Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3480 OF 2022
WITH
WRIT PETITION NO. 1608 OF 2022
WITH
WRIT PETITION NO. 1297 OF 2023

Pidilite Industries Ltd. … Petitioner

Versus

The State of Maharashtra & Ors. …Respondents

Mr. Sriram Sridharan for the petitioner.
Mr. Vishwanath Patil for respondent nos. 2 and 3 in WP/1297/2023.
Ms. Swati Sagvekar for respondent nos. 2 and 3 in WP/1608/2022.
Ms. S.D. Vyas, 'B' Panel counsel for State/respondent no. 1.

CORAM: G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATED: 20 June, 2023

P.C.

1. These are three petitions filed under Article 226 of the Constitution of India, assailing the assessment orders passed by respondent no. 2 – The Deputy Commissioner, Local Body Tax Department, Vasai Virar City Municipal Corporation. By the orders as impugned, the petitioner is assessed for payment of local body tax as leviable under the provisions of Section 152D of the Maharashtra Municipal Corporation Act, 1949 as prevalent and leviable during the years 2015-16, 2016-17 and 2017-18(Q-1) respectively, being the relevant years for these three petitions.

2. At the outset, learned counsel for the respondent-Municipal Corporation has raised an objection to the maintainability of these petitions on the ground that an alternate remedy of appeal is available to the petitioner under the provisions of Section 406(6) to be filed before the Deputy Commissioner. It would be appropriate to note the said provisions, which reads thus:

> ***406. Appeals when and to whom to lie.***
> *(1) Subject to the provisions hereinafter contained, appeals against any rateable value or the capital value, as the case may be, or tax fixed or charged under this Act shall be heard and determined by the Judge.*
>
> *(2) No such appeal shall be entertained unless–*
>
> *(a) it is brought within fifteen days after the accrual of the cause of complaint ;*
>
> *(b) in the case of an appeal against a rateable value or the capital value, as the case may be, a complaint has previously been made to the Commissioner as provided under this Act and such complaint has been disposed of ;*
>
> *(c) in the case of an appeal against any tax including interest and penalty imposed in respect of which provision exists under this Act for a complaint to be made to the Commissioner against the demand, such complaint has previously been made and disposed of ;*
>
> *(d) in the case of an appeal against any amendment made in the assessment book for property taxes during the official year, a complaint has been made by the person aggrieved within twenty-one days after he first received notice of such amendment and his complaint has been disposed of ;*
>
> *(e) in the case of an appeal against a tax, or in the case of an appeal made against a rateable value or the capital value, as the case may be the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the dispute rateable value up to the date of filing the appeal, has been deposited by the appellant with the Commissioner.*

(2A) Where the appeal is not filed in accordance with the provisions of clauses (a) to (e) of sub-section (2), it shall be liable to be summarily dismissed.

(3) In the case of any appeal entertained by the Judge, but not heard by him, before the date of commencement of the Maharashtra Municipal Corporations (Amendment) Act, 1975, the Judge shall not hear and decide such appeal unless the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value, as the case may be, up to the date of filing the appeal has been deposited by the appellant with Commissioner, within thirty days from the date of publication of a general notice by the Commissioner in this behalf in the local news-papers. The Commissioner shall simultaneously serve on each such appellant a notice under sections 473 and 474 and other relevant provisions of this Act, for intimating the amount to be deposited by the appellant with him.

(4) As far as possible, within fifteen days from the expiry of the period of thirty days prescribed under sub-section (3), the Commissioner shall intimate to the Judge the names and other particulars of the appellants who have deposited with him the required amount within the prescribed period and the names and other particulars of the appellants who have not deposited with him such amount within such period. On receipt of such intimation, the judge shall summarily dismiss the appeal of any appellant who has not deposited the required amount with the Commissioner within the prescribed period.

