IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4861 OF 1995

1. Jawahar Sahakari Kapus Utpadak Soot Girni Maryadit (In Liquidation) Latur, Through it's Liquidator, Shri D B Patil. ..Petitioner..

VERSUS

1. The State of Maharashtra, (Through the Government Pleader, High Court of Bombay, Bench at Aurangabad).

2. The Collector, Latur.

3. The Tahsildar, Latur. ..Respondents..

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Advocate for Petitioner : Mr B N Patil
AGP for Respondents 1-3 : Mr A M Phule

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CORAM : V.K. JADHAV, J.
Dated : January 09, 2020

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JUDGMENT :-

1. Petitioner is a Co-operative Society registered under the Provisions of the Maharashtra Co-operative Societies Act, 1960 (hereinafter for short called as 'the Act of 1960'). It is a spinning mill situated at Latur. It went in liquidation. In the year 1965 N.A. permission was granted by the Collector, Osmanabad to the petitioner-society for the land survey nos.37, 38 and 39 admeasuring 11

Hectors 43 R. The petitioner-society went in heavy losses and, therefore, in the year 1988 the liquidation order was passed in respect of the petitioner-society on 15.7.1988. In the year 1991, there was a meeting at the Government level and the it was decided that the additional land with the petitioner-society shall be sold and the amount of loan shall be recovered. Accordingly, in the year 1993 Director of Handloom, Powerloom and Textile of the State of Maharashtra granted permission to the petitioner-society to sell the land on certain conditions. The petitioner-society has sought permission from the respondent no.2 for change of user from Industrial into residential purpose. By order dated 29.8.1994 the respondent Collector, Osmanabad has granted permission for change of the use of the land of survey no.37, 38 and 39 of village Kanheri, Tq. and District Latur measuring 8 H 72 R i.e. 87,200 square meters for residential purpose on certain conditions. The respondent Collector, Osmanabad has directed the petitioner-society to pay N.A. assessment in respect of the aforesaid land @ 0-35 paise per square meter plus convertion tax three times and total amount comes to Rs.1,22,080/- from the date of commencement of the N.A. use of the land for the purpose for which permission was granted. It is further clarified in the order that N.A. assessment shall be guarantee for the period ending on 31.7.1991 and after which N.A. assessment shall be paid as per the revised rates, if any. Thereafter, the State of Maharashtra revised the N.A. assessment rates w.e.f. 01.08.1991 and it was accordingly published in the Government Gazette. In interms of the revised rates, the petitioner was directed to pay an amount of Rs.18,42,586/- by sending a demand notice on 8.5.1995. It was also communicated to the petitioner that in case N.A. dues are not deposited, the property of the petitioner-society would be attached. On 28.8.1995 the petitioner-society had communicated to respondent no.3 Tahsildar, Latur that the petitioner-society is in liquidation and there are number of liabilities to the tune of Rs.12 crores and, as such, the liquidator is trying to sell the property and to discharge the liability. It was also communicated that there are no funds available at present. It was also informed that in terms of section 107 of the Maharashtra Co-operative Societies Act, 1960 the proceedings pertaining to the recovery of the dues and attachment of the property of the petitioner-Society which is under liquidation is not permissible. Even then, respondent No.3 Tahsildar has issued a proclamation on 10.10.1995 for auction sale of the plots from land survey nos.37, 38, 39. Even, respondent no.3 Tahsildar has also sent the copy of the Schedule-E in which it is mentioned that for the recovery of said amount of Rs.18,42,586/- the property is attached and on 13.10.1995 at 11.00 am in Tahsil Officer, Latur the property would be sold by auction. Hence, this writ petition.

2. Learned counsel for the petitioner-Society submits that retrospective effect cannot be given to recover the N.A. assessment taxes, when the permission was granted long back to the petitioner-society prior to the revised rates. It was only permission sought for the change of the user from Industrial to residential purpose and original N.A. permission was granted in the year 1965 itself. Learned counsel submits that respondent no.3 Tahsildar has not considered the Government Resolution and as such N.A. assessment cannot be more than twice. Respondents have claimed exorbitant amount from the

petitioner-society. Learned counsel submits that the petitioner-society is in liquidation and by virtue of the provisions of section 107 of the Act of 1960, no suit or any other legal proceedings shall lie or be proceeded with, against society or liquidator, except by leave of the Registrar and subject to such terms as he may impose. Learned counsel submits that proposed auction sale of the properties is illegal and unwarrnated. The petitioner-society is also not liable to pay excess demand of the N.A. assessment. Learned cousnel submits that there is no justification for the exorbitant demand of the N.A. assessment and even if the area of 87,200 square meters is considered as whole, assessment by 2.50 per square meters alongwith conversion tax three times, said demand to the tune of rupees Eighteen Lakhs and some odd amount is exorbitant.

