

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

WRIT PETITION NO.5490 OF 2023

**SARVAJANIK SHIKSHAN SAMITI NANDURBAR THROUGH ITS
CHAIRMAN RAMANLAL MATTULAL SHAH
VERSUS
NANDURBAR MUNICIPAL COUNCIL THROUGH ITS CHIEF
OFFICER**

....

Mr. Mukul Kulkarni, Advocate h/f Mr. A. N. Sikchi, Advocate for
Petitioner

Mr. D. S. Bagul, Advocate for respondent - sole

....

**WITH
WRIT PETITION NO. 5499 OF 2023**

**GIRIVIHAR COOPERATIVE HOUSING SOCIETY LTD. THROUGH
ITS CHAIRMAN BHARATKUMAR UTTAMLAL SHAH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Mr. Parag Barde, Advocate a/w Mr. S. P. Shah, Advocates i/b Mr. D.
R. Jethliya, Advocate for Petitioner

Mr. S. B. Yawalkar, AGP for Respondent No.1

Mr. D. S. Bagul, Advocate for respondent No.3

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 28.06.2023

PER COURT :-

1. In both these matters, the Petitioners have approached
this Court as against the bills of tax. In the first petition, the

Petitioner is an educational institution which has put forth prayer clauses (A), (B), (C) and (D), as under:-

(A) The Hon'ble High Court may be pleased to issue appropriate writ, order or direction in the nature of writ and thereby issue directions to the sole respondent to refrain from raising the demand notice and arrears of property tax without carrying out the fresh assessment as per the provisions of the Maharashtra Municipal Council, Nagar Panchayats and Industrial Township Act, 1965 as directed by the Judicial Magistrate First Class, Nandurbar in Municipal Appeal No.69 of 2015 and Municipal Appeal No.70 of 2016;

(B) The Hon'ble High Court may be pleased to issue appropriate writ, order or direction in the nature of writ and thereby quash and set aside the demand notice dated 19.04.2023 issued by the sole respondent under the Maharashtra Municipal Council, Nagar Panchayats and Industrial Township Act to the petitioner trust for recovery of the arrears of property tax. (Annexure H);

(C) The Hon'ble High Court may be pleased to issue appropriate writ, order or direction in the nature of writ and thereby directing the sole respondent to unseal the school premises run by the petitioner trust forthwith and further the sole respondent be restrained from taking any coercive action against the property tax bill No.8964 dated 11.10.2022 and the demand notice dated 19.04.2023;

(D) Pending hearing and final disposal of the present Writ Petition, the Hon'ble High Court may be pleased to direct the sole respondent to unsealed the school premises run by the petitioner trust forthwith and further be pleased to restrain the sole respondent from taking any coercive steps/action on basis of the demand notice dated 19.04.2023 issued by the sole respondent under section 152 of the Maharashtra Municipal Council, Nagar Panchayats and Industrial Township Act to the petitioner trust for recovery of the arrears of property tax pursuant thereto. (Annexure H)

2. In the second petition, the petitioner is a housing society, which has put forth prayer clauses (A), (B), (E) and (F), as under:-

(A) By issuing appropriate writ, order, direction or any other order in nature of writ, the Hon'ble High Court may be pleased to quash and set aside the notice dated 21.04.2023 and consequent communication dated 03.05.2023 issued by Respondent No.3. (Annexure-D & F respectively);

(B) Pending hearing and final disposal of this Writ Petition, the Hon'ble High Court may be pleased to stay the effect, implementation, execution and operation of notice dated 25.04.2023 and consequent communication dated 03.05.2023 issued by Respondent No.3. (Annexure-D & F respectively);

(E) By issuing appropriate writ order direction or any other order in nature of writ Hon'ble Court may kindly be pleased to quash and set aside the notice dated 08.05.2023 issued by tax inspector of Respondent No.3 thereby sealing the Shop No.1 to 46 of Girivihar Shopping Complex Nandurbar;

(F) Pending hearing and final disposal of present writ petition Hon'ble Court may kindly be pleased to direct the respondent No.2 to de-seal the shop No.1 to 46 in Girivihar Shopping Center Nandurbar.

3. In the first petition, the learned Vacation Judge has passed an order on 16.05.2023, concluding that, "*in pursuance of the said bill, further action has been taken and the school building has been sealed. The said action is without jurisdiction and also premature since the period of filing appeal against the impugned bill is yet to expire.*"

4. In the second petition, the learned Vacation Judge has passed an order on 17.05.2023 by recording that, *"again Bill has been issued to the petitioner without making any re-assessment in accordance with law. He would submit that, the petitioner has approached to appellate authority challenging the current Bill dated 11.10.2022 and that appeal is pending. However, inspite of pendency of appeal, the respondent Municipal Council has sealed the shops."*

5. The learned Advocates for the Petitioners canvassed before us that these Petitioners have been regularly paying the taxes as per admitted assessments.

6. We are of the view that when a statutory appeal is provided in law, when the said appellate forum can look into the grievances of the appellant/plaintiff, when all the disputed issues can be considered by the said forum and further proceedings can then be carried in revisional jurisdiction before a higher Court, we would be extremely slow in entertaining such petition.

7. There is yet another reason for not entertaining this petition. While preferring an appeal, the appellant has to deposit 50% of the assessed amount. Many a times, reliefs are granted in writ petitions and later on, the respondent authorities makes a grievance

that no direction for depositing 50% of the assessed amount was imposed on the Petitioner. In **M/s Shewalkar Developers Limited vs. Rupee Cooperative Bank Limited** - 2016(1) Mh.L.J. 382, the Division Bench of this Court has observed in paragraph Nos. 11, 12, 13, 14, 15 and 16 as under:-

“11. Time and again we have observed that the Court acts as one Court. The Judges sitting at different Benches at the same Seat or on different Benches at the Principal Seat and its Benches cannot be permitted to pass the orders contrary to the orders passed by other Benches. At least in a lis between the same parties, there has to be consistency in the orders passed by different Benches. If this is not done and every Judge is permitted to pass the orders contrary to the orders passed by the other Bench, it would create chaos. This would lead to a situation of criss-cross and it would hit at the basic doctrine of ‘Rule of Law’.

