IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.178 OF 2021 WITH
CIVIL APPLICATION NO.4313 OF 2021

The State of Maharashtra & ors. … APPELLANTS

VERSUS

M/s Onkar Kaniram and Co. … RESPONDENT

....
Shri P.K. Lakhotiya, A.G.P. for appellants
....

CORAM : R. G. AVACHAT, J.

DATE : 7th APRIL , 2021

O R D E R :

The challenge in this Second Appeal is to the judgment and decree dated 7/3/2011, passed by Civil Judge, Senior Division, Dhule in Special Civil Suit No.242/2006 and confirmed by judgment and decree dated 10/1/2020, passed by District Judge-5, Dhule in Regular Civil Appeal No.36/2014.

By the impugned judgment and decree, the notice dated 25/9/2006 issued by the Talathi, Dhule directing the plaintiff firm to pay Rs.47,860/- towards non-agricultural taxes/ assessment in respect of the lands Survey No.549/1A, 549/1A-B and 549/1C came to be declared to be bad in law.

The defendants in the suit came to be restrained from taking any coercive steps against the plaintiff firm on the basis of aforesaid notice.

The appeal preferred against the judgment and decree passed in Special Civil Suit No.242/2006 came to be dismissed. The original defendants are, therefore, in this Second Appeal.

2. Heard Shri P.K. Lakhotiya, learned A.G.P. for the appellants. He would submit that, by virtue of Sections 4 and 11 of the Maharashtra Revenue Jurisdiction Act (for short the Act), the Civil Court did not have jurisdiction to entertain the suit. The decree impugned in this Second Appeal is, therefore, non est. He would further submit that, the suit has been filed by the partnership firm. In view of Section 69(2) of the Indian Partnership Act, the suit is not maintainable by an unregistered partnership firm. The learned A.G.P. would further submit that, since the notice impugned in the suit was issued by the Talathi in exercise of jurisdiction under the Maharashtra Land Revenue Code, 1966 (for short MLRC), a remedy of appeal is available thereagainst in view of Section 247 of the MLRC. According to learned A.G.P., the plaintiff firm did not have a right of hearing before revision of N.A. assessment is made by the revenue authorities.

3. Perused the judgment impugned in this Second Appeal. Considered the submissions made by the learned A.G.P. In my view, no substantial question of law does arise in this appeal. All the grounds raised for admission of this Second Appeal have duly been addressed by both the courts below.

So far as regards jurisdiction of the Civil Court to entertain and try the suit is concerned, it is to be stated that, the legality of the notices issued by the Talathi was challenged in the suit. The issue has no longer been res integra in view of the following judgments :-

(1) 1987(2) Bom.C.R. 237
State of Maharashtra Vs. Mrs. Nargis Mewawala

(2) 2007(1) Mh.L.J. 819
Gopinath Pensalwar Vs. State of Maharashtra

(3) 1965 Mh.L.J. 226 (SC)
Municipal Council, Khurai Vs. Kamal Kumar

The trial Court, relying on the aforesaid authorities, held the Civil Court to have jurisdiction to entertain the suit, being Special Civil Suit No.242/2006.

4. So far as regards second ground of objection with reference to Section 169(2) of the Partnership Act is concerned, the same has also been rightly addressed by both

the courts below. In case of **M/s Haldiram Bhujiawala & anr. Vs. M/s Anand Kumar Deepak Kumar & anr., AIR 2000 SC 1287**, it has been held that a suit by unregistered firm is not barred under Section 69(2) if a statutory right or a common law right is being enforced.

What had been challenged in the suit was an act of the Talathi in issuance of notice of demand of N.A. assessment/ tax. No right arising out of any contract was sought to be enforced in the suit.

5. So far as regards the third submission is concerned, it is to be stated that, although a remedy of appeal is available under Section 247 of the MLRC, no provision bars the suit wherein challenge is to legality of issuance of N.A. assessment.

6. It was the case of the plaintiff firm that it had been paying the N.A. assessment of the land used by it for industrial purpose at a rate fixed in the year 1982-83. The Talathi abruptly issued the impugned notice demanding the revised N.A. assessment/ tax. Admittedly, the impugned notice was issued on the basis of an audit report wherein it was observed that less amount of tax was being levied. Admittedly, before issuing the impugned notice revising the N.A. tax, no procedure contemplated under Sections 111 to

114 of the MLRC had been followed.

7. For the reasons given hereinabove, no substantial question of law is involved in this Second Appeal. The Second Appeal, therefore, stands dismissed.

In view of dismissal of the Second Appeal, nothing survives in the Civil Application and the Civil Application also stands dismissed.

(R. G. AVACHAT)
JUDGE

fmp/-