

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1802 OF 2018

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KAPIL VARIYANI
VERSUS
THE MUNICIPAL CORPORATION OF THE CITY OF JALGAON

THROUGH THE MUNICIPAL COMMISSIONER

Mr.Topan Thatte a/w Mayur Salunkhe, Advocate for the petitioners.
Mr.P.R.Patil and Mr.Shrikant S.Patil, Advocates for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 14/02/2018

PER COURT :

1. In all these petitions, the individual petitioners are identically placed. The respondent/Municipal Corporation of the City of Jalgaon is a common respondent. By consent of the parties, all these petitions are heard together as an identical issue is involved.

2. Identical prayers have been put forth by these petitioners who are said to be occupying the shops in the Mahatma Phule Market on the first floor. Since identical prayers have been put forth, it would be apposite to reproduce prayer clause "A" and "B" as under :-

“A. This honourable High Court be pleased to quash and set aside the order dated 20th of January 2018 by the learned Deputy Municipal Commissioner of the Municipal Corporation of the city of Jalgaon.

B. During the pendency of this petition, this honourable High Court be pleased to stay the operation of the order dated 20th January 2018 by the learned Deputy Municipal Commissioner of the Municipal Corporation of the city of Jalgaon.”

3. I have considered the strenuous submissions of the learned Advocates for the petitioners and the respondent/Corporation.

4. The petitioner has placed reliance upon the judgment delivered by the Hon'ble Supreme Court in the matter of M/s Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar [1969 AIR (SC) 556].

5. Learned Advocate for the respondent/Corporation has placed on record the judgment delivered by the learned Division Bench of this Court (Coram : S.C.Dharmadhikari and Mangesh S.Patil, JJ) dated 14/07/2017 in WP No.7730/2015 with PIL No.102/2015 and PIL No.119/2015 and WP No.11652/2015. Reliance is also placed upon the order of the Hon'ble Apex Court dated 04/12/2017 in the matter of Ramesh Narayan Khadke and others Vs. Hon'ble Minister for State for Urban Development Department, Maharashtra State and others in Spl.Leave Petition (Civil) Diary No.26560/2017.

6. The petitioners have challenged the document placed at Annexure A to the petition which is a lease rent fee bill for the period 2017-2018 issued u/s 128(1) of the Maharashtra Municipal Corporations Act. Each of the petitioners has been issued with such

bills with regard to the shops occupied by them on the first floor of the Mahatma Phule Market. Considering the area of the shops, different amounts are mentioned in the said bill as per the rate decided.

7. Learned Advocate for the petitioners submits that each of these bills have to be considered as a specific order passed u/s 128(1). It is not merely a bill of annual lease rent fees that has been issued, but is to be construed to mean an order for the reason that clause 3 at the footnote indicates that if the bill amount is not paid, the recovery employees, who would be collecting the said rent amounts, would seal the shops if the said amounts are not paid. It is, therefore, canvassed that the bills at issue would amount to a specific order issued by the Quasi-Judicial authority considering the mandate mentioned at the footnote of the bill .

8. Learned Advocate for the Municipal Corporation submits that the said bill cannot be termed to mean an order passed by the Quasi-Judicial authority by any stretch of imagination. U/s 128(1), the manner of recovering municipal taxes has been mentioned. Different sub sections below Section 128 make it possible for the Corporation to resort to coercive steps for the recovery of taxes. The said bills are

based upon the area of the shops occupied by these petitioners and other taxes which are leviable and hence it is a clerical function of the Corporation to routinely prepare such annual bills, which are ultimately signed by the Deputy Commissioner, Revenue and the Market Recovery Officer so as to render the said bills authentic. He, therefore, submits that the said bills could never be termed as being an order passed by the Quasi-Judicial authority.

9. Learned Advocate for the petitioners submits that these petitioners have been occupying the said shops for years together on lease basis. These are commonly known as 'gala nos.1 to 128' on the first floor of the said market. The first lease ended on 25/08/2008. In a meeting No.105 held on 28/01/2009, a resolution was passed at Sr.NO.59, by which the lease was renewed for 50 years. A revision in the lease rent @ 6% per year was provided. However, the Corporation has passed several other resolutions after Resolution No.59 and have unilaterally changed the conditions of the lease agreement.

10. It is then submitted that w.e.f. 01/04/2012, these shop keepers are termed as illegal occupants by the Corporation. They were sought to be evicted. They approached the District Court u/s 81-F and the said proceedings are subjudice. All these petitioners have

preferred RCA Nos. 167/2017 and group of cases by which the act of the Corporation in seeking their eviction, recovery of rent and as to which resolution can be applied to the petitioners, are the issues to be decided u/s 81-B and 81-F.

11. Learned Advocate for the Corporation submits that in so far as Resolution No.40 is concerned, which is made applicable to these shop keepers, identically placed shop keepers have approached the State Government for challenging Resolution No.40. The said Resolution No.40 was in supersession of all earlier resolutions including Resolution No.105 dated 28/01/2009. This resolution No.40 was passed on 19/12/2013.

