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

SECOND APPEAL NO. 304 OF 1992

Chabildas s/o. Jamanadas,
deceased through LRs

1] Govind Chabildas Nagar,
Age 55 years, Occ. Business,
R/o. Kasuparik Galli, Supari Hanuman Road,
Aurangabad.

2] Gopal s/o. Chabildas Nagar,
Age 53 yeas, Occ.& R/o. as above. … Appellants (ori. Plaintiffs)

Versus

Municipal Corporation, Aurangabad,
through its Administrator,
Aurangabad.
… Respondent.

Mr. V.P. Raje, Advocate for appellant,

**CORAM : S.G. CHAPALGAONKAR, J.**

**RESERVED ON : 20TH JUNE, 2023**
**PRONOUNCED ON : 30TH JUNE, 2023.**

**JUDGMENT :-**

The appellant/original plaintiff takes exception to the judgment and decree dated 26.3.1990 passed by the 2nd Additional District Judge, Aurangabad in R.C.A. No. 51 of 1988, thereby reversing the judgment and decree dated 25.1.1988 passed by the Civil Judge

Junior Division, Aurangabad in R.C.S. No. 511 of 1985.

2. For the sake of convenience and brevity, the parties are referred to, as per their original status.

3. The plaintiff had instituted Regular Civil Suit No. 511 of 1985 seeking a relief of declaration that the bill of demand bearing No. 6784 for recovery of the arrears of taxes amount to Rs. 1933/- in respect of Municipal House No. 3686 situated at Chavdi Bazar for the period from 1982-83 to 1984-85 is ab-initio-void.

4. The contention of the appellant is that the defendant Corporation raised demand of taxes for the period 1982-83 to 1984-85 by of impugned Bill. However, the assessment of the bill was not done by following due provisions of the Maharashtra Municipalities Act and Rules framed thereunder. The provisions of Sections 113, 115, 117, 118, 119, 120, 121 of the Maharashtra Municipalities Act were not followed.

5. The respondent Corporation contested the suit by filing a written statement at Exh.13 and disputed the claim. The trial court framed the issues at Exh.18. After recording evidence of the parties, the trial court arrived at a finding that the arrears of taxes claimed by the Corporation for the years 1982-83, and 1984-85, in respect of Municipal House No. 3686 under bill no. 6783 dated 4.12.1984 is illegal, null and void. The objection as regards to jurisdiction of the civil court was negated and the decree was passed in favour of the plaintiff, thereby restraining the defendants from enforcing the impugned bill of demand.

6. The respondent Corporation had challenged the aforesaid judgment and decree passed by the trial court in Regular Civil Appeal No. 51 of 1988 before District Judge Aurangabad. The appeal was taken up for hearing alongwith two other appeals, wherein, the similar issue regarding challenge to jurisdiction of civil court was raised on behalf of the Municipal Corporation. and the decree passed by the trial court was assailed on that ground. The District Court vide its common judgment and order dated 26.3.1990 allowed all the 3 appeals, upholding objection regarding jurisdiction of civil court as raised by respondent, although, affirmed finding of trial court that the authentication and adoption of assessment list by the Corporation was improper.

7. The appellant approached this court by way of filing the instant Second Appeal aggrieved by the judgment and order passed by the District court, so also, Second Appeal No. 221 of 1991 was instituted by one of the appellants against the common judgment and order passed by the District Court.

8. Pertinently, this court had passed an order to club both the appeals for simultaneous hearing since it involves the same questions of law and assails the common judgment. However, second appeal No. 221 of 1991 arising out of RCA No. 68 of 1988 was taken up for hearing before this Court independently. This court, after referring to question of law and previous pronouncements governing the issue of jurisdiction of civil court to entertain the suit challenging the bill of demand, concluded that the civil suit is perfectly maintainable under Section 9 of CPC particularly in view of law laid down by Division Bench of this court in judgement reported in 1980 BCR 580. Accordingly, this court set aside

the order passed by the appellate court and restored the judgment and decree passed by the trial court.

9. In the present matter also, the trial court as well as the appellate court are ad-idem on the point that the demand bill issued by the respondent Corporation is null and void. The trial court has recorded a categorical finding in para.16 of the judgment that the assessment list of the year 1982-84 was adopted for subsequent years i.e. 1983-84 and 1984-85. The financial year 1983-84 commenced from 1st April, 1983 and ends on 31st May, 1984. The authentication certificate was passed on 31.3.1983 which could not have been adopted for the year 1983-84 since the list should be adopted in the same year. The learned District Judge has also recorded a finding in terms of Section 124 of the Maharashtra Municipalities Act to adopt the preceding year list, however, the administrator adopted the list of 1982-83 in the year 1984. As such, the adoption certificate was invalid for the year 1984-85. In view of the finding recorded by the trial court, which is confirmed by the appellate court, so also, in the light of the selfsame substantial question of law and order passed by this court in Second Appeal No. 221 of 1991 dated 11.8.2009, upholding jurisdiction of the civil court to deal with the challenge to the bill of demand, the present appeal deserves to be allowed.

Hence following order.

**ORDER**

**A.** The Second appeal is allowed with cost.

**B.** The impugned judgment and decree dated 26.3.1990 passed by the 2nd Additional District Judge, Aurangabad in R.C.A. No. 51 of 1988 is hereby quashed and set aside.

**C.** The judgment and decree dated 25.1.1988 passed by the Civil Judge Junior Division, Aurangabad in R.C.S. No. 511 of 1985 is restored.

**D.** Decree be drawn accordingly

**[S.G. CHAPALGAONKAR]**
**JUDGE**

grt/-