

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

WRIT PETITION NO. 3692 OF 2022

The Aurangabad Jilha Chemists and
Druggists Association through its
Secretary .. Petitioner

Versus

The Municipal Corporation, Aurangabad
Through its Commissioner .. Respondents

Shri Pramod F. Patni, Advocate for the Petitioner.
Mrs. Anjali Bajpai (Dube), Advocate for the Respondent.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 16TH JANUARY, 2023.**

FINAL ORDER :

. Heard.

2. The petition challenges the order dated 11th November, 2021, passed by the Trial Court in R.C.S. No. 26 of 2021, whereby the petitioner was directed to value the suit as per Section 6(iv)(a) of the Maharashtra Court Fees Act on or before next date and pay proper court fees.

3. R.C.S. No. 26 of 2021 was instituted by the petitioner challenging the notice dated 21.06.2021 issued by the Municipal Corporation Aurangabad raising a demand of Rs. 7,57,203/- upon the petitioner. It is the case of the petitioner in the suit that by a registered lease deed executed between the parties the nallah belt was given on lease and construction over nallah belt was undertaken by the petitioner pursuant to the development

permission granted by the Municipal Corporation. It is also the case in the suit that as per the agreement between the parties, the respondent is under obligation to clean the nala which is flowing below the building and not entire stretch and the expense of Rs 7,57,203/ which is sought to be claimed shows that the liability of cleaning the entire stretch of nallah is sought to be foisted on the Petitioner. The challenge to the notice is on an additional ground that as per the provisions the Section 153 of the Maharashtra Provincial Municipal Corporation Act (for short “Corporation Act”), it is the duty of the Municipal Corporation to clean the nala and the demand raised by the notice dated 21.06.2021 is illegal and without authority of law.

4. Learned counsel for the petitioner submits that the suit has been correctly valued U/Sec. 6(iv)(j) of the Maharashtra Court Fees Act as the suit was for declaration and the subject matter in dispute is not susceptible of monetary valuation and has accordingly paid the court fees. He would further submit that, it is clear from the prayers in the plaint that the petitioner seeks a declaration about the duty of the Municipal Corporation to clean the entire nala. He would further submit that although the demand notice makes a mention of amount of Rs. 7,57,203/-, the challenge is on jurisdictional issue. In support of his contentions, the learned counsel has relied upon following decisions of this Court.

- I. Vrindavan (borivali) Co-operative Housing Society Limited Vs. Karmarkar Bros. and others reported in 1982 Mh.L.J 607.
- II. Rajaram Bhagwati Tiwari and others Vs. Municipal

Corporation of Greater Bombay and others reported in 2004(3) Mh.L.J. 290.

III. Maria Philomina Pereira Vs. M/s Rodrigues Construction reported in 1990(1) Mh. L. J. 445.

5. I have considered the submissions of the petitioner.

6. Suit R.C.S. No. 26 of 2021 has been filed challenging the notice dated 21.06.2021. By this notice a demand has been raised by the Municipal Corporation for a sum of Rs. 7,57,203/- seeking reimbursement of expenses incurred in cleaning the nallah on the basis that it was obligation of the petitioner to clean the nala, and as the obligation was not complied by the petitioner, the said work was undertaken by the Municipal Corporation.

7. It is clear that although one of grounds of challenge is to the obligation of the Municipal Corporation by relying upon the provisions of the Corporation Act, what has been challenged in effect is a demand notice which has been issued by the Municipal Corporation seeking to recover the amount. In my view, the submissions raised by the learned counsel for the petitioner as regards the authority of the corporation and on the lease deed are in fact grounds in support of the challenge to the demand notice. The subject matter of the suit has been valued at Rs. 1,000/- on the ground that the petitioner is claiming declaration and the notice is not susceptible to the monetary valuation and as such has been valued under Section 6(iv)(a) of the Maharashtra Court Fees Act. In my view since the demand notice which is under challenge seeks to recover a monetary

component, it cannot be said that notice is not susceptible to monetary valuation as submitted.

8. In support of his contention, the learned counsel for the petitioner has relied upon the decision of **Rajaram Bhagwati Tiwari and others Vs. Municipal Corporation of Greater Bombay and others** (supra) and invited attention of this Court to paragraph No. 11. In the said decision this Court has held that Section 6(iv)(j) of the Maharashtra Court Fees Act is in a sense a residuary section which seeks to carve out an exception to the general rule, which is laid down U/Sec. 6(iv)(d). In my opinion, the said decision does not assist the case of the petitioner for the reason that the same applies to the subject matter which is not susceptible to monetary valuation.

9. So far as decision in the case of **Vrindavan (Borivali) Co-operative Housing Society Limited Vs. Karmarkar Bros. and others** (supra) is concerned, the said decision has been rendered in the facts of that case, where the relief was sought as to the declaration that plaintiffs-society is a co-operative housing society is in possession of the said building known as 'Umanagar' situated at Borivali (East) and thereafter the consequential relief of declaration was sought. The observation of this Court in the facts of that case were that suit was not simplicitor for specific performance but it was a suit to enforce the compliance with the statute. In my view in the present case the suit specifically challenges the demand notice raised by the Municipal Corporation seeking to recover Rs. 7,57,203/- and as such it cannot be said that the suit is only for the compliance of the provisions of the Corporation Act. In the present case it is only a

ground in support of challenge raised to the demand notice. In so far as decision in the case of **Maria Philomina Pereira Vs. M/s Rodrigues Construction** (supra) is concerned, said decision arises in the context of Section 6(xi) of the Bombay Court Fees Act pertaining to the compliance of a statutory obligation. As already observed above, in the present case, it is not merely a compliance of statutory obligation which is sought by way of suit but a specific challenge to the demand notice.

10. In my view, the Petitioner seeks adjudication of demand notice seeking to recover a sum of Rs. 7,57,203/ which is capable of monetary valuation and hence the impugned order directing to value the suit as per the provisions of Section 6(iv)(a) of the Maharashtra Court Fees Act is proper and deserves no interference at the hands of this Court.

11. The writ petition is devoid of merits and same is accordingly dismissed.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23