IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2028 OF 2023

Mohammadiya Educational and
Research Society, Solapur .Petitioner
Vs.
The State of Maharashtra & Ors. .Respondents

Mr. Sumit Khaire for the Petitioner.
Mrs. M.P. Thakur, AGP for Respondent No.1.
Mr. Anand Kulkarni for Respondent Nos.2, 3 & 4.

CORAM : G. S. KULKARNI &
R. N. LADDHA, JJ.
DATE : APRIL 06, 2023

P.C.:

1. The petitioner is a charitable trust which is conducting a school named as Pranititai Shinde Marathi Prathamik Shalla and Al-Husain Urdu Prathmik Shalla situated at 130, Bhimashankar Nagar, Majrewadi, Solapur.

2. The grievance of the petitioner is that the petitioner-trust is a licensee of the said premises. The petitioner has taken the said property from the owners of the property under a leave and licence agreement which appears to be of January 2011. It is contended that the municipal corporation had taken steps to fix the rateable value of the said property, which according to the learned counsel for the respondent-corporation was accepted by the owners of the property, as also the tax amount was deposited.

3. It is the contention of the municipal corporation that from time to time, bills for recovery of the property tax were issued to the owners of the property. Copies of the bills are placed on record in the reply affidavit filed on behalf of the municipal corporation which are annexed at Exhibit '5' (page 76 to 80 of the reply affidavit). The corporation has contended that the owners defaulted in making payment of the property taxes despite appropriate bills being issued. Accordingly, the municipal corporation has taken further steps to issue a warrant of attachment dated 09 December, 2022 for recovery of an amount of Rs.20,53,815/-. In pursuance of the said warrant of attachment, the school of the petitioner has been sealed on 09 December, 2022.

4. The contention of the petitioner is that the school being conducted by the petitioner is an aided school and a serious prejudice would be caused to the petitioner by the act of the municipal corporation having sealed the school under the warrant of attachment in question. The petitioner has also contended that on the property in question, property taxes ought not to be levied by the municipal corporation as it is undertaken as charitable activity. Learned counsel for the petitioner has contended that no fees are charged from the students of the school as also all the activities, which are undertaken, are completely charitable in nature, hence, the said property would be entitled for an exemption from levy of taxes under the provisions of Section 132 of the Maharashtra Municipal Corporation Act, 1949. On a query being made by the Court to the learned counsel for the petitioner as to whether a formal application has been made to the municipal corporation praying for exemption from the levy of the property taxes, he submits that the petitioner has prepared the application, but so far no application has been filed with the municipal corporation.

5. We have heard learned counsel for the parties on the above backdrop. We have also perused the memo of the petition as also the reply affidavit filed on behalf of the municipal corporation.

6. In our opinion, if the petitioner-institution is undertaking charitable work, the petitioner, in that event, needs to be permitted to make a formal application to the municipal corporation in regard to the relevant period for which the petitioner intends to seek an exemption from the levy of the property taxes. The petitioner, being the occupant of the property in terms of what Section 140 of the Maharashtra Municipal Corporation Act provides, would entitle the petitioner to make an application as the liability of the petitioner is co-terminus with that of the owner to make payment of the property tax. We also cannot be oblivious to the fact that the petitioner is running a school which is an aided school, the premises of the school at the middle of the academic term, ought not to have been sealed by the respondent-corporation for recovery of the property taxes and more particularly when the owners have not come forward for the payment of the property taxes. We accordingly direct the municipal corporation to forthwith unseal the petitioner's property/school.

7. In so far as the contention of the petitioner in respect of exemption is concerned, we permit the petitioner to make a proper application with all supporting materials, seeking exemption from levy of the property taxes, for the period which the petitioner may think appropriate. If such an application is made within a period of two weeks from today, let the same be decided within two weeks thereafter, after hearing the petitioner. All contentions of the parties in that regard are expressly kept open.

8. Till an appropriate decision is taken, the municipal corporation shall not take any further coercive action under the warrant of attachment. In the event any adverse order is passed, the same shall not be effected for a period of two weeks. Ordered accordingly.

9. The petition stands disposed of in the above terms. No costs.

10. Needless to observe that if the petitioner fails in its application seeking exemption, the municipal corporation shall be free to proceed to recover the property tax subject matter of the impugned warrant of attachment after such period of two weeks from the passing of the said order expires. This however, shall be subject to all rights, contentions and remedies of the petitioner to assail any order which the municipal corporation may pass on the exemption application. All contentions in that regard are also expressly kept open.

11. Mr. Kulkarni, learned counsel for the respondent-corporation shall orally inform the concerned officer to unseal the school.

[R. N. LADDHA, J.] [G. S. KULKARNI, J.]