12. He further submits that though Resolution No.40 was not challenged in a Court, some of the identically placed shop keepers approached the State Government which stayed the effect of Resolution No.40 on 01/09/2016. The State Government thereafter issued notices in between 17th to 19th May 2017 and heard the representatives of the shop keepers as well as the petitioners. Finally, by the order dated 18/12/2017, the State Government confirmed Resolution No.40 and this decision has not been assailed by these petitioners in any Court.

13. It is then submitted that several meetings were held by the Commissioner of the Municipal Corporation with these shop keepers and thereafter the bills as per Resolution No.40 were issued. These bills were issued only after the terms of the lease rent were finalized.

14. It is then submitted that Resolution 40 provides that the lease rent is chargeable at the rate of 5 times of the market rent as per the ready reckoner. Yet, the Corporation is not charging that much amount of rent. Since 2012 till 2018, these petitioners have not paid a single penny towards the rent.

15. It is further contended that identically placed shop keepers were before this Court in the matters that were decided by the learned Division Bench on 14/07/2017. A detailed judgment was delivered. The conclusions are in paragraph No.42, which read as under :-

“42] As a result of the above discussion, we are of the opinion that each of these proceedings can be disposed of with a common order and direction. They are disposed of as under :

[A] The State Government should take a decision on the pending proposals / proceedings as expeditiously as possible and within two months from the date of receipt of copy of this

order.

[B] We clarify that the decision has to be taken in accordance with the observations and conclusions in this order.

[C] The Municipal Corporation is free to execute and enforce any subsisting final order of eviction and is also free to initiate further proceedings under Chapter VIII-A of the Maharashtra Municipal Corporations Act, 1949 and which it should initiate within a period of two months from the date of receipt copy of this order.

[D] We clarify that the merits of individual cases and shop keepers to whom notices are served or may have to be heard before final orders are passed, are not touched and remained unaffected by our order. The Writ Petitions and the PILs are disposed of.

[E] In Writ Petition No.11652/2015 no separate orders are needed for the petitioner therein has adopted the stand of the PIL petitioner.

[F] Writ Petition No.7730/2015 stands disposed of by the above order.

[G] In view of the disposal of PILs and Writ Petitions, all Civil Applications are disposed of.”

16. The Hon'ble Apex Court, while dealing with a challenge to the above judgment, has passed an order which reads as under :-

“Upon hearing the counsel the Court made the following

O R D E R

After hearing learned counsel for the parties, we find that the High Court has considered the matter thoroughly in all its

length and, thereafter, given the directions in paragraph 42 of the impugned judgment which fully take care of the interest of all the parties.

It may also be mentioned that the present special leave petitions are on behalf of the petitioners who are not even parties to the said litigation.

We therefore, are not inclined to interfere with these directions. The special leave petitions are dismissed.”

17. Mr.Patil, therefore, contends that the Hon'ble Apex Court has recorded that the High Court has considered the matter thoroughly in all its length, and , thereafter, given the directions in paragraph No.42 of the impugned judgment, which fully take care of the interest of all the parties.

18. Having considered these submissions, I find that the issue before this Court is as to whether the impugned bill can be termed to be an order passed by a Quasi-Judicial authority.

19. Section 128 of the Corporation Act reads as under :-

“128. Manner of recovering municipal taxes.

A municipal tax may be recovered by the following processes in the manner prescribed by rules :-

[1] by presenting a bill,

- [2] [* * *],
- [3] *by distraint and sale of a defaulter's movable property,*
- [4] *by the attachment and sale of a defaulter's immovable property,*
- [5] *In the case of octroi and toll, by the seizure and sale of goods and vehicles,*
- [6] *in the case of property tax by the attachment of rent due in respect of the property,*
- [7] *by a suit."*

20. The above provision indicates that the Municipal Taxes would be recovered by adopting such a procedure as is prescribed by the Rules. The different modes of seeking recovery are mentioned in Sub Sections 1, 3, 4, 5, 6 and 7. It is not uncommon that statutory authorities or the limbs of the State, at times mention at the bottom of the bill that the amount has to be deposited within a particular time, or else an additional charge or penalty would be leviable if they are not paid within a particular duration or that coercive steps would be taken for recovering such amounts.

21. It is not disputed that the Deputy Commissioner (Revenue) does not pass specific orders for computing the bills and the lease rent leviable. It is a clerical job of the concerned department of the Corporation to prepare such bills based on its records and especially

the area / size of the shop since the lease rent is calculated on the basis of the area, which is held by an individual shop keeper. It is not as like that the Deputy Commissioner has issued notices to the shop keepers calling upon them to show cause as regards computing of the amounts towards lease rent. Neither such notices are issued, nor any hearing is contemplated, so that the raising of the bills could be termed as a Quasi-Judicial function of those Authorities whose stamp signature appears on these bills. As such, in my view, these bills are purely in the form of usual bills raised by the Corporation which has a right to recover the lease rent amount from the shop keepers. The contention of the petitioners that the bills should be treated as being orders passed by the Quasi-Judicial authorities or authorities exercising quasi judicial functions, is fallacious.

