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

WRIT PETITION NO. 3858 OF 2019

Ramesh s/o Shankar Kolte,
Age 51 years, Occ. Business,
R/o. Plot No. 7, S.No. 4/1,
Khedishivar, Jalgaon, Tq. & Dist.
Jalgaon, At present "Hari Om Villa"
P-95/22, Near Mohtadevi Mandir,
Balaji Nagar, MIDC, Waluj, Aurangabad. **... Petitioner.**

VERSUS

The Jalgaon Municipal Corporation,
Jalgaon, District Jalgaon,
Through Its Commissioner. **... Respondent.**

...

Advocate for the Petitioner : Mr. Manale Satish S.
Advocate for the Respondent : Mr. V.D. Gunale.

CORAM : MANGESH S. PATIL, J.

RESERVED ON : 02/12/2020

PRONOUNCED ON : 07/12/2020

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. In this petition under Article 227 of the Constitution of India, the petitioner is challenging the judgment and order passed by the learned Civil Judge Senior Division Jalgaon in Municipal Appeal No. 31/2014 dated 20.06.2018 thereby dismissing the appeal preferred by him under Section 406 of the Maharashtra Municipal Corporation Act 1949 (hereinafter 'the Act')

3. In short the facts leading to the filing of the petition are to the effect that the petitioner is the owner of plot No. 7 from the City Survey No. 44/1 of Khedi Shivar within the Municipal limits of Jalgaon Municipal Corporation. He constructed a multistoried building comprising of 16 rooms in the year 2013. The area under construction comes to 212.65 square meters. He approached the respondent/Corporation for assessment of the building for the purpose of property tax. The respondent/Corporation by the letter dated 01.03.2014 informed the petitioner that the annual rateable value of the property was Rs. 1,76,063/-and further called upon him to put his grievance or objection to such assessment on 20.03.2014. He then lodged an objection/complaint in writing on 15.03.2014.

4. By way of this objection he *inter alia* requested to consider that though the building was being used as a hostel for 22 students, for variety of reasons the occupancy is less and fluctuates. He requested to consider the expenses being incurred by him. He also requested that two rooms from the second floor were still vacant. He was using couple of rooms for his personal use and also requested to consider the tax levied on the surrounding similarly situated properties under similar use.

5. According to petitioner after his such objection/complaint dated 15.03.2014 nothing was communicated to him and he only received a Property Tax Bill dated 28.11.2014 (Exhibit 'D'). He therefore preferred the appeal under Section 406 of the Act on similar grounds that were raised by him in his complaint/objection dated 15.03.2014.

6. The respondent/Corporation opposed the appeal *inter alia* on the ground that it was barred by limitation provided under Clause (a) of sub Section 2 of Section 406 of the Act. He has not preferred any complaint to the Commissioner which is a condition precedent for preferring the appeal as laid down under clause (b) of sub Section 2 of Section 406 of the Act. No particulars of the bills were given in the Appeal-memo. The amount

demanded by the bill was not deposited while preferring the appeal as is required by Clause (e) of sub Section 2 of Section 406 of the Act. There was no error in the assessment of tax.

7. After hearing both the sides by the impugned judgment and order the learned Judge dismissed the appeal. Hence this Writ Petition.

8. Learned advocate Mr. Manale for the appellant in tune with the grounds in the appeal memo as well as the objection, submitted that the appeal was preferred only after complying the necessary preconditions under Section 406 of the Act. The petitioner had duly filed a complaint with the Commissioner on 15.03.2014. Since no decision was taken or communicated and he was served with the Property Tax Bill dated 28.11.2014, the appeal having been filed within 15 days from the date of this bill was well within limitation. The amount demanded in the bill was also deposited with the Appellate Court on 24.03.2015.

9. The learned advocate for the petitioner would then point out that under Right to Information Act the petitioner obtained copies of the Assessment Register of the respondent/Corporation for the year 2013-2014 and also obtained a copy of Data register for fixation of rateable value maintained by the respondent/Corporation (Exhibit 'J'). The property of the petitioner falls under residential area for which the rate prescribed is Rs. 132/- per 10 square meters and for commercial properties it is prescribed as two times the rate of the residential premises. However, so far as the petitioner's property is concerned, for the two rooms in his occupation treating them to be his office, and a commercial use, the rateable value has been fixed at twice the rate i.e. at the rate of Rs. 264 per 10 square meters. However, for other rooms the rate is fixed as Rs. 700/- per room for all the rooms. Even though the Data register prescribes that the rate has to be fixed depending upon the floor but the tax has been assessed uniformly for all the floors. He therefore submitted that the learned Judge has not correctly

appreciated the facts and circumstances and has illegally dismissed the appeal.

10. Learned advocate Mr. Gunale for the respondent/Corporation submitted that none of the preconditions which need to be complied before preferring the appeal under Section 406 of the Act has been complied by the petitioner and for this reason alone the appeal was liable to be dismissed summarily.

11. Learned advocate Mr. Gunale submitted that the complaint/objection dated 15.03.2014 was addressed to the Deputy Commissioner when clause (b) of sub Section 2 of Section 406 of the Act contemplates a complaint to be filed to the Commissioner. He would then submit that the appeal has to be filed within 15 days from the accrual of the cause of action as contemplated under Clause (a) of sub Section 2 of Section 406 of the Act. Therefore no error has been committed by the learned Judge in observing that the appeal was barred by limitation.

