IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO.71 OF 2018

Prakash s/o Kamlakar Pathak,
Age 72 years, Occu. Nil,
R/o Samrat Chowk,
Koyan Sub-Division Road, Latur,
Taluka and District Latur
Mobile No. 9511834507
PAN NO. CVBPP7852H ... **PETITIONER**

VERSUS

1. The State of Maharashtra
through the Secretary,
In the Department of Urban
Development, Mantralaya,
Mumbai – 32

2. The Commissioner,
Latur City Municipal Corporation,
Latur, Taluka and District Latur.

... **RESPONDENTS**

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Shri S.V. Natu, Advocate for petitioner
Shri S.B. Yawalkar, A.G.P. for respondent No.1.
Shri N.P. Patil Jamalpurkar, Advocate for respondent Nos.2 & 3

.....

WITH

WRIT PETITION NO.3942 OF 2018

Venkat so Bhagwanrao Bedre,
Age 59 years, Occu. Legal Practitioner,
R/o Mitra Nagar, Latur,
Taluka and District Latur ... **PETITIONER**

VERSUS

1. The State of Maharashtra
through the Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32

(Copy of the respondent No.1 is
to be served through the Govt.
Pleader, High Court of Bombay,
Bench at Aurangabad)

2. The Municipal Corporation Latur City,
through its Commissioner.

3. The Deputy Commissioner,
Municipal Corporation, Latur City

... **RESPONDENTS**

.....

Shri P.R. Katneshwarkar, Advocate holding for
Shri H.V. Patil, Advocate for petitioner
Shri S.B. Yawalkar, A.G.P. for respondent No.1.
Shri N.P. Patil Jamalpurkar, Advocate for respondent Nos.2 & 3

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CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.

Date of reserving judgment : 21st January, 2019

Date of pronouncing judgment : 1st March, 2019

JUDGMENT (PER R.G. AVACHAT, J.) :

1. Rule. Rule returnable forthwith and heard finally with the consent of learned counsel appearing for the parties.

2. Both the Public Interest Litigation and the Writ Petition are being decided by this common judgment.

3. The reliefs claimed in the P.I.L. are as under :

(1) The action of the respondent Municipal Corporation in levying the property taxes is illegal and bad in law and, therefore, the same may be quashed and set aside.

(2) The respondent Municipal Corporation be directed to place the subject of levy of property tax before the Standing Committee of the Municipal Corporation, Latur for its approval and then act in accordance therewith.

FACTS

P.I.L. NO.71 OF 2018:

4. The petitioner is a co-opted Corporator of the Latur City Municipal Corporation (for short the Corporation). The Corporation is constituted under the Maharashtra Municipal Corporations Act, 1949 (for short the Corporation Act) and came into existence on 25.10.2011. Prior to the establishment of the Corporation, it was Latur Municipal Council, constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short the Municipalities Act).

5. The Corporation decided to levy property tax on the

properties located within the Corporation limits. The Corporation engaged Technical Consultant/ Agency for carrying out survey for the levy of property tax on the buildings and land in the city of Latur. The Corporation fixed the rates of property taxes without following the statutory mandatory provisions. The subject of levy of the property tax had not been placed before the Standing Committee of the Corporation for its approval. The property tax came to be increased manifold. No rules and regulations have been framed for levy of property tax. The petitioner had, therefore, challenged the action of the Corporation by filing Writ Petition (No.1112/2000). The said Writ Petition was disposed of with a direction to the Corporation to consider the petitioner's representation. The Corporation turned down the representation, contending that the subject of levy of property tax was not required to be taken before the Standing Committee of the Corporation for its approval since no rates of property tax, which were fixed way back in 2009 by the erstwhile Municipal Council, were sought to be revised.

W.P. NO.3942/2018

6. The petitioner herein is a practicing Advocate. He holds immovable property within the limits of the Corporation. The Corporation, on 15.2.2018, increased the property tax of the

petitioner’s property from Rs.2418/- to Rs.95,846/-. The grounds of challenge to levy of property tax are common in both these petitions. According to the petitioner, the action of the Corporation in fixing the property tax, without prior approval of the Standing Committee is illegal and non est.

7. The respondent Corporation took exception to the maintainability of both the petitions on the ground of availability of equally efficacious alternative remedy of an appeal under Section 406 of the Corporation Act. The Corporation also came with a case that the rates of taxes had already been fixed by the Municipal Council, Latur by the resolution dated 21.12.2009 and according to the same rates, the current taxes have been levied by the Corporation. It was, therefore, not necessary to take the approval of the Standing Committee of the Corporation for levy of the property tax. In the year 2015, the survey has been conducted through private agency and on taking correct measurements of the properties, the bills of taxes as per the rates fixed by the then Municipal Council had been issued. The relevant rules pertaining to levy of property tax, have been followed.

