pmw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5288 OF 2004

Engineering Educational Trust
Through its Managing Trustee
Shri Somchand Kautik Mahajan … Petitioner
Vs.
The Kalyan-Dombivli Municipal
Corporation and Anr. … Respondents

Mr. Somchand Kautik Mahajan Petitioner in person.
Mr. A.S. Rao for the Respondent Nos.1 and 2.

CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.

DATE : 12th APRIL, 2018

ORAL JUDGMENT (Per A.S. Oka, J.)

1 Called out for final hearing. On 11th January 2018 when the Petition was called out for final hearing, the petitioner appearing in person who has filed the Petition in his capacity as the Managing Trustee of the petitioner – Trust was absent. Therefore, an intimation was ordered to be issued to him of the date fixed. On 8th February 2018 Shri S.K. Mahajan appeared in person and sought adjournment. On 22nd February 2018 along with a letter, Shri Mahajan forwarded his written submissions. Today, he appears before the Court and relies upon the written submissions. We have heard the learned counsel appearing for

the Municipal Corporation. We have carefully perused the written submissions.

2 This Petition pertains to a property bearing the Municipal House No.1748 situated at Reti Bandar, Near Gavdevi Temple, Dombivli (W), District Thane (for short "the said building"). The first substantive prayer in this Petition is for directing the respondents to hand over possession of the subject building to the petitioner. The first respondent is a Municipal Corporation established under the Maharashtra Municipal Corporations Act, 1949 (for short "the said Act"). The second prayer is for directing the respondents to make a fresh assessment of the subject building by treating the same as being used for residential purposes. The third and last substantive prayer is for directing the respondents to hand over possession of the said building.

3 The petitioner claims to be a Charitable Trust duly registered under the Maharashtra Public Trust Act, 1950 (for short "the said Act of 1950"). The petitioner is relying upon Writ Petition No.2307 of 1996 filed by it in this Court. The said Petition was disposed of by the order dated 25th July 1996. The learned Single Judge while disposing of the Petition directed the first respondent to consider the application of the petitioner for exemption from payment of property taxes as per

clause (b)(1) of Sub-Section (1) of Section 132 of the said Act. The Petition discloses that by order dated 25th July, 1996, the said application was rejected. Being aggrieved by the said order, the petitioner preferred a Writ Petition No.628 of 2000 which was disposed of by a Division Bench by Judgment and Order dated 31st March, 2004 by passing an order of remand and by directing the first respondent to decide the application afresh. The petitioner applied for review of the said Judgment and Order dated 31st March, 2004. The Review Petition was rejected by order dated 5th May, 2004.

4 We must note here that in the Petition, the allegation is that on 15th July, 2003, the possession of the subject building was taken by the first respondent without following due process of law. There are no further details set out in the Petition. We may note that the order dated 5th May, 2004 passed by a Division Bench of this Court in Review Petition No.46 of 2004 filed by the petitioner for review of the order dated 31st March, 2004 notes that there were two requests made by the present petitioner. The first request was a direction to assess the said building afresh by treating the same as being used for residential purposes. The second prayer was for removal of the seal. The order shows that both the prayers were not entertained by the Division Bench.

5 An affidavit-in-reply was filed by Shri Wilson D'souza, Assessor and Collector of Taxes of the first respondent which is of 12th August 2004 to which a copy of detailed order dated 17th June 2004 passed by him has been annexed. The said order for the reasons recorded therein rejects the prayer of the petitioner for grant of exemption under Section 132(1)(b) of the said Act. We find from the Petition that the petitioner was aware of the said order passed by the Assessor. To one of the several written arguments tendered by the petitioner, a copy of the said order dated 17th June 2004 has been annexed. The present Civil Application No.2408 of 2009 refers to a fresh notice issued by the first respondent by which the petitioner was called upon to pay arrears of tax of Rs.6,38,061/-. The said order is of an attachment of the subject building. The prayer in the Civil Application was for directing the respondents to withdraw the said notice and to issue bills giving details of the assessment. The notice dated 8th September, 2009 notes that the same is in respect of the arrears of property tax till 31st March 2009. We find that the said Civil Application has been dismissed for non-prosecution by order dated 29th April 2010 passed by the Division Bench of this Court.

