
VERSUS
THE JALGAON CITY MUNICIPAL CORPORATION

Advocate for Petitioner : Shri S.S. Bora.
Advocate for Respondent : Shri P.R. Patil.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 30th January, 2018

PER COURT :

1. The petitioner is aggrieved by the order dated 14.11.2017, passed by the trial Court below Exhibit 6, refusing temporary injunction to the petitioner in Special Civil Suit No. 127 of 2017 and the order dated 15.1.2018, passed by the appellate Court, rejecting Civil Misc. Appeal No. 75 of 2017.

2. I have considered the submissions of Shri Bora, learned Advocate for the petitioner and Shri Patil, learned Advocate for the respondent / Corporation, *in extenso*. The entire dispute turns upon the following two issues:-

(i) Whether the petitioner / original plaintiff can prove that his business enterprise is situated on Plot CTS No. 1853 and 1854 in the Municipal limits of Jalgaon Municipal Corporation or on 1852?

(ii) Whether the suit preferred by the petitioner is maintainable before the Court before which it has been filed, in view of Section 406(3) of the Maharashtra Municipal Corporation's Act or whether the petitioner would have to approach the Court of the learned Civil Judge S.D. for the said cause of action?

3. Both the Courts below have concluded that the bill raised by the Corporation upon the petitioner for recovery of property taxes is with regard to CTS No. 1852. The said concurrent conclusions are based on certain documents placed before the trial Court. Temporary injunction is, therefore, refused.

4. The petitioner before this Court contends that Manohar Chitra Mandir had filed RCS No.89 of 1961, which was decided by judgment dated 24.12.1963 and the suit was decreed. Shri Bora contends that in the said judgment, the petitioner was held to be in possession of CTS No. 1853 and 1854. A specific issue No. 7 was cast for the said purpose and the petitioner, as a defendant before the Court, proved that it was occupying CTS No. 1853 and 1854.

5. Shri Bora then points out RCS No. 252 of 1974 preferred by the original landlord, who had also described the suit property as CTS No. 1853 and 1854, while seeking eviction of the petitioner as a tenant from the said premises. He then indicates from receipt dated

15.10.1992 that the petitioner was occupying CTS No. 1853 and 1854. The building structure certificate dated 1.12.1995, for the petitioner / establishment also indicates CTS No. 1853 and 1854. The latest certificate dated 31.12.2008 by the Chartered Engineer also indicates the same. He further points out from an order of attachment of immovable property dated 17.8.2000 issued by the office of the Deputy Commissioner of Income-Tax against the land owner, wherein, it is seen that the petitioner was a tenant in CTS No. 1853 and 1854.

6. Shri Patil, learned Advocate has strenuously contradicted the contentions of the petitioner and insists that the petitioner is occupying CTS No. 1852 based on certain revenue documents as well as a judgment of the appellate Court dated 19.4.2017 in RCA No. 150 of 2013. The Municipal Corporation is, however, yet to take a stand as to who is the tenant in CTS No. 1853 and 1854.

7. Shri Bora, submits that prior to approaching this Court, the petitioner has deposited an amount of Rs. 10,00,000/- as against the disputed recovery of Rs. 34,00,000/- and odd amount. He also submits that a cheque of Rs. 24,20,259/- has also been handed over to the Commissioner of Municipal Corporation, Jalgaon dated 30/01/2018. These payments are without prejudice to the rights

and contentions of the petitioners.

8. After having considered the entire record available and various documents, including judicial pronouncements, in matters which were filed from 1963 onwards, I find that there is a dispute, as to whether a petitioner is occupying CTS No. 1852 or 1853 and 1854. Shri Bora, submits that he has received information that CTS No. 1852, is occupied by a different person. Copy of the said document is placed on record at page No. 221 of the petition paper book. The said document is a part of the revenue record and it would indicate that the petitioner is not occupying CTS No. 1852.

9. It is quite peculiar to note that, on the one hand, the Municipal Corporation is imposing taxes on the petitioner and not on the owner of the land with reference to CTS No. 1852 and on the other hand, there is a serious dispute as regards which is the plot which the petitioner is actually occupying as a tenant.

10. Considering the two issues formulated in paragraph No. 2 of this order, I am of the view that this petition can be disposed of by directing the petitioner to ensure that the cheque dated 30/01/2018, payable to the Municipal Corporation shall be credited and protection could be granted to the petitioner, since the entire

amount of Rs. 34,00,000/- and odd amount, that would be recoverable by the Municipal Corporation, is deposited.

11. Considering the above, this petition is partly allowed and the impugned orders refusing injunction/protection to the petitioner shall stand modified with the following directions :

(a) On the condition that the cheque dated 30/01/2018, for an amount of Rs. 24,20,259/- shall be credited to the account of the respondent/Corporation, the Corporation shall be restrained from initiating coercive steps against the petitioner in relation to the cause of action set out in Special Civil Suit No. 127/2017, until two issues framed by this Court are decided by the Trial Court.

(b) The two issues framed below paragraph No. 2 in this order, shall be framed by the Trial Court forthwith.

(c) The litigating sides are permitted to lead evidence and canvass their respective contentions with regard to the said two issues which the Trial Court shall decide peremptorily and in any case on/or before 30/06/2018.

(d) Since, the interim application seeking temporary inunction/relief at Exhibit No. 6 is disposed of, the Trial Court shall proceed to record the oral and documentary evidence of the parties with regard to the said two issues.

(e) Needless to state, the fate of Spl.C.S. No. 127/2017, shall depend upon the conclusions that would be drawn by the Trial Court while answering the said two issues.

(f) In the event of the Trial Court concluding that the petitioner is not a tenant and is not occupying CTS No. 1852, the amount of property tax deposited by the petitioner with the Corporation shall be adjusted against the dues of taxes, if any, that are payable by the petitioner.

(g) The above directions shall not create any impediment in the path of the petitioner for seeking reimbursement of the property taxes paid or adjusted, from the land owner and in the event of the petitioner resorting to any proceedings for this purpose, the said proceedings would be adjudicated upon by the competent Court on it's own merits and by considering whether the landlord or the petitioner would be liable to pay the property taxes.

(h) The petitioner shall place before the Trial Court the rent agreement signed by the petitioner with the landlord before commencing the recording of evidence with regard to the two issues that are framed.

(i) In the event the Trial Court concludes that the petitioner is not the tenant of CTS No. 1852, the Corporation shall refund the excess amount that is deposited by the petitioner if the bills for CTS No. 1853 and 1854 are less than the amount that the petitioner has already deposited.

(RAVINDRA V. GHUGE, J.)

S.P.C.