8. Mr. S.V. Natu, the learned counsel for the petitioner in Public Interest Litigation and Shri P.R. Katneshwarkar, learned

counsel for the writ petitioner made their submissions consistent with the pleadings in their respective petitions. According to both the learned counsel, after the formation of the Municipal Corporation in the year 2010, the acceptance of the same rates of property tax as were fixed by the erstwhile Municipal Council is the function of the Municipal Corporation i.e. Standing Committee and even for taking decision, that rate is not required to be changed, the issue should have been placed before the Standing Committee for its approval. Instead of availing the services of the experts serving with the Corporation, the private agency was engaged for survey of the properties situated within the Corporation limits. Both the learned counsel have vehemently contended that the provisions of Section 99 of the Corporation Act have been breached. The rules relating to levy of property tax have not been followed. On the question of maintainability of the petition, the learned counsel would submit that, legality and vires of levy of property tax is under challenge in both the petitions. The same could not have been challenged in appeal under Section 406 of the Corporation Act.

9. Mr N.P. Patil Jamalpurkar, learned counsel appearing for the Corporation would, on the other hand, submit that the petitioner in Public Interest Litigation is a Corporator. He was a

party to the decision regarding levy of property tax. The petitioner's property is situated within the limits of Corporation. The petitioner has, thus, personal interest in the matter. In view of the learned counsel, both the petitions are not maintainable in view of availability of equally efficacious alternate remedy. According to the learned counsel, the rates of the property tax that were fixed way back in 2009 by the erstwhile Municipal Council, have not been changed by the Corporation. It was, therefore, not necessary to take the subject before the Standing Committee for its approval.

MAINTAINABILITY OF THE PETITIONS.

10. The learned counsel for the Corporation placed reliance on the judgment of the Division Bench of this Court in the case of **Mahratta Chamber of Commerce Industries & Agriculture and others Vs. The State of Maharashtra** reported in **2004(1) Bom.C.R. 137**, to push through his point that when remedy of appeal under Section 406 is available to the petitioners, the present petitions are not maintainable.

11. It cannot be gain said that, Section 406 of the Corporation Act speaks of remedy of appeal against any ratable value or the capital value, as the case may be, or tax fixed or

charged under the Corporation Act. The forum of appeal is the Court of Small Causes or Civil Judge, Senior Division. The Hon'ble Supreme Court of India, in case of **New Manek Chowk Spg. and Wvg. Mills Co. Ltd., etc. Vs. Municipal Corporation of the City of Ahmedabad and others**, reported in **AIR 1967 SC 1801**, has held :

> "The small causes court cannot decide the applicability of Article 14 of the Constitution and the words used in Section 406(1) of the Corporation Act do not cover the vires of the tax or the legality of the tax which is sought to be levied. From this, it follows that, it would be useless for the assessee to take objection or file appeals against the decisions on ratable value to the authorities prescribed under the Corporation Act if he was challenging the determination of ratable value as being violative of Article 14. It is no answer to a charge to say that ratable value could be determined properly by the Municipal authorities acting under the Act and the Rules thereunder when they do not resort to any of the well known methods of valuation and cannot justify their arbitrary method.

12. Needless to mention, in both the petitions, the challenge is to the legality and vires of the property which is sought to be levied. The petitioners may fail on merits. The

petitions are, however, maintainable.

13. There is no dispute that, under the provisions comprised in Section 127(1) of the Corporation Act, the Corporation is duly empowered to levy the property tax. The grievance relates to non compliance of the procedure which is required to be followed for levy of such tax. The learned counsel for the petitioner in the Public Interest Litigation was candid enough to submit that there is no quarrel about the quantum of property tax. The learned counsel meant to say that since the Corporation came to be established, the levy of property tax ought to have been approved by the Standing Committee of the Corporation. The learned counsel referred and relied on Section 99 of the Corporation Act. The Section runs thus :

> "99. **Fixing of rates of taxes** :-
>
> The Corporation shall, on or before the twentieth day of February, after considering the Standing Committee's proposals in this behalf, determine, subject to the limitations and conditions prescribed in Chapter XI, the rates at which the next ensuing official year and the rates at and the extent to which any of the taxes referred to in sub-section (2) of the said section [excluding Local Body Tax under clause (aaa) thereof] which the Corporation

> decides to impose shall be levied in the next ensuing official year.

14. The learned counsel relied on Section 99-A of the Act. We found the reliance on this Section to be misplaced since the same pertains to the levy of cess specified in clause (aa) of Sub-Section (2) of Section 127 of the Corporation Act. This provision pertains to a cess of entry of goods into the limits of the city for consumption, use or sale therein to be levied in lieu of octroi with the previous sanction of the State Government.

True, the terminology of Section 99 would undoubtedly indicate that proposal regarding levy of Municipal taxes referred to in sub-section (1) of Section 127 may be moved by the Standing Committee.

