IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.969/2018

M/s Ventures Pvt. Ltd., Shankar Nagar, Nagpur, through its Director Sunil Satyanarayan Sarogi
...Versus...
Nagpur Municipal Corporation having its office at Civil Lines, Nagpur through its Municipal Commissioner and others

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Shri N.R. Kanungo, Advocate for petitioner
Shri R.S. Kalangiwale, Advocate for respondents

CORAM : AVINASH G. GHAROTE, J.
DATE : 31/08/2021

1. Heard Shri Kanungo, learned Counsel for the petitioner and Shri Kalangiwale, learned Counsel for the respondents.

2. Three notices of demand were issued by the respondent no.1-Municipal Corporation on account of municipal taxes, payable in respect of House Nos.665/A-L-1, 665/A-L-2, 665/A-L-3, owned by the present petitioners claiming house tax of Rs.2,25,149/-, on each of the houses, being aggrieved by which, the petitioners had approached this Court by way of Writ Petition No.1308/2014, wherein by

an order dated 01/09/2014, this Court, finding that there was remedy of appeal available under Section 406 of the Maharashtra Municipal Corporations Act, 1949 (for short, "the MMC Act, 1949" hereinafter) disposed of the petition with a direction to the "Judge" under Section 406 of the MMC Act, 1949 to decide the appeal, if filed by the petitioner, within 15 days after complying with the other provisions of the Act.

3. The petitioner thereafter filed an appeal under Section 406 of the MMC Act, 1949 on 15/09/2014 along with which an application for dispensing with depositing the entire amount in dispute was also filed. By an order dated 15/09/2014, the application for dispensing with the entire amount in dispute was rejected, in view of which rejection, the appeal under Section 406 of the MMC Act, 1949 was not registered at all. It is against this order, dated 15/09/2014, that an appeal under Section 411 of the MMC Act, 1949 came to be filed bearing Misc. Civil Appeal No.240/2017. This appeal has been dismissed by judgment dated 04/12/2017 by the learned District Judge, holding that the appeal was not maintainable, which is the subject matter of challenge in this petition.

4. Shri Kanungo, learned Counsel for the petitioner submits that the finding by the learned District Judge

regarding maintainability of the appeal is incorrect, in as much as according to him, an appeal under Section 411 of the MMC Act, 1949 would be maintainable since the same was against the demand of tax by the respondent no.1 and therefore, the impugned judgment would not be sustainable in law.

5. Shri Kalangiwale, learned Counsel for the respondents submits that since the order dated 15/09/2014 was passed on an interim application, seeking dispensation for depositing the tax demanded due to which the appeal itself was not registered, there is no fault with the impugned judgment.

6. A perusal of Section 406 of the MMC Act, 1949 demonstrates that an appeal against any rateable value or the capital value, as the case may be or tax fixed or charged under the MMC Act would lie before the Judge, as defined in Section 2 (29) of the MMC Act, 1949 and shall be heard and determined by him. However, Sub Section 2 of Section 406 of the MMC Act, 1949 imposes an embargo upon the "Judge" to entertain such an appeal, one of them, as enumerated in Clause (e) of Section 406 (2) being the prior deposit of the amount of tax with the Commissioner. Section 406 (2A) of the MMC Act, 1949 provides that where the appeal is not filed in accordance with the provisions of Clause (a) to (e) of

Sub Section (2), it shall be liable to be summarily dismissed. Admittedly, the request for dispensing with the deposit of tax came to be rejected by the learned Judge by the order dated 15/09/2014, a result of which, the appeal as filed under Section 406 of the MMC Act, 1949 was not registered at all.

7. A perusal of Section 411 of the MMC Act, 1949 indicates that the appeal shall lie to the District Court only in respect of matters provided under Clause (a) and (b), which for the sake of reference are reproduced as under :-

> *"**Section 411. Appeals to the District Court**.*
>
> *An appeal shall lie to the District Court,-*
>
> *(a) from any decision of the Judge in an appeal under section 406 by which a rateable value or a capital value, as the case may be is fixed, and*
>
> *(b) from any other decision of the said Judge in an appeal under the said section, upon a question of law or usage having the force of law or the construction of a document :*
>
> *Provided that no such appeal shall be heard by the District Court unless it is filed within one month from the date of the decision of the Judge."*

8. A bare perusal of Clause (a) and (b) of Section 411 of the MMC Act, 1949 would demonstrate that an order passed on an application for dispensing with the

requirement of Clause (e) of Section 406 (2) of the MMC Act, 1949 is not one, which would fall within the scope and ambit of Clause (a) and (b) of Section 411 of the MMC Act, 1949, in view of which, the finding rendered by the learned District Judge cannot be faulted with. That being the position, the writ petition is clearly without any merits altogether and is accordingly dismissed. In the circumstances, there shall be no order as to costs. All pending civil applications are disposed of accordingly.

(AVINASH G. GHAROTE, J.)

Wadkar