12. The Hon’ble Apex Court in the judgment in the case of Official Liquidator... Versus... Dayanand and others, reported in MANU/SC/4591/2008: (2008) 10 Supreme Court Cases 1, in paragraph no.78, has held as under:

“78. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. In Mahadeolal Kondia v. Administrator General of W.B. this Court observed : (AIR p.941, para 19)

“19..... If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another’s decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinates to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court.”

13. *It could thus be seen that the Hon’ble Apex Court in clear terms has held that the thing which is more necessary in law than any other thing is the quality of certainty. It is further held that the said quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another’s decisions.*

14. *After considering its earlier judgments, the Hon’ble Apex Court, in paragraph no.90, has observed as under:*

“90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and

certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.”

15. *The Hon’ble Apex Court has in clear terms reiterated that the disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution. It has been held that the predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system.*

16. *No doubt that wide discretion is vested with the Court under Articles 226 and 227 of the Constitution of India. But when a Court and that too a Division Bench of this Court at Nagpur Bench is seized of the matter and had passed an order thereby specifically granting stay to the order of the Cooperative Court and had called upon the petitioner to show cause as to why the order passed by the Cooperative Court should not be quashed and set aside, the learned Single Judge of this Court ought to have stayed his hands away and directed the petitioner to approach this Court for seeking appropriate relief in the present petition. We do not wish to go into the question as to whether the petitioner had rightly filed the petition at Principal Seat, inasmuch as we find that since the order passed by the learned Single Judge has the effect of nullifying the order passed by the Division Bench of the same Court, the same would not be valid in law.”*

8. It was further concluded that in matters where recovery of money is at issue, the Court should pass an equitable order and by directing the parties to deposit 50% of the amount sought to be recovered.

9. The learned Advocate for the Municipal Council submits on specific instructions that the impugned bills may be kept in abeyance and the Municipal Council would follow the due procedure laid down in law and cause a reassessment even for those periods which were subject matter of litigation before the Court.

10. The learned Advocates for the Petitioners submit that after the Court sets aside a bill on the ground of non adherence to the procedure prescribed in law while making an assessment, with liberty to carry out a fresh assessment, such directions should be implemented within a reasonable time. If the Municipal Council sits over such issues and without following the due procedure merely alters the amount to be charged and sets out the said amount as an arrear component in the freshly issued bill, it would not mean that a fresh assessment in accordance with the procedure has been carried.

11. The submissions of the learned Advocates on the above point are well placed. When a competent Court sets aside an assessment bill and directs the Municipal Council to follow the due procedure laid down in law for making a fresh assessment, such

directions are to be implemented in letters and spirit. Creating a farce of abiding by such directions and merely altering the figures by reducing the earlier taxed amount, would not be indicative of proper and fair reassessment made.

12. We are intrigued by the peculiar circumstances that we find from these cases. The litigation history between these petitioners and the Municipal Council dates back to 2003 onwards. Every time the Council issues a tax bill, the Petitioners are aggrieved and they challenge the bills before the competent Court. 50% of the amounts are deposited as a pre-condition and subsequently, after the proceedings are allowed and the bill is quashed with a direction to the Municipal Council to carry out a fresh assessment, the latter issues a fresh bill for the next financial year by indicating the earlier bill amount (which has been quashed by the Court) as an arrear component. This bill is also challenged and subsequently the said bill also gets quashed and set aside. This has been happening repeatedly every year.

13. To put it simply, it has practically become a practice for the Municipal Council to issue a bill and the Petitioners to challenge that bill and with the setting aside of the bill, the Municipal Council

commits the same mistake, which is again set aside by the competent Court. To say the least, the act of the Municipal Council of repeatedly committing the same mistake works to the advantage of the petitioners who are still paying taxes @ old rates of Rs.26,000/- per year when the present rates according to the Municipal Council for the same Petitioner has risen upto Rs.1,66,000/- per year. It is anybodies guess as to why the Municipal Council does not rectify its mistake and continues to repeatedly commit the same mistake which not only affects its tax collection, but increases litigation and the Petitioners have to deposit only 50% while challenging such tax bills.

14. The learned Advocate for the Municipal Council submits that there is no limitation prescribed in the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 while levying property tax. So also, if litigation is the cause for prolonging the recovery of such taxes, no limitation can be imposed on the Municipal Council for recovering such taxes after the verdict of the trial Court. We deem it appropriate to leave this issue open to be canvassed by the Petitioners and to be controverted by the Council before an appropriate statutory legal forum.

15. Taking into account the peculiar facts as recorded above, which have intrigued us, we called upon Shri Bagul, the learned Advocate for the Municipal Council to apprise the competent authorities of the exact provisions applicable and the procedure to be followed for imposing tax bills and further guide them as to how they should avoid committing mistakes and that too repeatedly and henceforth, be diligent in such matters.

16. In view of the above and the statement made by the Municipal Council, **these petitions are disposed off**. The impugned bills are kept in abeyance. Since the properties at issue have been de-sealed, no further directions are required to be issued. Let the Municipal Council follow the appropriate procedure and calculate the bills in accordance with the prescription of law. If personal hearing is prescribed under the statute, the same shall be an integral part of the process of hearing and deciding the issue of calculating rateable taxes.

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

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