

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

WRIT PETITION NO. 8043 OF 2020

Abhinav Manav Vikas Sanstha .. Petitioner
A Registered Trust under Maharashtra
Public Trust Act bearing Public
Trust Registration No. F-2902 (Latur),
Through its Secretary,
Kamalkishor s.o. Vishnudas Agarwal,
Age. 57 years, Occ. Business,
R/o. Signal Camp, Latur.

Versus

1. The State of Maharashtra .. Respondents
Through : Department of Urban
Development, Mantralaya,
Mumbai-32.
2. Latur City Municipal Corporation,
Latur, Through its Commissioner,
Main Road, Latur.

Mrs.Anjali Bajpai-Dube, Advocate for the petitioner.
Mr.G.O. Wattamwar, AGP for respondent/State.
Mr.Hanmant V. Patil, Advocate for respondent No.2.

CORAM : N.J.JAMADAR,J.
RESERVED ON : 05.04.2021
PRONOUNCED ON : 30.04.2021

J U D G M E N T :-

01] Rule. Rule made returnable forthwith and, with
the consent of the learned Counsels for the parties,

heard finally at the stage of admission.

02] The challenge in this petition is to a judgment and order passed by the learned District Judge, Latur, dated 7th March, 2020, in Misc. Civil Appeal No.108 of 2019, whereby the learned District Judge dismissed the appeal preferred by the petitioner-appellant and affirmed the order passed by the learned 2nd Joint Civil Judge, Junior Division, Latur dated 4th November, 2019, rejecting the application [Exh.5] preferred by the petitioner seeking injunction against the respondent/defendant – Municipal Corporation, from taking coercive action for recovery of the tax levied upon the petitioner/plaintiff.

03] Shorn of unnecessary details, the background facts leading to this petition can be stated as under :-

a] The petitioner is a public charitable trust registered under the Maharashtra Public Trusts Act, 1950.

It imparts education to the children belonging to all strata of society. The plaintiff-trust runs Shrikishan Somani Prathamik Madyamik Vidyalaya at property No. B-3/366 [old property No. R-8/153/1]. The said property is solely used for educational purpose.

b] The defendant-Municipal Corporation levied taxes on the property of the trust and issued demand notice on 11th September, 2017. The plaintiff lodged objection to the levy of taxes as the plaintiff, being a public charitable trust, the property was exempt from taxes under section 132(1)(b) of the Maharashtra Municipal Corporations, Act, 1949 [the Act, 1949]. The plaintiff claims that the defendant-Municipal Corporation did not decide the said objection. Instead, the defendant issued a fresh demand notice on 1st of September, 2018 followed by a final demand notice dated 8th May, 2019, calling upon the plaintiff to pay the taxes within two days thereof, with threat of coercive action in the event of default.

c] The plaintiff, thus, instituted the suit, being RCS No.301 of 2019 seeking declaration that the demand notice dated 1st September, 2018 and the final notice dated 8th May, 2019 are illegal and without authority and perpetual injunction restraining the defendant-Municipal Corporation from levying and demanding the tax on the property of the plaintiff-trust. In the suit, the plaintiff preferred an application for temporary injunction [Exh.5] seeking to restrain the defendant-Corporation from attaching and selling the properties of the plaintiff trust towards the recovery of the taxes.

d] The defendant-Municipal Corporation resisted the claim. It was denied that the plaintiff is a charitable trust. The defendant-Corporation contended that the property in question is not being exclusively used for imparting education. The eligibility of the plaintiff to get exemption under section 132 of the Act, 1949 was contested. It was contended that the Civil Court has no

jurisdiction to entertain, try and decide the question in controversy as there was a remedy of appeal under section 406 of the Act, 1949 and, thus, jurisdiction of the Civil Court was impliedly barred.

e] The learned Civil Judge was persuaded to reject the application for temporary injunction holding that the question as to whether the plaintiff is a charitable trust or not is a matter for trial and, at the interim stage, the Corporation cannot be restrained from recovering the tax as the Corporation cannot function or meet its financial obligation, if its source of revenue is blocked by an interim order.