3. Learned counsel for the petitioner, on instructions from the petitioner-society, in the alternate submits that, so far the petitioner-society has paid Rs.14.00 Lakhs to the respondent-State and, in case, if the said amount is accepted as a full and final settlement

towards N.A. assessment tax including the conversion of use etc., the petitioner-society has no grievance and writ petition may be disposed off in terms of the same.

4. Learned A.G.P. submits that the petitioner-society has sought permission from respondent no.2 for change of the use of land from Industrial to Residential purpose and permission to convert the land from Industrial to residential purpose was granted on certain conditions which are detailed in the order dated 29.8.1994. It is admitted that subsequently the State Government has revised the N.A. assessment w.e.f. 1.8.1991 for the areas as detailed in the circular. As per the revised rates, the rate for N.A. assessment of village Kanheri Tq. & Dist. Latur (where suit lands are situated) was revised from 0.35 paise per square meters to 2.50 paisa per square meter. Learned A.G.P. submits that N.A. assessment which shall not be more than twice in the case of the petitioner was applicable to the case prior to 1.8.1991. It has specifically mentioned in the Government Resolution that rates mentioned may be applicable to the cases of the N.A. assessment after 1.8.1991. As per the

order dated 29.8.1994 the petitioner-society was directed to pay an amount of Rs.1,22,080.00 as per the old rate subject to revised rate from 1.8.1991. The Government Resolution came to be issued in the year 1995 which specifically prescribed the N.A. assessment rates applicable from 1.8.1991. In view of the same, the petitioner-society was directed to deposit an amount of Rs.18,42,586/- as per revised rate. Learned A.G.P. submits that even the petitioner-society has not disputed the amount mentioned in the notice issued to the tune of Rs.18,42,586/-. The petitioner-society has only raised an objection that the petitioner-society is under liquidation and there is a bar of Civil as well as the Revenue Court to initiate any proceeding against the Co-operative society which is under liquidation. The learned A.G.P. submits that the liquidator himself has applied for conversion of the use. It was the liquidator's decision to sell out the plots and raise funds to satisfy the debts. In view of the same, bar as contemplated under section 107 of the Co-operative Societies Act is not applicable. The learned AGP, on instructions, admits that the petitioner-society has so far deposited Rs.14.00 Lakhs (Rs.Fourteen Lakhs) and the letter from respondent Tahsildar, Latur received on 10.7.2018 stating therein that since the petitioner-society had deposited Rs.14.00 Lakhs, writ petition may be disposed off by accepting said amount of Rupees 14.00 lakhs as a full and final settlement. Learned AGP submtis that, on merits, the petitioner-society has no case. This writ petition is thus liable to be dismissed.

5. I have heard the learned counsel for the petitioner and the learned AGP for respondents, at length. With their able assistnce, I have carefully perused the averments made in the memo of the petition, the grounds taken therein, annexures thereto and the affidavit-in-reply filed by the respondents.

6. Chapter IV of the Maharashtra Land Revenue Code, 1966 (herein after referred to as 'Land Revenue Code' for short) deals about the land revenue. Section 67 prescribes the manner of the assessment and alteration of the assessment. In Chapter no.VII of the Land Revenue Code, assessment and settlement of the Land Revenue of Lands used for Non-agricultural purposes is prescribed.

In terms of section 113 the State Government has to fix the standard rate of non-agricultural assessment per square meter of land in each block in an urban area which is a “standard rate of non-agricultural assessment” and at such percentage of the full market value of such land as may be prescribed in terms of sub-section (2) of Section 113 the standard rate of non-agricultural assessment shall remain in force for a period of five years (hereinafter referred to as the guaranteed period) and shall then be liable to be revised in accordance with the provisions of Chapter. The first such guarantee period shall commence on the first day of August, 1979 and shall expire on the 31st day of July, 1991.

7. The standard rate of Non-Agricultural assessment has been prescribed under sub-rule (3) of Rule 16 of the Maharashtra Land Revenue (Conversion of Use of Land and non-agricultural Assessment) Rules, 1969. In terms of sub-section (2C) of Section 113, the rates of the non-agricultural assessment for every guaranteed period of five years after the 1st August, 2001 shall not be less than the rate prevailing on the day immediately

preceding the day from such guarantee period and shall not exceed in terms of clause (a), (b) of sub-section (2C) of Section 113. The provisions of section 67 of the Maharashtra Land Revenue Code, 1966, Section 113 of the Assessment and Settlement of Land Revenue of Lands used for Non-agricultural purposes and Rule 16 of the Maharashtra Land Revenue (Conversion of Use of Land and Non-agricultural assessment Rules, 1969) are reproduced herein.

