7IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3785 OF 2021

N.M.Petit Charity Fund
Through the Trustees & Ors. … Petitioners

Versus

Talathi Pune City, Tehsil Pune & Ors. … Respondents

Mr.Gautam Ankhad a/w. Mr. Mohit Khanna i/b. Rashmikant and Partners for the Petitioners.

Ms.S.D.Vyas, B Panel Counsel for the State.

CORAM : S.J. KATHAWALLA, &
MILIND N. JADHAV, JJ.

DATE : 1ST SEPTEMBER, , 2021

P.C. :

1. The Petitioner – N.M.Petit Charity Fund is a Charitable Trust registered under the Bombay Trust Act, 1950 (**the Act**) vide registration No.C-58 with the Charity Commissioner, Mumbai (**the Trust**). The Trust is having an educational institution namely J.N.Petit Technical High School(**the said School**) situated at CTS No. 24, admeasuring 20400 sq. mtrs., Bund Garden Road, Pune – 400 001 (**the said land**).

2. By the present Writ Petition, the Trust seeks to challenge the demand notice dated 17th March, 2021 issued to the Trust whereby Respondent No. 1 – Talathi,

Pune City has demanded non-agricultural tax (**NA tax**) from the Trust in respect of the said land amounting to Rs.59,30,688/-for the years 2001-2002 to 2019-2020 and the letter dated 20th April, 2021 addressed to the Trust by Respondent No. 2 – Tehsildar, Pune City reiterating that the Trust is liable to pay the NA tax since they do not have any exemption from paying any tax from the office of Respondent No. 3 – Collector (Revenue Branch), Pune.

3. The contention raised by the Trust is that in view of Section 117 of the Maharashtra Land Revenue Code, 1966 (**the Code**), the NA Tax is not applicable to an educational institution like the said School which is open to all citizens without distinction of religion, race, caste, place of birth or any of them.

4. The facts leading to the filing of the present Writ Petition are in brief set out hereunder :

4.1. As set out hereinabove, the Trust is running the said School on the said land to impart education to boys without distinction of religion, race, caste and place of birth or any of them.

4.2. The Trust has relied on the Oral Judgment of this Court in the case of ***Naval Hormusji Tata & Ors. Vs. Arun Bhatia, Collector of Bombay & Ors.*** passed in Writ Petition No. 376 of 1984 dated 6th March, 1991, wherein it is held that Bai Avabai Framji Petit Parsee Girls Orphanage, Bandra, Bombay is the School which imparts education to girls without distinction of religion, caste or creed and therefore the land of the School is exempt from payment of NA assessment under Section 117 of the

Code, and consequently the demand notice seeking arrears of NA assessment with miscellaneous charges for the period ranging from 1st August, 1951 to 31st July, 1968 was quashed and set aside.

4.3. Respondent No. 3 - Collector, Pune published Government Gazette dated 29th January, 2021 thereby fixing the revision of NA assessment rates from 1st August, 2011 to 31st July, 2016. According to Respondent Nos. 2 and 3, the Trust had paid NA tax of Rs. 24,125/- for the years 1997 to 1999. Respondent No. 1 – Talathi, Pune issued demand notice dated 17th March, 2021 calling upon the Trust to pay Rs.59,30,688/- towards NA tax for the years 2001/2002 to 2019/2020 along with fine.

4.4. According to the Trust, by its letter dated 3rd March, 2021 addressed to the Respondent No. 3 – Collector, Pune and letter dated 24th March, 2021 addressed to Respondent Nos. 1 – Talathi, Pune and Respondent No. 2 – Tahsildar, Pune the Trust interalia pointed out that the said school is run by the Trust which is registered with the Charity Commissioner, Mumbai. It was further submitted that in view of Section 117 of the Code, NA tax was not applicable in respect of the land on which the said school is functioning. By the said letter dated 3rd March, 2021, the Trust requested Respondent No. 3 – Collector, Pune to issue directions to the concerned authority not to recover NA taxes from the said School. The Trust also placed reliance on the decision of this Court in Writ Petition No. 376 of 1984 in case of ***Naval Hormusji Tata & Ors. Vs. Arun Bhatia, Collector of Bombay & Ors.*** (supra). The Trust also annexed a letter issued by the Education Officer (Primary), Zilla Parishad, Pune dated 10th

November, 2020 wherein the norms for running Charitable Schools are given.