f] Being aggrieved, the petitioner-plaintiff preferred an appeal, being Misc. Appeal No.109 of 2019 before the District Court. The learned District Judge was persuaded to uphold the order passed by the Civil Judge. Placing reliance on a judgment of a learned Single Judge of this Court in the case of Akola Municipal

Corporation Vs. Akola Gujarati Samaj, 2018 (5)

Mh.L.J.267, the learned District Judge held that the question as to whether a property is exempt from levy of tax under section 132(1)(b) of the Axt, 1949 is required to be agitated under section 406 of the Act, 1949 and the jurisdiction of the Civil Court is impliedly ousted. Thus, the plaintiff has no prima facie case and is, consequently, not entitled for grant of injunctive relief.

g] Being further aggrieved by and dissatisfied with the impugned judgment and order passed by the learned District Judge, the petitioner-plaintiff has invoked writ jurisdiction of this Court.

04] I have heard Mrs.Anjali Bajpai (Dube), learned Counsel for the petitioner, Mr.G.O.Wattamwar, learned AGP for the State and Mr.Hanmant V. Patil, learned Counsel for respondent No.2-Municipal Corporation, at considerable length. With the assistance of learned

Counsel for the parties, I have also perused the material on record.

05] Mrs. Bajpai, learned Counsel for the petitioner strenuously urged that the Courts below have fallen into an error in rejecting the application for temporary injunction. In the process, the Courts have totally misconstrued the beneficial object of provisions contained in Section 132(1)(b) of the Act, 1949. The learned Counsel for the petitioner further urged that the judgment of this Court in the case of Akola Municipal Corporation (Supra), on which reliance has been placed by the learned District Judge to hold that the jurisdiction of the Civil Court is impliedly ousted, does not lay down correct law.

06] Mrs. Bajpai, learned Counsel further urged that the question is covered by a judgment of this Court in the case of Saint Kanwarram Education & Social Welfare Society & Ors. Vs. Municipal Corporation of City of

Amravati, 2009 (2) AIR Bom R 384, wherein this Court had not only upheld the tenability of the suit, but decreed the suit holding that the property in the said case, which was also being used for educational purposes, was exempt from levy of tax under section 132(1)(b) of the Act, 1949.

07] Mr.Hanmant Patil, learned Counsel for respondent No.2-Corporation urged with tenacity that the legal position is well neigh settled that the remedy of a person aggrieved by levy of tax under the Municipal enactment is before the machinery provided in the said Act. The jurisdiction of the Civil Court is impliedly barred. The learned Counsel for respondent No.2 would urge that the pronouncement of this court in the case of Akola Municipal Corporation (Supra), which has considered the exposition of law in the case of Dhulabhai and Ors. Vs. State of M.P. and another, 1969 Mh.L.J.(S.C.)1, a Constitution Bench judgment on the aspect of exclusion of the jurisdiction of the Civil Court, and another judgment

of this Court in the case of Greaves Cotton Limited Vs. Pimpri Chinchwad Municipal Corporation and Others, 2014(1) Mh.L.J.655, correctly enunciates the legal position, in the context of the statutory remedy under section 406 of the Act, 1949. Thus, no fault can be found with the impugned judgment which places reliance on the judgment in the case of Akola Municipal Corporation (Supra) and holds that the jurisdiction of the civil Court is impliedly ousted.

08] On a careful consideration of the submissions, it appears that there is a cleavage of judicial opinion as regards the tenability of the suit before the civil Court, where the legality of the impost is challenged on the basis of clause (b) of section 132(1) of the Act, 1949.

09] Section 132 enumerates the premises on which tax can be levied. Section 132 reads as under :-

"132. General Tax on what premises to be levied.

(1) The general tax shall be levied in respect of all

buildings and lands is the City except.-

- (a) buildings and lands solely used for purposes, connected with the disposal of the dead;
 - (b) buildings and lands or portions thereof solely occupied and used for public worship or for a public charitable purpose;
 - (c) buildings and lands vesting in the Government used solely for public purposes and not used or intended to be used for purposes of trade or profit or vesting in the Corporation, in respect of which the said tax, if levied, would under the provisions hereinafter contained be primarily leviable from the Government or the Corporation, respectively."
- (2) The following buildings and lands or portions thereof shall not be deemed to be solely occupied and used for public worship or for a public charitable purpose within the meaning of clause (b) of sub-section (1), namely -
- (a) buildings or lands or portions thereof in which any trade or business is carried on; and
 - (b) buildings or lands or portions thereof in respect of which rent is derived whether such rent is or is not applied solely on religious or charitable purposes.
- (3) Where any portion of any building or land is exempt from the general tax by reason of its being solely occupied and used for public worship or for a public charitable purpose such portion shall be deemed to be a separate property for the purpose of municipal taxation."