67. Manner of assessment and alteration of assessment. -

(1) The land revenue leviable on any land under the provisions of this Code shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of the land,-

(a) for the purpose of agriculture,

(b) for the purpose of residence,

(c) for the purpose of industry,

(d) for the purpose of commerce,

(e) for any other purpose.

(2) Where land assessed to agricultural is used for non-agricultural purpose or vice versa or being assessed to one non-agricultural use is used for another non-agricultural purpose, then the assessment fixed under the provisions of this Code upon such and shall, notwithstanding that the term for which such assessment may have been fixed has not expired, be liable to be altered and assessed at a rate provided for under this Code in accordance with the purpose for which it is used or is permitted to be used.

(3) Where land held free of assessment on condition of being used for any purpose is used at any time for any other purpose, it shall be liable to assessment.

(4) The assessment under sub-sections (2) and (3) shall be made in accordance with the rules made in this behalf.

113. Powers of Collector to fix standard rate of non-agricultural assessment.

(1) Subject to the provisions of Section 112, the [the State Government shall, or if so authorised by the State Government, by notification in the *Official Gazette*, the Collector shall] fix the rate of non-agricultural assessment per square metre of and in each block in urban area (to be called "the standard rate of non-agricultural assessment") at such percentage of the full market value of such land as may be prescribed.

[*Explanation.* - For the purposes of this sub-section, the full market value shall be estimated in the prescribed manner on the basis of the land rates as determined and issued in the form of Annual Statement of rates, by the Chief Controlling Revenue Authority under the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 framed under the Bombay Stamp Act, 1958, immediately preceding the year in which the standard rate of non-agricultural assessment is to be fixed.]

[(2) The standard rate of non-agricultural assessment shall remain in force for a period of [five years] (hereinafter referred to as "the guaranteed period") and shall then be liable to be revised in accordance with the provisions of this Chapter:]

[Provided that the first such guaranteed period shall commence on the first day of August, 1979 and shall expire on the 31st day of the July, 1991:]

[Provided further that, the State Government may, extend such guaranteed period for all or any block in any urban area so however that, such extended period shall not be more than five years.]

(2A) Where the standard rate of non-agricultural assessment in any block in any urban area has been fixed or revised before the 1st day of August, 1979, such standard rate shall be deemed to be due for revision at any time on and after [the 1st day of August, 1979; and then such standard rate if so revised shall be deemed to have come into force with effect from the 1st day of August, 1979 on which date the first guaranteed period commenced and would remain in force after the 31st July, 1991 and would then be subject to further revision under sub-section (2B), from time to time.]

(2B) Where the standard rate of non-agricultural assessment is fixed or revised for any guaranteed period, the same shall be revised as soon as possible after the commencement of the next guaranteed period and such revised rate shall be deemed to have come into force with effect from the commencement of such next guaranteed period.

[(2C) Notwithstanding anything contained in sub-section (1) or the rules made thereunder the rates of non agricultural assessment for every guaranteed period of five years after the 1st August 2001 shall not be less than the rate prevailing on the day immediately preceding the beginning of such guaranteed period (hereafter referred to as 'the reference day' ans shall not exceed -

(a) three times the non-agricultural assessment rate prevailing on the reference day in a Municipal Corporation area and two times of such rate in the area of the rest of the State for the cases which are already assessed for non-agricultural purposes; and

(b) six times the non-agricultural assessment rate prevailing on the reference day in a Municipal Corporation area and four times of such rate in the area of the rest of the State for the cases to be assessed for non-agricultural purposes.]

(3) The standard rates of non-agricultural assessment fixed or revised as aforesaid shall be published in the *Official Gazette*, and in such other manner as may be prescribed before they are brought in force.

Rule 16. Standard rate of non-agricultural assessment :

(1) For purpose of determining the standard rate of non-agricultural assessment, the Collector shall, on the basis of the full market value of plots, ascertained in accordance with the principles enunciated in the preceding rule, first estimate the full market value of non-agricultural land in each block separately for each of the [five years] immediately preceding the

year in which the standard rate of non-agricultural assessment is to be fixed.

(2) On the basis of the full market value determined for the preceding [five years] under sub-rule (1), the Collector shall estimate the full market value of land per square metre in each block.

(3) The standard rate of non-agricultural assessment per square metre of land in each block shall be equal to [0.05 per cent] of the full market value estimated under sub-rule (2).

(4) The Collector shall submit to the State Government for approval the standard rate determined under sub-rule (3) through the Commissioner of the Division.

(5) The Statement Government may modify the Collector's proposal in respect of standard rate to such extent as it may deem fit.

[(6) The standard rate approved by the State Government shall be published in the Official Gazette and such standard rate shall come into force with effect from the commencement of the relevant guaranteed period as provided for in Section 113. The standard rate shall also be put up on the notice board in the officer of the Tahsildar.