4.5. According to the Trust, to ascertain whether the Trust is entitled to exemption under Section 117 (4) of the Code, Respondent No. 3 – Collector, Pune vide his letter dated 7th April, 2021 directed Respondent No. 2 – Tahasildar, Pune to carry out a detailed inquiry in respect of the applicability of the NA tax to the land on which the said School is situated and submit a report through the Sub Divisional Officer, Pune

4.6. Without ascertaining whether the Trust is entitled to exemption under Section 117 (4) of the Code, the Respondent No. 2 vide its letter dated 20th April, 2021 replied to the letter of the Trust dated 24th March, 2021 inter alia pointing out to them that the Trust did not have an exemption order regarding NA tax from Respondent No. 3 – Collector, Pune or the Government. Hence, the Trust is liable to pay NA tax.

4.7. The above Writ Petition was therefore filed by the Trust on 13th July, 2021 impugning the demand notice dated 17th March, 2021 and the letter dated 20th April, 2021 issued by Respondent No. 1 – Talathi, Pune calling upon the Trust to pay the amount of Rs.59,30,688/- towards NA Tax claimed in the demand notice.

5. After the above Writ Petition was filed and it was pointed out therein that the direction given by the Respondent No. 3 - Collector, Pune by his letter dated 7th April, 2021 to the Respondent No. 2 - Tahasildar, Pune to carry out the detailed inquiry as set out in Clause 4.5 above, has been breached, Respondent No. 2 Tahsildar informed the concerned Circle Officer and Talathi to conduct detailed local inquiry

and to call for an explanation of the Trust. Further by letter dated 9th August, 2021, Respondent No. 2 – Tahsildar informed the concerned Education Officer (Primary) Pune Zilla Parishad, Pune to ascertain whether the Trust is following the norms given by them in running the said School or not.

6. Respondent No. 2 – Tahasildar, Pune filed an Affidavit dated 16th August, 2021 for self and on behalf of Respondent No. 3 – Collector, Pune, wherein it is interalia recorded that Respondent No. 1 – Talathi, Pune has issued the demand notice dated 17th March, 2021 calling upon the Trust to pay the sum of Rs. 59,30,688/- for the period 2001/2002 to 2019/2020 ; the Trust had made a representation to Respondent No. 2 – Tahasildar, Pune and Respondent No. 3 – Collector, Pune interalia contending that the said School is run by the Trust which is registered with the Charity Commissioner, Mumbai and therefore NA tax is not applicable to the land on which the said School is situated in view of Section 117 of the Code ; that Respondent No. 3 - Collector, Pune has vide his letter dated 7th April, 2021 directed the concerned Education Officer to carry out a detailed inquiry in respect of the NA tax payable if any on the land where the School is situated and submit his report to the Respondent No. 3 - Collector, Pune through the Sub Divisional Officer ; that without waiting for any inquiry report, Respondent No. 2 – Tahasildar, Pune vide its letter dated 20th April, 2021 wrote a letter to the Trust recording that the Trust is liable to pay NA tax since they do not have any exemption order regarding NA tax from the Respondent No. 3 - Collector, Pune or the State Government.

7. In the meantime, in view of the aforestated conduct of Respondent No. 2 – Tahsildar, Pune, we had on 11th August, 2021 issued an oral direction to Respondent No. 3 - Collector, Pune to remain present before the Court through video conferencing. Accordingly, on 18th August, 2021, the Respondent No. 3 - Collector, Pune was present before us through video conferencing. We inquired from Respondent No. 3 - Collector, Pune as to how Respondent No. 2 – Tahsildar, Pune had ignored the letter of the Respondent No. 3 - Collector, Pune dated 7th April, 2021 directing him to carry out a detailed inquiry in respect of NA tax applicable to the land on which the said School is situated and submit a report through the Sub Divisional Officer, the Respondent No. 2 – Tahsildar had proceeded to call upon the Trust by his letter dated 20th April, 2021 holding that the Trust is liable to pay NA tax, the Respondent No. 3 - Collector Pune assured us that he will personally look into the grievance of the Trust ; he shall be obtaining a report from the Education Officer in this regard ; his staff is already present in the said School for inspection and verification ; he will hear the management of the School on 24th August, 2021 and submit his report to this Court on 31st August, 2021. The statements made by the Resondent No. 3 - Collector, Pune were accepted.