12. Learned advocate Mr. Gunale would then submit that the petitioner is not entitled to claim any parity with the other properties in the vicinity. There would be several variables which would affect the determination of rateable value depending upon the area under construction, age of the construction etc. Therefore the petitioner is not entitled to refer to the assessment in respect of the adjoining properties.

13. I have carefully gone through the papers and minutely considered the rival submissions. There can be no dispute about the legal position as regards the requisite conditions to be fulfilled before preferring appeal under Section 406 of the Act. Under Section 406(2)(a) of the Act the appeal has to be preferred within 15 days after accrual of the cause of complaint. Under Section 406(2)(b) in case of appeal against a rateable value a complaint has to be previously made to the Commissioner and it has to be disposed of before preferring the appeal. Under Section 406(2)(e) of the

Act, the tax demanded under bill in dispute has to be deposited with the Commissioner. Sub Section 2A of Section 406 of the Act also speaks of consequences of not obeying these preconditions and lays down that the appeal shall be liable to be dismissed summarily, if the conditions are not fulfilled.

14. As can be seen, the petitioner did forward a representation addressed to the Assistant Commissioner on 15.03.2014 pursuant to the notice received by him from the respondent/Corporation dated 01.03.2014 (Exhibit 'C'). There is no record to show that the respondent/Corporation took any decision on this complaint/ correspondence. The petitioner cannot be expected to have waited for the decision of this complaint when he was subsequently served with a final property tax bill dated 28.11.2014 (Exhibit 'D'). Believing that his complaint must have been decided he chose to prefer the appeal which was filed on 11.12.2014 i.e. within 15 days of this property tax bill.

15. The learned Judge has observed that since the petitioner had already filed an objection/complaint on 15.03.2014 he was aware about the assessment and could have filed appeal within 15 days from raising the objection. The observations of the learned Judge are palpably illegal. When the petitioner has filed a complaint as is contemplated under Clause (b) of sub Section 2 of Section 406 of the Act, no fault can be found with him in waiting for a decision on that complaint. If no decision is taken, the cause for him for preferring the appeal can be said to have accrued only when he was served with the property tax bill on 28.11.2014.

16. It seems that the learned Judge failed to appreciate the fact that it was a sheer error in the appeal-memo in referring to this bill, as a notice. Be that as it may, the appeal was preferred well within time and the observations and the conclusions of the learned Judge holding otherwise are not tenable.

17. Learned advocate Mr. Gunale submitted that when the law requires the complaint to be made to the Commissioner, the complaint/correspondence made by the petitioner which is addressed to the Assistant Commissioner of the respondent/Corporation cannot be said to be due compliance of clause (b) of sub Section 2 of Section 406 of the Act.

18. True it is that this correspondence is addressed to the Assistant Commissioner and not the Commissioner. However, it needs to be borne in mind that a common man or a citizen cannot be expected to distinguish between such designations of the Public Officers. As has been rightly submitted by the learned advocate Mr. Manale for the petitioner, since the notice dated 01.03.2014 was received by the petitioner and was signed by the Assistant Commissioner of the respondent/Corporation, even this complaint dated 15.03.2014 was addressed to the Assistant Commissioner. Therefore, no fault can be found with the petitioner in addressing this complaint to the Assistant Commissioner and the respondent/Corporation cannot be allowed to derive any benefit there from, mere so when it has never decided the grievance put forth by the petitioner much less on the ground that the complaint was not addressed to the Commissioner. Therefore submission of the learned advocate Mr. Gunale in this respect is not tenable.

19. As far as the merits are concerned, the Data-sheets (Exhibits 'I' and 'J') received by the petitioner under the Right to Information Act would clearly demonstrate that the property of the petitioner has been assessed treating it to be of commercial use. The Data sheet prescribes the rates at which the property tax is to be assessed depending upon the nature of the property i.e. nature of the construction. A R.C.C. building is to be assessed at the rate of Rs. 132/- per 10 square meters but if it is being used for commercial purpose it is susceptible to be assessed at twice the rate. It also prescribes different slabs depending upon the assessment of individual floor. For underground floor the assessment is to be made at 50%, for ground floor

100%, for first floor 75%, for second floor 50% and so on. However, as far as petitioner's property is concerned, as can be seen, the two rooms in possession of the petitioner have been assessed at twice the rate i.e. 264 per 10 square meters treating it to be office i.e. commercial use. However, for the rest of the floors the assessment has been made without specific reference to the Data sheet and has been applied uniformly for all the floors that too @ Rs. 700/- per room. If this is so, *prima faice,* even if one avoids to resort to draw any parity between the adjoining properties and the property of the petitioner, the assessment does not seem to have been made correctly. The learned Judge has not addressed himself to this aspect of the matter while dismissing the appeal by the impugned judgment and order.

20. Since it is a matter of assessment of a property tax, though the appeal preferred by the petitioner has been dismissed, in my considered view it would be just and proper to relegate him to the Commissioner of the respondent/Corporation who can be directed to take a conscious decision in accordance with law on the complaint filed by the petitioner dated 15.03.2014.

21. The petition is accordingly partly allowed. The impugned judgment and order dismissing the appeal preferred by the petitioner under Section 406 of the Act is quashed and set aside. The Commissioner of the respondent/Corporation shall take appropriate decision on the complaint dated 15.03.2014 filed by the petitioner (page 19 and 20) by extending an opportunity to him of being heard and in accordance with law.

22. The rule is accordingly made absolute in above terms.

(MANGESH S. PATIL, J.)

mkd/-