10] On a plain reading of section 132, it becomes clear that the Corporation is empowered to impose general tax on all buildings and lands in the city except three categories of properties. First; buildings and lands solely used for purposes connected with the disposal of the dead, Second; buildings and lands or portions thereof solely occupied and used for public worship or for a public charitable purpose and Third; buildings and lands

vesting in the Government used solely for public purposes. The controversy in hand revolves around second category, covered by clause (b), namely, "buildings and lands or portions thereof solely occupied and used for public worship or for a public charitable purpose".

11] Sub-section (2) of Section 132 carves out further exceptions to the said exemption. It provides that the buildings and lands or portions thereof shall not be deemed to be solely occupied and used for public worship or for a charitable purpose, within the meaning of clause (b), if in such premises any trade or business is carried on and in respect of which rent is derived, whether such rent is or is not applied solely to religious or charitable purpose.

12] It becomes evident that the emphasis under clause (b) of section 132(1) is on the user of the premises and not its ownership. The fact that the property belongs to a public charitable trust is of no

consequence. The property is exempt from levy of tax only when it is solely occupied and used for a public charitable purpose. The Legislature has taken care to use the expression "portions thereof" in clause (b). The Legislature has addressed the contingency of a portion of the premises being put to commercial use or to generate rental income. Thus, under sub-section (3) of section 132, it is specifically provided that where any portion of any building or land is exempt from the general tax by reason of its being solely occupied and used for public worship or for a public charitable purpose, such portion shall be deemed to be a separate property for the purpose of municipal taxation. This implies that a part of the building in the occupation of a public charitable trust may not be entitled to exemption though other part is eligible for such exemption.

13] In the aforesaid backdrop, it may be now apposite to consider the pronouncement of this Court in the case of Akola Municipal Corporation (Supra). In the

said case, the question which arose for consideration was whether the suit filed by the respondent-trust seeking declaration and permanent injunction against the appellant-Municipal Corporation in respect of dues towards municipal taxes was maintainable. It was the case of the respondent-trust that the building in question was being used for charitable and educational purposes. The appellant-municipal corporation assailed the tenability of the suit on the premise that in view of the provisions of section 406 of the Act, 1949, the Civil Court had no jurisdiction to entertain and try the suit. The Trial Court held that the Civil Court had no jurisdiction. In appeal, the District Court held that when the respondent-public trust has challenged the very legality of the tax to be recovered by the municipal corporation, such question could be decided by the Civil Court.

14] In the backdrop of aforesaid facts, this Court after adverting to the provisions contained in section

132 and 406 to 413 of the Act, 1949, framed the question as to whether the mechanism provided under the Act, 1949 covers the dispute and the questions sought to be raised by the respondent-public trust? After placing reliance upon the judgment of the Constitution Bench of the Supreme Court in the case of Dhulabhai (Supra) and subsequent pronouncement of the Supreme Court in the cases of Mafatlal Industries Ltd. and Ors. Vs. Union of India and Ors., 1997(5) SCC 536 and Devinder Singh and ors. Vs. State of Haryana and Anr., 2006(5) SCC 720, the learned Single Judge held that the exemption claimed by a public trust under section 132(1)(b) of the Act, 1949 is a matter that can be agitated in appeal under section 406 of the Act, 1949. The contention that the property is not subject to levy of tax was held to be covered by the expression "appeals against rateable value or capital value as the case may be or the tax fixed or charged under this Act" used in section 406 of the said Act. It was thus ruled that the jurisdiction of the Civil Court is impliedly ousted by the provisions contained in

section 406 of the Act, 1949.

