IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2853 OF 2019

Mohan D. Lulla ... Petitioner

Vs

The Commissioner, Ulhasnagar Municipal Corporation and Anr. ... Respondents

Mr.Girish R. Agrawal for the Petitioner.

Mr.Vijay D. Patil for Respondent No.1.

Mrs.A.A.Purav, AGP for State-Respondent No.2.

CORAM :- S. C. DHARMADHIKARI & B.P.COLABAWALLA, JJ.

DATE :- APRIL 16, 2019

P.C. :-

1. Heard both sides.

2. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.

3. By this petition under Article 226 of the Constitution of India, the petitioner is challenging the act of respondent No.1 in sealing an immovable property.

4. Mr.Agrawal appearing for the petitioner would contend that the Municipal Corporation and its Commissioner has no power to seal the premises.

5. On the other hand, the argument is that a bill was issued in respect of general taxes by the first respondent. The amount of taxes remained unpaid despite reminders. Once the taxes were not paid, the petitioner's property was sealed by the Municipal Corporation.

6. Mr.Agrawal would submit that non payment of general or property taxes can result in, at best, attachment of the immovable property, but there is no provision in law enabling the sealing of the same.

7. Mr.Patil appearing on behalf of respondent No.1-Corporation invites our attention to the affidavit in reply to submit that the petitioner had no permission to construct the premises as well. In fact, no prior permission was taken and the construction was found to be unauthorised. A penalty was levied. The penalty levied under Section 267-A of the Maharashtra Municipal Corporations Act, 1949 has to be collected and recovered in the same manner as property taxes and that is how the Corporation took resort to the taxation rules and issued a warrant of attachment. It also issued a direction to seal the premises. Moreso, when the petitioner is in arrears of about Rs.7,18,000/- approximately towards the taxes.

8. We find that we need not enter into a larger controversy particularly in relation to the authorisation and legality of the construction carried out by the petitioner. We also do not doubt the authority and power of the Municipal Corporation to assess and recover property taxes/general taxes and penalty in relation to alleged unauthorised construction. All that we are concerned with is a lack of power in sealing the premises. That power has not been conferred by law and what the Maharashtra Municipal Corporations Act, 1949 by Section 139 permits the Municipal Corporation, insofar as the recovery of general taxes is concerned, is to determine the primary responsibility for property taxes. Prior to that, there are other taxes which are also to be recovered. However, as far as property taxes are concerned, from Section 139 onwards, the Act enacts a complete scheme. Once the exemption is not granted, then, the property tax has to be paid. There are provisions which enable the Municipal Corporation to recover such taxes and by coercive means. The law contains specific provisions in relation thereto. In the present scenario, Mr.Patil appearing for the first respondent was unable to point out any provision in the Maharashtra Municipal Corporations Act, 1949 which will enable the first respondent to seal the premises. Absent such a provision, we do not think that we should allow the sealing to continue any longer.

9. As a result of the above discussion, the writ petition succeeds. Rule is made absolute in the above terms. The Municipal Corporation shall forthwith remove the seal on the premises of the petitioner. However, it does not absolve the petitioner from the liability to pay taxes nor does it prevent the Municipal Corporation from recovering the same in accordance with law.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**