

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO.10147 OF 2018
IN WP/1081/2018

RAJKAMAL TALKIES THROUGH ITS PARTNER MAHENDRA NATHMAL
LUNKAD
VERSUS
THE JALGAON CITY MUNICIPAL CORPORATION THROUGH ITS
COMMISSIONER

...
Advocate for the Applicant : Shri Bora Satyajit S.
Advocate for the Respondent : Shri P R Patil.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th January, 2019

Per Court:

1 I have heard the learned Advocates for the respective sides at length.

2 My earlier order dated 30.01.2018 passed in Writ Petition No.1081/2018 holds the field. However, while reading the order once again, in the light of the submissions of the learned Advocates, it is found that the word "not" appearing in the second line at two places in paragraph 11(f), should not be occupying that place in the light of the specific directions issued in paragraph 11(i). The entire order would indicate that this Court had concluded that if the Trial Court comes to a conclusion that the Petitioner is a tenant and occupying CTS No.1852, the

amount of property tax of Rs.34,20,259/- shall be adjusted by the Municipal Corporation against the dues of taxes. It appears that on account of a typographical error, the word "not" has been inserted at two places in paragraph 11(f). As such, the word "not" should not be read while reading paragraph 11(f) in view of the specific directions set out in paragraph 11(i).

3 Having considered the strenuous submissions of the learned Advocates for the respective sides and upon considering the judgment of the Trial Court dated 30.06.2018 in Special Civil Suit No.127/2017 by which, I find that the two issues framed by this Court by order dated 30.01.2018, have been dealt with by that court and it is concluded that the Applicant (Rajkamal Talkies) is occupying CTS Nos.1853 and 1854.

4 The learned Advocate for the Municipal Corporation submits that now that the Applicant is held to be occupying CTS Nos.1853 and 1854, the Applicant should be restrained from changing its stand any time in future to contend that Rajkamal Talkies is occupying CTS No.1852.

5 Shri Bora, learned Advocate for the Applicant is agreeable and makes a statement that Rajkamal Talkies would never claim that it is occupying CTS No.1852.

6 Shri Patil, therefore, submits that the Municipal Corporation be granted leave to adjust all the bills issued with reference to CTS Nos.1853 and 1854 to Rajkamal Talkies, if any amounts are unpaid as

against the amount deposited.

7 Shri Bora submits that Rajkamal Talkies is the tenant in CTS Nos.1853 and 1854 and it's agreement mandates the landlord to pay the taxes. However, if the taxes payable by the landlord with reference to CTS Nos.1853 and 1854 are now adjusted with the amount deposited by Rajkamal Talkies with the Municipal Corporation, the remaining amount be refunded and Rajkamal Talkies reserves it's right to recover the amount from the landlord with reference to CTS Nos.1853 and 1854.

8 In the light of the above, this Civil Application is allowed with the following directions :-

(a) Any bills of taxes already issued by the Municipal Corporation till January, 2019 with reference to CTS Nos.1853 and 1854 and if unpaid by the landlord, the said unpaid amount of taxes would be adjusted against the amount of Rs.34,20,259/- deposited by the Applicant/ Rajkamal Talkies.

(b) After satisfying the above stated bills, the excess amount, if any, shall be refunded by the Municipal Council to the Applicant/ Rajkamal Talkies on or before 05.02.2019, failing which, the interest at the rate of 6% per annum on the said amount from the date the said amount is deposited by the Applicant with the Municipal Corporation, shall be paid by the Municipal Corporation and such interest amount shall be paid from the personal salary of the Municipal Commissioner.

(c) To the extent of the bills with regard to CTS Nos.1853 and 1854 till January, 2019 are concerned, the Municipal Corporation shall not prepare any revised or new bills under the pretext that it has raised incorrect bills any time before.

(d) The Applicant/ Rajkamal Talkies is permitted to recover the amount of taxes paid by it from the landlord provided the agreement between the said two parties so prescribes and subject to the legal rights of the said landlord.

(e) The Applicant is now precluded from contending in any proceedings any time in future and in any litigation pending presently in any court that it was occupying CTS No.1852.

kps

(RAVINDRA V. GHUGE, J.)