15] The observations of the Court in para Nos.14 to 17 are material. They read as under :-

"14. In the present case, it is the contention of the appellant/ Municipal Corporation that Section 406 of the said Act is a sufficient remedy for the respondent/Public Trust to air its grievance as sought to be raised in the suit filed by it before the Civil Court. A perusal of the aforesaid provision shows that an appeal shall be heard and determined by the Judge on questions pertaining to rateable value or capital value or tax fixed or charged under the said Act. In this case, it is the contention of the respondent/Public Trust that the notice and bills issued by the appellant/ Municipal Corporation charging a certain amount of tax on its building is not sustainable because under Section 132(1)(b) of the said Act, because such building is exempt from payment of tax for the reason that it is being used for public charitable purposes. In other words, the contention of the respondent/Public Trust is that being exempt from payment of tax the rate of such tax would be nil or that the fixing and charging of such tax by the appellant/Municipal Corporation ought to be nil.

15. This contention of the respondent/Public Trust can be certainly raised in an appeal under Section 406 of the said Act. The exemption claimed by it, is under Section 132(1)(b) of the said Act, which is a ground that can be agitated in the appeal. It is not as if the respondent/Public Trust is prohibited from raising such a ground in the 17 ao34.17 appeal or that the "Judge" does not have the authority to deal with such a ground of challenge while exercising appellate power under Section 406 of the said Act. The said contention of the respondent/Public Trust is covered under the expression "appeals against rateable value or the capital value as the case may be or tax fixed or charged under this Act" used in Section 406 of the said Act.

16. A perusal of the other relevant provisions of the said Act show that under Section 410 thereof, if on hearing of an appeal a question of law or construction of a document arises, the Judge may draw a statement of the facts of the case and refer such questions with his own opinion on the point for a decision of the District Court. Under Section 411 of the said Act, an appeal shall lie to the District Court from any decision of the Judge in an appeal under Section 406 thereof,

by which a rateable value or capital value as the case may be is fixed or upon a question of law or usage or the construction of a document. The question whether tax is to be fixed at the rate at which the Municipal Corporation claims or it has to be nil as claimed by the respondent based on Section 132(1)(b) of the Act, can also be a subject matter of such appeal under Section 411 of the Act. Further Section 413 of the said Act provides that the decision of the District Court in an appeal under Section 411 of the Act shall be final.

17. Thus, the provisions of the aforesaid Act provide a scheme 18 ao34.17 wherein the grievance of the respondent/Public Trust can be fully taken care of and, therefore, the jurisdiction of the Civil Court is impliedly ousted. Applying the propositions culled out by the Constitution Bench judgment of the Hon'ble Supreme Court in the case of Dhulabhai (supra), it becomes evident that the aforesaid Act, with which we are concerned in the present case, is covered under proposition Nos.2 and 6. In the present case, there is no question of a challenge to the vires of any provision of the aforesaid Act and the claim of the respondent/Public Trust that the notice and bills issued by the appellant/Municipal Corporation are illegal because the respondent is entitled for exemption from payment of property tax, is a question that can very well be decided in the mechanism provided as per the aforesaid provisions of the said Act."

16] Mrs. Bajpai, learned Counsel for the petitioner stoutly submitted that the aforesaid enunciation is in conflict with the judgment of this Court in the case of Sant Kanwarram (Supra). In the said case, the plaintiff had challenged the levy of property tax by instituting a suit on the ground that the property being used for educational and charitable purposes was exempt under section 132(1)(b) of the Act, 1949. The defendant – Corporation resisted the claim and contended that the

suit was not maintainable in view of provisions contained in section 406 of the Act, 1949. The Trial Court decreed the suit. In appeal, the District Judge set aside the decree and dismissed the suit. In the second appeal, this Court framed the following substantial question of law :-

"Whether the plaintiff-trust is exempted under section 132(1)(b) of Bombay Provincial Municipal Corporation Act from payment of property tax or is it liable under section 132(2)(b) to pay the tax?"

17] This Court, after considering the provisions of Section 132(1), observed as under :-

"In fact there cannot be any doubt that the plaintiff is covered by section 132(1)(b). In fact to my mind every charitable institution or trust would be covered by section 132(1)(b). The question is whether certain property or charitable trust falls out of the exemption clause. If it does not fall under section 132(2)(b) it is certainly exempt."