8. On 31st August, 2021, the Respondent No. 3 - Collector, Pune has submitted his report to this Court, wherein he has after referring to the demand notice dated 17th March, 2021 addressed to the Trust and the Trust's representation seeking cancellation of the said notice recorded that the Respondent No. 2 – Tahasildar, Pune

and the Sub Divisional Officer, Pune have carried out a detailed inquiry and submitted their report recording that the said School of the Trust has 1500 students who belong to different castes and religions and the Sub Divisional Officer has recommended that exemption be granted to the Trust under Section 117 (4) of the Code. The Respondent No. 3 – Collector, Pune in his report also stated that the Education Officer (Primary), Zilla Parishad, Pune has after visiting the School on 18th August, 2021 sought to confirm whether the School is complying with Government Resolution dated 10th November, 2020 and after confirming the same sent a letter dated 18th August, 2021 to the Sub Divisional Officer, Zilla Parishad, Pune giving the detailed report. From the said report, it appears that the conditions set out in the said Government Resolution are being complied with by the Trust and Respondent No. 3 – Collector, Pune has after setting out Section 117 (4) of the Code and after considering the facts set out in the report, exempted the Trust from paying NA tax on the said land on which the School is being run. However, in the terms and conditions set out in his Order, Respondent No. 3 - Collector, Pune has only mentioned that the School is exempted from paying NA tax for the period 2021 to 2022.

9. We have considered the above submissions of the parties as well as the report of Respondent No. 3 – Collector, Pune dated 31st August, 2021. We have also considered the decision of the Learned Single Judge of this Court in the case of ***Naval Hormusji Tata & Ors. Vs. Arun Bhatia, Collector of Bombay & Ors.*** (supra).

10. The Trust is registered under the Act vide registration No.C-58 with the

Charity Commissioner, Mumbai and is running the said School namely J.N.Petit Technical High School on the land bearing CTS No. 24, admeasuring 20400 sq.mtrs., Bund Garden Road, Pune – 400 001.

11. The Trust has relied on Section 117 (4) of the Code, which reads as under :

> "**117. Lands exempt from payment of non-agricultural assessment**
>
> Lands used for the following purposes shall be exempt from the payment of the non-agricultural assessment namely :
>
> …………
>
> lands used for an educational or a charitable purpose the benefit of which is open to all citizens without distinction of religion, race, caste, place of birth or any of them".

12. It is the case of the Trust that though the said School run by the Trust on the said land is open to all citizens without distinction of religion, race, caste, place of birth or any of them, the Respondent No. 1 – Talathi, Pune has by his demand notice dated 17th March, 2021 called upon the Trust to pay NA tax in respect of the said land amounting to Rs.59,30,688/- for the years 2001/2002 to 2019/2020 along with fine. Though the Trust by its letter dated 3rd March, 2021 addressed to the Respondent No. 3 – Collector, Pune and letter dated 24th March, 2021 addressed to Respondent Nos. 1 – Talathi, Pune and Respondent No. 2 – Tahsildar, Pune interalia pointed out that the said school is run by the Trust which is registered with the Charity Commissioner,

Mumbai and is entitled to exemption under Section 117 (4) of the Code with regard to payment of NA taxes in respect of the said land and despite Respondent No. 3 – Collector, Pune having issued direction to Respondent No. 2 – Tahasildar, Pune to carry out detailed inquiry in respect of applicability of NA taxes to the said land on which the said School is situated and submit a report to the Sub Divisional Officer, Pune, Respondent No. 2 – Tahasildar, Pune has in utter breach of the directions passed by the Respondent No. 3 – Collector, Pune to conduct an inquiry vide his letter dated 20th April, 2021, replied to the letter of the Trust dated 24th March, 2021 and inter alia pointed out that since the Trust did not have any exemption order regarding NA taxes from Respondent No. 3 – Collector, Pune or the Government, the Trust is liable to pay NA taxes. The Trust was thus compelled to file the above Writ Petition. It is only after the above Writ Petition was filed, Respondent No. 2 – Tahasildar, Pune vide its letter dated 9th August, 2021 informed the concerned Education Officer (Primary) Pune Zilla Parishad, Pune to hold the detailed enquiry in respect of the applicability of the NA taxes to the land on which the said School is situated and submit a report through the Sub Divisional Officer, Pune.