(7) The standard rate fixed under sub-rule (3) shall remain in force for the relevant guaranteed period and thereafter be liable to be revised under Section 113 of the Code".]

8. In the backdrop of these provisions, the State of Maharashtra on 30.6.1995 has issued the circular pertaining to the non-assessment taxes in terms of the provisions of section 113 of the Land Revenue Code and accordingly revised the rates w.e.f. 01.08.1991 @ Rs.2.50 per square meters pertaining to the land situated at village Kanhera Taluka and District Latur. It has been specifically

stated in the Government Resolution dated 30.6.1995 that said rates are applicable for new permission sought for the use of the non-agricultural purpose and so far as old matters are concerned, the N.A. assessment taxes shall not exceed double of the amount as prescribed prior to 1.8.1991.

9. In the instant matter, it is not disputed that way back in the year 1965 the petitioner-society was granted N.A. permission and in the year 1994 the petitioner-society has sought conversion of the use. It is not the case that in the year 1994 the petitioner-society has sought permisison for N.A. use of land for the first time. Even, assuming that said rates 2.50 per square meters is applicable to the land 8H 72R i.e.87,200 square meters for which permission is sought for change of the use for residential purpose and even after addition of the conversion of the tax three times the total amount in any case does not come/exceed to Rs.8,72,000/-.

10. Apart from this, in terms of section 107 of the Maharashtra Co-operative Societies Act, 1960 no legal

proceedings can be initiated against the society or the liquidator, except by leave of the Registrar, and subject to such terms as he may impose. Section 107 of the Act of 1960 is reproduced herein below.

Section 107 - Bar of suit in winding up and dissolution matters

Save as expressly provided in this Act, no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a society under this Act; and when a winding up order has been made no suit or other legal proceedings shall lie or be proceeded with against the society or the liquidator, except by leave of the Registrar, and subject to such terms as he may impose:

Provided that, where the winding up order is cancelled, the provisions of this section shall cease to operate so far as the liability of the society and of the members thereof to be sued is concerned, but they shall continue to apply to the person who acted as Liquidator.

11. Admittedly, the State Government has not sought any permission from the Registrar for initiating the proceedings of the attachment of the property of the petitioner-society for non-payment of the N.A. assessment tax. It is also part of the record that the petitioner-society has submitted before the respondent Tahsildar that the permission for change of the user for a residential purpose of industrial land was sought, to sell the property of the petitioner-society for discharging the financial liability which is to the tune of Rs.12 crores. It is also a part of the

record that the petitioner-society went in liquidation because of the heavy losses.

12. In the light of the discussion above, I do not find any justification for initiating the proceedings of the attachment of the property of the petitioner-society and its auction sale. Furthermore, the learned AGP even though reasonable time was granted and even after taking instructions from the concerned officials, unable to justify the demand of said exorbitant amount of Rs.18.00 Lakhs and some odd amount.

13. Learned counsel for the petitioner-society, on instructions, submitted that the petitioner-society has so far deposited Rs.14.00 Lakhs with the State Government towards N.A. assessment taxes and for that purpose the petitioner-society has no grievance. In view of the same, this writ petition can be disposed off in terms of the said statement made on behalf of the petitioner-society. The petitioner-society, however, is not liable to pay anything more towards N.A. assessment taxes and the respondent-State is also not entitled to claim more amount than

already paid by the petitioner-society pertaining to the property for which change of permission of user has been sought. Hence, I proceed to pass the following order.

ORDER

I. Writ Petition is hereby partly allowed.

II. The demand notice issued by the Tahsildar, Latur on 8.8.1995 for the recovery of the additional N.A. assessment to the tune of Rs.18,42,586/- and the proclamation for auction sale issued by respondent no.3 Tahsildar, Latur in schedule-E for auction sale of the property of the petitioner-society received by the petitioner-society on 10.10.1995 are hereby quashed and set aside.

III. **Instead of that :-**

Since the petitioner-society has already paid Rs.14.00 Lakhs and for that purpose the petitioner-society has no grievance, the respondent-State shal accept the said amount of Rs.14.00 lakhs as a full and final payment towards N.A. assessment taxes for the suit property.

IV. The respondent-State is hereby directed to withdraw the attachment order of the property of the petitioner-society pertaining to survey nos.37, 38 and 39 of village Kanheri Tq. & District Latur and the plots therein.

V. Needless to say that the petitioner-society is not liable to pay the amount exceeding Rs.14.00 Lakhs towards additional N.A. assessment amount and the respondent-State shall not recover any further amount exceeding the said amount of Rs.14.00 Lakhs from the petitioner-society.

VI. Writ Petition accordingly disposed off. Rule is made absolute in above terms.

(V.K. JADHAV, J.)

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