. Placing reliance on the judgment of the Supreme Court in the case of Municipal Corporation of Delhi Vs. Children Book Trust, 1992(3) SCC 390 and a Division Bench judgment of this Court in the case of Balkrishna Vora Vs. Poona Municipal Corporation, 1963 Mh.L.J.325, this Court concurred with the findings recorded by the Trial Court

and held that the building in question was exempt from property tax.

18] In the case of Balkrishna Vora (Supra), the Division Bench of this Court was confronted with the question as to whether a suit wherein the legality of the levy of the tax was questioned was competent. The municipal corporation, based on the provisions contained in section 406 of the Act, 1949, raised a contention that the proper machinery was provided for ventilating the grievances against levy of tax under section 406 of the Act and, therefore, a Civil Court would have no jurisdiction to entertain the suit.

19] After considering the provisions of the Act, 1949 and Taxation Rules, the Division Bench held that it is always open for the Civil Court to entertain a suit where the question is one of the legality of the taxation or the liability of the assessee to pay taxes. The words used in section 406 of the Act do not cover *vires* of the

tax or the legality of the tax which is sought to be levied. The following observations of Division Bench are material and hence extracted below :-

"2. xxxxxxxxxx Sub-section (1) of Section 406 of the Bombay Provincial Municipal Corporations Act, 1949, provides for an appeal against rateable value or tax fixed or charged under this Act. Section 413 of the Act provides that every rateable value fixed under the Act against which no complaint is made as provided, and the amount of every sum claimed from any person under the Act on account of any tax, if no appeal therefrom is made as hereinbefore provided, and the decision of the Judge aforesaid upon any appeal against any such value or tax if no appeal is made therefrom under Section 411 and if such appeal is made the decision of the District Court in such appeal shall be final.

3. It is clear from all these provisions read together that the intention of the Legislature in providing for this machinery is only to enable matters of rateable value and the fixation of the taxes on the basis of such rateable value to be decided by the machinery provided in the Act, and if this is the only machinery that is provided under the Act, the case, would clearly fall within the principles of the decision in Ankleshwar Municipality v. Chhotalal (1954) 57 Bom. L.R. 547 and Gopal Mills Co. Ltd. v. Broach Bor. Mun (1955) 58 Bom. L.R. 300. In both these cases, it has been held that the jurisdiction of the civil Court is excluded only to the extent to which machinery is provided under the Act for ventilating the grievances of the tax-payers. In the first case it was held that it is not within the competence of a Magistrate who hears appeals against the taxes to enter into the question as to whether or not the tax levied was within or without the powers of the municipality. In the second case, a right of filing a suit in a case where the plaintiff alleged that the tax levied or sought to be recovered was ultra vires or beyond the powers of municipality was held to be competent; in both the cases the principle followed being the same as mentioned above.

4. Mr. Rane, however, relied as we stated, on Rule 16 saying that the scope of appeal under Section 405 of the Bombay Provincial Municipal Corporations Act, 1949, must be decided by reference to what the Commissioner can decide, as was done in Ankleshwar Municipality v. Chhotalal. It is indeed true that we must also take the powers of the Commissioner into account while deciding the scope of the appeal under the Act. However, the words used in Section 406(1) of the Act, in our

view, do not cover the vires of the tax or the legality of the tax which is sought to be levied. It provides for appeals against rateable value or tax fixed or charged, and, in our view, looking to the general scheme of the Act, by the words "tax fixed or charged" what was meant was the amount or quantum of tax and not the legality of the same. This view is further strengthened by Section 413 which gives finality to the rateable value fixed under the Act and the amount or the sum claimed and nothing else. Exclusion of the jurisdiction of the civil Court is not to be lightly inferred. There is no express provision by which the jurisdiction of the civil Court is excluded in all matters that the Commissioner may be able to decide. Moreover, finality is given only to decisions regarding the rateable value and the amount of tax and not to any other matter that the Commissioner may incidentally decide. It seems that the scope of the disputes that fall to be decided, under the rules of assessment and in appeals under Sections 406 and 411 was intended to be limited and for a good reason. There is no scope for testing the decision in any superior Courts with the result that the parties may in complicated cases suffer substantially. It seems to us, therefore, that it is always open for the civil Court to entertain a suit where the question is one of legality of the taxation or the liability of the assessee to pay the tax.