15. Admittedly, the rates of the property tax under challenge have already been fixed by the erstwhile Municipal Council way back in 2009. The same has been reiterated in the affidavit filed on behalf of the respondent Corporation. During the span of over 10 years, new buildings came up. Those were not subjected to levy of property tax. The Corporation, therefore, decided to take a survey of all the existing properties. The Corporation, for the purpose of the survey, engaged private

agency. The agency did the survey. It was found that there are 90000 buildings. The affidavit filed on behalf of the respondent Corporation further records that 19217 properties were unassessed, thousands of properties were partially assessed and major properties like hospitals, lodges, restaurants and bars, marriage halls were underassessed in previous assessment. The private agency simply assisted the Corporation for numbering of all the properties and the computerization of assessment data. The work done by the agency has been duly verified, corrected and implemented as per the provisions of Chapter VII pertaining to taxation rules. As such, it appears that, the relevant rules namely Rule 7, 7-A etc. comprised in Chapter VIII (Taxation Rules) have been complied with.

16. *Qui facit per alium facit per se* is the principle, that suggests that, he who does through another does himself. Here, a private agency simply assisted the Municipal Corporation in collecting data and to do the other work as stated hereinabove. It is reiterated that the tax has been levied as per the rate fixed way back in 2009. The rates were fixed considering the location, nature and user of the property. The tax was fixed according to ratable value. The record also indicates that, the public notice had been issued, objections were solicited, the objections have

been considered and the tax came to be levied. Those who were aggrieved, have preferred appeals under Section 406. As regards manifold increase in the property tax in respect of the property of the writ petitioner, it is to be stated that, the same came to be fixed considering its location, user and area thereof. For challenging the same, the writ petitioner has a remedy of appeal. It was also informed that, this property was not correctly assessed in previous assessment.

17. This takes us to the issue as to non-compliance of Section 99 of the Corporation Act. The question is, whether compliance of provisions of Section 99 is mandatory or condition precedent when there is no change in the rates of the property tax and those are sought to be levied for the first time by the Municipal Corporation on its establishment.

18. Section 493 of the Corporation Act speaks of transitory provisions. The provisions of Appendix IV shall apply to the constitution of the Corporation and other matters specified therein. Clause (5) of Appendix IV is reproduced hereinbelow for ready reference :

> 5. **Constitution of appointments, taxes, budget estimates, assessments, etc. :-**

> Save as expressly provided by the provisions of this Appendix or by a notification issued under paragraph 22 or order made under paragraph 23,
>
> (a) any appointment, notification, notice, tax, order, scheme, licence, permission, rule, bye-law or form made, issued, imposed or granted under the Maharashtra Municipalities Act, 1965 or any other law in force in any local area constituted to be a City immediately, before the appointed day shall, in so far as it is not inconsistent with the provisions of this Act, <u>continue in force until it is superseded by any appointment, notification, notice, tax, order, scheme, licence, permission, rule, bye-law or form made, issued, imposed or granted under this Act or any other law as aforesaid, as the case may be</u>;
>
> (b) . . . .
>
> (c) . . . .

The plain reading of Clause (5)(a) of Appendix IV would disclose that any action taken or order passed under any law in force immediately prior to the date of Constitution of the Corporation, in so far as it is not inconsistent with the provisions of the Corporation Act, will continue to remain in force until it is superseded by necessary action or order under the Corporation Act. The expressions in the said clause to the effect “law in force", "immediately before the appointed date", "shall inconsistent with the provisions of this Act" and "continue in force until" clearly disclose that the statutory provision has been made to facilitate day to day affairs of the newly constituted Corporations so that till appropriate decisions are taken under the provisions of the Corporation Act, its administration is not affected in any manner. The expressions "immediately" and "in force" disclose that the action which is saved must be under the law which was in force on the date immediately prior to the date of formation or constitution of the Corporation. **[2006 (2) Bom.C.R. 207 : Hemant Sudhakar Madane & ors. Vs. State of Maharashtra & ors.]**

19. Since the Corporation did not revise the rates of the property tax, which were fixed by erstwhile Municipal Council, it appears to us that it was not necessary for the Corporation to place the subject before the Standing Committee of the Corporation. Since, however, the property tax has been levied first time on number of properties, those came into existence between interregnum, we find it necessary to direct the Municipal Corporation to place the subject of levy of property tax before the Standing Committee and act in accordance with decision thereon. We propose to direct the Corporation to henceforth place the

subject before the Standing Committee of the Corporation.

20. With the above directions, the Public Interest Litigation and the Writ Petition are disposed of in terms of the following order :

O R D E R

(1) The Commissioner, Latur Municipal Corporation is directed to henceforth place the subject of levy of property tax before the Standing Committee of the Corporation and act in accordance with a decision thereon, so as to ensure compliance of Section 99 of the Maharashtra Municipal Corporations Act.

(2) Both the Public Interest Litigation and the Writ Petition are disposed of accordingly.

R.G. AVACHAT
JUDGE

S.S. SHINDE
JUDGE

fmp/-