22. Thence, the issue before this Court is as to whether these petitions can be directly entertained by this Court.

23. Reliance has been placed upon the judgment of the Hon'ble Apex Court in the Baburam Prakash case (supra). It is canvassed by the petitioners that existence of an alternative or efficacious remedy would not be a bar for entertaining a writ petition. This aspect requires no debate for the reason that it is a self imposed restraint on

this Court in matters where a statutory remedy is available. A Court may entertain a writ petition directly if it finds that the petitioners are not required to be relegated to a statutory remedy. It is settled law that if this Court admits a petition and takes it up for consideration at the final hearing stage, the objection of maintainability and the availability of a statutory remedy cannot be canvassed.

24. However, while dealing with a petition at the stage of its filing and admission, a Court may take a call as to whether the said petition can be entertained without relegating the petitions to a statutory remedy available. The core issue in such a situation would be as to whether disputed questions are being put forth calling upon this Court to exercise its supervisory jurisdiction. It is well settled that Courts, exercising supervisory or revisional jurisdiction, ought not to entertain a petition if disputed questions are being raised. If disputed questions have not been raised, this Court can assess as to whether the petitioners are likely to suffer an irreparable loss or manifest inconvenience by relegating them to a statutory remedy notwithstanding that such a remedy may be efficacious.

25. In the instant cases, after hearing the extensive submissions of

the learned Advocates, the following issues gain significance and no decision can be taken and no conclusions can be arrived at in these petitions, without considering the following aspects :-

[a] The petitioners contend that if they have been treated as being illegal occupants from 01/04/2012, the Municipal Corporation can resort to the remedies available for recovering damages against these petitioners for having latched on to the shops despite being illegal occupants.

[b] If the petitioners are illegal occupants, the Corporation cannot raise any bill for claiming recovery of lease rent.

[c] The petitioners' claim that resolution No.40 dated 19/12/2013 is not applicable to them and resolution No.59 passed on 11/06/2008 would be applicable.

[d] The petitioners have also raised an issue that the calculations of the lease rent amounts has not been properly done and the same is erroneous as it is sought to be computed on the basis of the Resolution No.40 rather than on the basis of the Resolution No.59 which is passed on 11/06/2008.

26. The appeals preferred by these petitioners in 2017 u/s 81F pertain to the steps initiated by the Corporation for evicting them and for restraining the Corporation from recovering rent from these

petitioners which is based on the Resolution No.40. No statement is made that they are granted any interim relief.

27. The respondent/Corporation contends that the shop keepers, who are subject matter of the judgment of the learned Division Bench of this Court dated 14/07/2017 in terms of paragraph No.42 reproduced above, would cover these petitioners as well since, though these petitioners are occupying shops on the first floor of the Mahatma Phule market, the judgment of this Court upholding Resolution No.40 pertains to the identically placed shop keepers who are occupying the ground floor and other shopping complexes of the same Corporation.

28. The petitioners contend that since they were not parties to the judgment dated 14/07/2017, the Law laid down by the learned Division Bench would not apply to them notwithstanding the fact that the said judgment pertains to the shop keepers from the Mahatma Phule Market and has resulted in sustaining resolution No.40.

29. I have formalized the above issues in paragraph No.25 as canvassed by the litigating sides, in order to assess as to whether

there are any disputed questions which could be gone into by this Court in its supervisory jurisdiction without a judicial or a quasi judicial order being a subject matter of these petitions.

30. Chapter VIII-A of the Corporations Act deals with the power to evict persons from the Corporation premises. Section 81-B deals with the power to evict such persons from the premises who are covered by the mischief contemplated thereunder. Section 81-C onwards till 81-E, pertain to the recovery of rent or damages or recovery through deduction from salaries and the Commissioner being vested with the same powers as are vested in a Civil Court under the CPC. Section 81-F deals with Appeals. As such, if the petitioners are aggrieved by the annual lease rent bills issued by the Corporation, this Court would not entertain the challenge to the said bill and embark on the exercise of calculating the area of shops occupied by the respective litigants, the computation of lease rent as per the rates as may be prescribed and as to whether the said lease rent could be said to be exorbitant or not, by taking into account the ready reckoner and thereafter calculate such rent amounts. So also disputed questions as like whether Resolution No.59 would apply or whether it would be Resolution No.40 that would apply. Whether the petitioners are illegal tenants, whether they are liable to pay

damages, whether the Corporation could recover rent from them, etc. are all such disputed questions. Resolution No.40 has already been sustained by the Division Bench of this Court. The Hon'ble Apex Court has dismissed the SLP.

31. Considering the above, I do not find any reason for this Court to entertain a challenge to annual lease rent bills raised by the Corporation. All these petitions are, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)