20] The aforesaid judgment of the Division Bench was brought to the notice of this Court in the case of Akola Municipal Corporation (Supra) to lend support to the contention that a suit questioning the legality of levy of tax was tenable. The Court distinguished the aforesaid judgment in the case of Balkrishna Vora (Supra) by observing that in the said case, the Court was concerned with the question as to whether the tax levied or sought to be recovered was *ultra vires* the powers of the Corporation, and observed as under :-

"19. In the present case, the learned Counsel for the respondent/Public Trust has heavily relied upon the judgment of this Court in the case of Balkrishna Vora Vs. Poona Municipal Corporation (cited supra). In the aforesaid case, the Court was concerned with the question that the tax levied or sought to be recovered was *ultra vires* the powers of the Corporation. In such a situation, it was held by this Court that the machinery provided under the aforesaid Act would not be sufficient for the assessee to air his grievance and thereupon, the Court held that the jurisdiction of the Civil Court could not be said to have been ousted and that the suit was maintainable. But, in the instant case, the nature of the grievance of the respondent/Public Trust is not such that it cannot be redressed under the machinery of the aforesaid Act. Therefore, the reliance placed on the said judgment of this Court is misplaced."

21] The aforesaid observations, in my considered view, do not bring out the full import of the judgment of the Division Bench in the case of Balkrishna Vora (Supra). The Division Bench has approved the earlier judgments in the cases of Ankleshwar Municipality Vs. Chhotalal and Gopal Mills Co. Ltd. Vs. Broach Bor. Mun., wherein it has been held that the jurisdiction of the civil Court is excluded only to the extent to which machinery is provided under the Act for ventilating the grievances of the tax payers. The Division Bench went on to observe in clear and explicit terms "*the words used in section 406(1) of the Act, in our view, do not cover*

the vires of the tax or the legality of the tax which is sought to be levied. It provides for appeals against rateable value or tax fixed or charged, and in our view, looking to the general scheme of the Act, by the words "tax fixed or charged" what was meant was the amount or quantum of tax and not the legality of the same."

22] In view of the clear and explicit enunciation by the Division Bench that the expression "tax fixed or charged" implies the amount or quantum of tax and not the legality of the same, it may not be in consonance with law to hold that the jurisdiction of the Civil Court is impliedly ousted as appeal under section 406 is tenable against "tax fixed or charged" under the Act, 1949". In any event, in the case of Akola Municipal Corporation (Supra), the aforesaid Division Bench judgment in the case of Balkrishna Vora (Supra) was sought to be distinguished on facts, as is evident from the observations in para No.19, extracted above.

23] In view of the pronouncement of the Division Bench in the case of Balkrishna Vora (Supra) that the words used in Section 406(1) of the Act do not cover the *vires* of the tax or the legality of the tax, which is sought to be levied, I find it rather difficult to accede to the submissions on behalf of respondent No.2 – Municipal Corporation, which found favour with the learned District Judge, that the jurisdiction of the Civil Court is ousted where the legality of the impost is assailed on the basis of exemption, from levy of tax, claimed under the provisions of Section 132(1)(b) of the Act, 1949.

24] The matter can be looked at from a slightly different perspective. As indicated above, under section 132(1) of the Act, only those properties which are put to specified use are exempt from levy of tax. The Legislative intent to exempt the properties which are solely used for specified purposes has a nexus with the obligatory and discretionary duties of the Corporation.

To illustrate, under clause (a) of sub-section (1) of Section 132, the buildings and lands used solely for the purposes connected with the disposal of the dead are exempt from tax. Section 63(11) of the Act, 1949 casts an obligatory duty on the Corporation as regards the disposal of the dead as under :-

“(11) the maintenance, change and regulation of places for the disposal of the dead and the provision of new places for the said purpose and disposing of unclaimed dead bodies;”

. In the context of the exemption for lands and buildings solely occupied for educational purposes, clause (15) of Section 63 again casts an obligatory duty on the corporation to maintain, aid and suitably accommodate schools for primary education; whereas under section 66(21), the Corporation may provide for the furtherance of educational objects other than those mentioned in clause (15) of section 63 and make grants to educational institutions within or without the City.

