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

WRIT PETITION NO.7528 OF 2022

1. Gramin Vikas Shikshan And
Krida Prasarak Mandal,
Khadki Budruk
Add- Malkapur, Akola
Tq & Dist. Akola.
Through its Secretary
Suresh Pundlikrao Kale,
Age 68 Yrs. R/o Khadki Budruk,
Akola. Tah. & Dist. Akola

2. Punjabrao Patil Kale Vidyalay,
Khadki Budruk, Akola
(Earlier known by name
Govindrao @ Babasaheb Sarnaik
Vidyalay) Through its Head Master,
Sanjay Pundlikrao Kale, Age 55 Yrs.
R/o Khadki Budruk, Akola,
Tq. & Dist. Akola … Petitioners

-vs-

1. State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32

2. The Akola Municipal Corporation,
Through its Commissioner, Akola
Tah. & Dist. Akola … Respondents

Shri U. J. Deshpande, Advocate for petitioners.
Shri Amit A. Madiwale, Assistant Government Pleader for respondent No.1.
Shri S. V. Sohoni, Advocate for respondent No.2.

CORAM : A. S. CHANDURKAR AND ANIL L. PANSARE, JJ.
DATE : December 14, 2022

Judgment (Per : A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner No.1 is a charitable Trust which claims that in view of provisions of Section 132(1)(b) of the Maharashtra Municipal Corporation Act, 1949 (for short, the Act of 1949) it is exempted from paying general taxes. To substantiate this claim reliance is placed on the judgment of the Honourable Supreme Court in *Municipal Corporation of Delhi vs. Children Book Trust* ***(1992) 3 SCC 390*** to urge that since the Trust is running an educational institution (petitioner No.2) that is imparting education, it is not liable to pay general tax.

3. The Municipal Corporation has issued demand notice to the petitioner seeking payment of various taxes including general tax. The petitioner has raised objection to the demand of such tax by relying upon the provisions of Section 132(1)(b) of the Act of 1949. The grievance of the petitioners is that notwithstanding such objection being raised, the demand is being pursued and the property of the Trust is being attached. Hence this writ petition has been preferred.

4. After hearing the learned counsel for the parties we find that the judgment in *Children Education Trust* (supra) has been considered by the Division Bench of this Court in Writ Petition No.927/2018 *(Shambhu Educations Society, Patur, Dist. Akola vs.*

State of Maharashtra, Thr. Secretary, Urban Development Dept. Mumbai and anr.) decided on 16/08/2019 wherein while observing that the Municipal Corporation ought to treat the activity of imparting education as a public charitable activity for the purposes of exemption of tax, it was observed that the Municipal Corporation would be entitled to analyse the balance-sheets and bye-laws of the Trust in the light of the aforesaid decision of the Honourable Supreme Court.

5. It is seen that the petitioner-Trust had submitted its reply to the demand notice after which the Municipal Corporation had sought to attach the Trust's property. We find that before enforcing the demand for general tax, it would be necessary for the Municipal Corporation to analyse the balance-sheets and bye-laws of the Trust in question in the light of the law laid down by the Honourable Supreme Court in *Children Book Trust* (supra).

6. In that view of the matter, the following directions would serve the interest of justice :

(i) The demand of general tax as made from the petitioner-Trust shall not be enforced until the Municipal Corporation considers the representation/reply submitted by the petitioner-Trust based on the judgment in *Children Book Trust* (supra) to determine the liability of the Trust to pay general tax.

(ii) The Municipal Corporation is free to issue fresh show cause notice to the petitioner-Trust demanding general tax and grant an opportunity to it to put forth its stand in accordance with law. After considering all relevant documents including balance-sheets and bye-laws of the Trust, the Municipal Corporation would be free to take a decision with regard to the liability of the public Trust to pay general tax. To that extent, the impugned demand notice issued to the petitioner-Trust demanding general tax shall not be enforced till such decision is taken by the Municipal Corporation.

(iii) The petitioners are free to respond to the show cause notice, if issued by the Municipal Corporation by filing additional reply if necessary.

(iv) It is clarified that insofar as demand of other taxes is concerned, it is open for the Municipal Corporation to enforce such demand and the petitioners would be free to avail the statutory remedy provided under the Act of 1949 if they are aggrieved by such demand.

(v) The entire exercise be completed within a period of three months from today on its own merits and in accordance with law.

With these directions the writ petition is disposed of.

No costs.

(Anil L. Pansare, J.) **(A. S. Chandurkar, J.)**

Asmita