6 In the present Petition on 5th July 2004, a Division Bench of this Court passed ad-interim order in terms of prayer clause (d) of the

Petition. Thereafter, by order dated 16th August 2004 Rule was issued. By the said order, the Petitioner was directed to deposit in this Court arrears of tax as per the demand of the Municipal Corporation within a period of 8 weeks. This Court directed that on the failure of the petitioner to deposit the arrears within a period of 8 weeks, ad-interim order dated 5th July 2004 shall stand vacated and the Municipal Corporation will be free to take steps in accordance with law. The office noting dated 12th January 2005 shows that the amount was not deposited within the stipulated time though by order dated 3rd November 2004 a Division Bench of this Court extended the time to deposit the amount by a period of 8 weeks in Civil Application No.2746 of 2004 filed by the petitioner. Perusal of the Farad Sheet shows that there is an office remark of 2012 that the petitioner has not deposited the requisite amount. Even today, when we made a query to the petitioner, he is not able to produce anything on record to show that the amount was deposited by him within the extended period of 8 weeks from 3rd November 2004.

7 Today, the petitioner states that he is in possession of the said building, but the Municipal Corporation has fixed a board on the said building recording that the building is under attachment.

8 We have carefully perused the written submissions tendered by the petitioner along with a letter dated 22nd February, 2018. It is contended in the written submissions that the petitioner was entitled to exemption under Section 132 of the said Act. It is contended that the said building is used only for educational purposes which is a charitable purpose. It is submitted that the petitioner Trust was collecting fees from the students as approved by the Education Department and merely because fees are accepted, it cannot be said that the purpose ceases to be charitable. It is pointed out that due to various reasons, the petitioner is now not running a school in the said building and therefore, it has become penniless. In the written submissions, the petitioner has relied upon a decision of this Court in the case of *Sant Kanwarram Education and Social Welfare Society and Ors. Vs. Municipal Corporation of City of Amravati* (Second Appeal No.203 of 2008) decided on 15th October 2008. There are prayers made in the written submission which are not made in the main Writ Petition. For example, a prayer is made for refund of deposit amount of Rs.1,60,000/- which was deposited under order dated 25th July 1996 in Writ Petition No.2307 of 1996. There is a prayer made for removal of garbage tank put near the entrance of the building and to remove encroachment. There is a prayer made to reconnect the disconnected water supply. There is a prayer for revoking the order dated 4th February

2016. There is also a prayer for directing payment of compensation and compensatory cost to the petitioner. The petitioner who is present today states that in addition to decision relied upon by him, there are several decisions of the Apex Court which supports the case of the petitioner for grant of exemption.

9 As narrated earlier, there is an order made on 17th June 2004 by the Assessor and Collector of the first respondent by which reasons recorded in the application grant of exemption from property taxes made by the petitioner have been rejected. As stated earlier, the petitioner was put to notice about the said order as the order was placed on record by the second respondent by filing an affidavit dated 12th August, 2004. As narrated earlier, a copy of the said order is also annexed to one of the written submissions filed by the petitioner on record. The order dated 17th June 2004 has become final as it was not challenged by amending the Petition. In fact, on that footing, a demand was raised by the Municipal Corporation of arrears upto 31st March 2009. The demand was sought to be challenged by filing a Civil Application which has been dismissed for non-prosecution. In any event, there is no substantive challenge to the said demand by the petitioner. As the order dated 17th June 2004 has become final, in this Petition, we cannot go into the issue whether the petitioner was entitled to exemption from payment of property taxes.

10 Going back to the prayers made in the Petition, the prayers (b) and (d) do not survive as the petitioner has stated today that he is in possession of the said building. As far as the prayer clause (c) is concerned, a direction to treat the said building as the property used for residential use for the purposes of assessment of property taxes cannot be considered. If the petitioner is aggrieved by the fixation of the rateable value, the petitioner has statutory remedies available under the said Act. Therefore, none of the prayers made in the Petition can be granted.

11 As regards the prayers made in the written argument, an order of refund of a sum of Rs.1,60,000/- cannot be passed for the simple reason that the said amount was deposited by the petitioner in terms of the order dated 31st July 1996 in Writ Petition No.2307 of 1996. By the said order, this Court directed the Municipal Corporation to decide the application for grant of exemption which was ultimately rejected by the aforesaid order which is not challenged. As far as the prayers regarding garbage tank and removal of attachment notice are concerned, there is no grievance made in the said Petition. Similarly, there are no prayers for reconnecting water supply. There is no prayer made in the Petition for revoking the order dated 17th June, 2004. The boards displayed on the building by the first respondent indicate that

the building is attached. Considering the facts of the case, we find that the question of passing order of payment of compensation and/or compensatory cost does not arise. There is absolutely no merit in the petition and the same is rejected.

12 We, however, find that the said building is attached by the Municipal Corporation for non-payment of taxes. To enable the petitioner to pay the arrears for the purposes of removal of attachment, we direct that for a period of two months from the date on which this order is uploaded, no further steps shall be taken by the Municipal Corporation on the basis of the attachment which is already levied.

13 Rule is discharged subject to what is observed above.

(RIYAZ I. CHAGLA, J) **(A.S. OKA, J)**