25] Evidently, the exemption is provided for the reason that the properties are being used for the very

object for the advancement of which the Corporation is statutorily enjoined to make provisions. From this standpoint, when a clear case for exemption under section 132(1)(b) is made out, the assessee cannot be non-suited on the general premise that the Corporation cannot function, if its revenue is blocked. In such a case, the very liability to pay the tax is itself in question.

26] I am mindful of the position that the exemptions in the Taxing Statutes are to be strictly interpreted. However, distinction has been made in the matter of interpretation of beneficial exemptions, which have been provided as an encouragement or incentive for promotion of certain activities. Such beneficial exemptions are to be liberally interpreted.

27] A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of Commissioner of Customs (Preventive), Mumbai Vs. M. Ambalal and Company, (2011) 2 SCC 74, wherein a

distinction is made between exemptions which are to be strictly interpreted and the beneficial exemptions. The observations in para No.16 are instructive and thus extracted below :-

"16. It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. The rule regarding exemptions is that exemptions should generally be strictly interpreted but beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. This composite rule is not stated in any particular judgment in so many words. In fact, majority of judgments emphasise that exemptions are to be strictly interpreted while some of them insist that exemptions in fiscal statutes are to be liberally interpreted giving an apparent impression that they are contradictory to each other. But this is only apparent. A close scrutiny will reveal that there is no real contradiction amongst the judgment at all. The synthesis of the views is quite clearly that the general rule is strict interpretation while special rule in the case of beneficial and promotional exemption is liberal interpretation. The two go very well with each other because they relate to two different sets of circumstances."

[emphasis supplied]

28] In the case at hand, on facts, it appears that the trial Court as well as the learned District Judge have not adverted to the question as to whether the claim of the petitioner is, prima facie, tenable. The petitioner has placed on record a copy of trust registration certificate. The petitioner has also placed

on record the copies of audited balance sheets. The petitioner could have been directed to place on record its constitution and/or bye-laws to ascertain the object of the trust and whether the activity is carried out for advancement of charitable causes exclusively. It would, therefore, be appropriate to remit the matter back to the trial Court to decide the application for temporary injunction afresh in the light of the aforesaid observations.

29] The petitioner shall file the copies of the constitution and/or bye-laws and the respondent No.2-defendant would be at liberty to file an additional say/affidavit to deal with the material to be placed on record by the plaintiff-petitioner.

30] In the exigency of the prevailing situation, where the expeditious hearing of the application for temporary injunction may not be possible, it would be in the fitness of things to direct the defendant No.2-

Municipal Corporation not to take coercive action to recover the amount of tax till decision of the application for temporary injunction, subject to the petitioner depositing a sum of Rs.40,000/- before the Civil Court within a period of four weeks from today. The said deposit would abide the order which may be eventually passed by the trial Court.

31] The upshot of the aforesaid consideration is that the petition deserves to be partly allowed.

32] Hence, the following order :-

O R D E R

The petition stands partly allowed.

The impugned order passed by the learned District Judge in Misc. Civil Appeal No.108 of 2019 and the order passed by the learned Civil Judge dated 4th November, 2019 rejecting the application for temporary injunction [Exh.5] stand quashed and set aside.

The application for temporary injunction [Exh.5] stands restored to the file of learned Civil Judge.

The Civil Court shall decide the application for temporary injunction [Exh.5] afresh after providing an opportunity of hearing to the petitioner and respondent No.2.

The Civil Court shall make an endeavour to decide the application for temporary injunction [Exh.5], as expeditiously as possible.

The respondent No.2-defendant shall not take coercive action to recover the amount of tax against the petitioner till the decision on the application for temporary injunction [Exh.5], subject to the petitioner/plaintiff depositing a sum of Rs.40,000/- [Rupees Forty Thousand] before the Civil Court, within a period of four weeks from today.

The said deposit shall abide the order, which may be eventually passed by the Civil Court.

Rule made absolute in aforesaid terms.

No costs.

[N.J.JAMADAR,J.]