13. This Court therefore on 11th August, 2021 issued an oral direction to the Respondent No. 3 – Collector, Pune to remain present before this Court through video conferencing. The Respondent No. 3 – Collector, Pune remained present before the Court on 18th August, 2021 when the Court enquired from him as to why Respondent No. 2 – Tahasildar, Pune had ignored the letter dated 7th April, 2021 giving direction to

him as set out hereinabove and had instead issued a letter dated 20th April, 2021 to the Trust calling upon them to pay amounts set out in the demand notice towards NA taxes. The Respondent No. 3 – Collector, Pune as stated hereinabove assured the Court that he will personally look into the grievance of the Trust and obtain a report from the Education Officer in this regard. Respondent No. 3 – Collector, Pune also informed the Court that his staff is present in the said School for inspection and verification and that he will hear the management of the School on 24th August, 2021 and submit his report to this Court on 31st August, 2021.

14. On 31st August, 2021, Respondent No. 3 – Collector, Pune submitted his report to this Court, wherein he has after referring to the demand notice dated 17th March, 2021 addressed to the Trust and the Trust's representation seeking cancellation of the said notice recorded that the Respondent No. 2 and the Sub Divisional Officer, Pune have carried out a detailed inquiry and submitted their report recording that the said School of the Trust has 1500 students who belong to different caste and religion and the Sub Divisional Officer has recommended that exemption be granted to the Trust under Section 117 (4) of the Code. The Respondent No. 3 – Collector, Pune in his report also stated that the Education Officer (Primary), Zilla Parishad, Pune has after visiting the School on 18th August, 2021 sought to confirm whether the School is complying with Government Resolution dated 10th November, 2020 and after confirming the same sent letter dated 18th August, 2021 to the Sub Divisional Officer, Zilla Parishad, Pune giving the detailed report. From the said

report, it appears that the conditions set out in the said Government Resolution are being complied with by the Trust and Respondent No. 3 – Collector, Pune has after setting out Section 117 (4) of the Code and after considering the facts set out in the report, exempted the Trust from paying NA tax on the said land on which the School is being run. However, in the terms and conditions set out in his Order, Respondent No. 3 - Collector, Pune has only mentioned that the said School is exempted from paying NA tax for the period 2021 to 2022.

15. In view of the aforestated report submitted to this Court by the Respondent No. 3 – Collector, Pune stating therein that all the ingredients of Section 117 (4) of the Code are complied with by the Trust in respect of the said School, in our view, the Trust and the said School are not liable to pay NA taxes and are entitled to exemption under Section 117 (4) of the Code from paying NA taxes. Though the report submitted by the Respondent No. 3 – Collector, Pune on 31st August, 2021 to this Court is in favour of the Trust, the Respondent No. 3 – Collector, Pune has not explained as to why he has granted exemption to the Trust / said School from paying NA taxes only for the period 2021-2022. A charitable Organization like the Trust cannot be made to run from pillar to post seeking exemption from paying NA taxes despite being entitled in law to such exemption as is made clear by the Respondent No.3 – Collector, Pune by filing a favourable report after carrying out a detailed inquiry through the Respondent No. 2 – Tahasildar, Pune and the Sub Divisional Officer, Pune as well as the Education Officer (Primary) Zilla Parishad, Pune. In view

thereof, we pass the following Order :

i. J.N.Petit Technical High School run by N.M.Petit Charity Fund on the said land is entitled to exemption under Section 117 (4) of the Maharashtra Land Revenue Code, 1960.

ii. The demands made by Respondent No. 1 – Talathi, Pune and Respondent No. 2 – Tahasildar, Pune on the Trust calling upon them to pay NA taxes in respect of the said land are quashed and set aside.

iii. The above Writ Petition is accordingly disposed off.

(MILIND N. JADHAV, J.) **(S.J. KATHAWALLA, J.)**