(5) In the case of any appeal, which may have been entertained by the Judge before the date of commencement of the Act aforesaid or which may be entertained by him on and after the said date, the Judge shall not hear and decide such appeal, unless the amount of the tax claimed by each of the bills, which may have been issued since the entertainment of the appeal, is also deposited, from time to time, with the Commissioner in the first month of the half year to which the respective bill relates. In case of default by the appellant at any time before the appeal is decided, on getting an intimation to that effect from the Commissioner, the Judge shall summarily dismiss the appeal.

(6) <u>An appeal against the demand notice in respect of levy of cess under Chapter XIA or the Local Body Tax under Chapter XIB] shall lie,—</u>

<u>(i) to the Deputy Commissioner, when the demand notice is raised by the Cess Officer or any other officer, not being the Deputy Commissioner];</u>

(ii) to the Commissioner, when the demand notice is raised by the Deputy Commissioner.

(7) The appeal under sub-section (6) shall be filed within fifteen days from the date of the demand notice.

(8) No appeal under sub-section (6) shall be entertained by the Deputy Commissioner or, as the case may be, the Commissioner unless the amount of the disputed tax claimed from the appellant has been deposited by the appellant with the Commissioner."

(emphasis supplied)

3. Learned counsel for the Municipal Corporation in support of such contention would also draw the Court's attention to a recent judgment of Division Bench of this Court in **Kharghar Cooperative Housing Societies Federation Ltd., through General Secretary & Anr. vs. Municipal Commissioner, Panvel Municipal Corporation & Ors., 2023 SCC OnLine Bom 775** to contend that in the context of the very provision, namely, Section 406 of MMC Act, this Court considering the position in law, has taken a view that it cannot be acceptable practice to permit by-passing of the statutory remedy of an appeal as provided under section 406 of the Act. Learned counsel for the respondent has drawn our attention to paragraphs 38 and 39 of the said decision, which in our opinion, are also substantially applicable in the context of the present case, when the Court observed as under:-

"38. We are not impressed with any of the grounds as urged by the petitioner so as to persuade us to entertain this petition and/or to come to a conclusion, that the petitioners be permitted to by-pass the statutory remedy made available by law to persons who are aggrieved and who intend to assail the property tax bills. All these grounds are certainly grounds which can be raised by the petitioners in a statutory appeal under Section 406 of MMC Act. In our opinion, the grounds as raised by the petitioner in fact can be more effectively raised, only

by taking recourse to the statutory remedy of an appeal, as each of the assessees would be required to prove on evidence, that the PMC in issuing individual bills in respect to each of these assesses, has not acted in accordance with the provisions of law and/or that in respect of such assesses there was a breach of principles of natural justice. We may also observe that all these are issues which are purely subjective and which are required to be individually adjudicated before the appellate authority. On a deeper scrutiny, it would certainly not be possible for this Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India and in such blanket manner, examine these issues, albeit camouflaged by the petitioners to be common issues.

39. If we accept the contentions as made on behalf of the petitioners, we fear that we are creating a new pattern and jurisprudence in relation to such matters being entertained in exercise of writ jurisdiction, thereby rendering the provision for a statutory appeal wholly otiose. This would lead to severe and drastic consequences, in as much as assessments as may be levied by the several Municipal Corporations, governed by the provisions of the MMC Act, would become vulnerable to challenge by approaching the High Court in its extraordinary writ jurisdiction. This would be applicable across the board in respect of all the Municipal Corporations in the State of Maharashtra. We would hence certainly not accept such wanton contention as sought to be urged by the petitioners, that an enbloc writ petition assailing the property tax bills be entertained. The legislative wisdom behind Section 406 providing for a statutory appeal cannot be defeated, merely because petitioner no.1 is a Federation, with several member societies, and merely because it is claimed that they have a common cause. It would be wrong reading of law that merely by forming a federation, a different color could be given to an individual cause so as to contend that the writ petition be entertained. In our opinion, for such reasons the petitioners are under an erroneous impression that merely because they have many members who purportedly share a common cause, namely, to assail the bills issued to them, the petitioners would have a foothold to maintain the present petition and that looking at the numbers albeit miniscule number of assessees, the High Court would be under some obligation, to entertain such a petition. Certainly, the law would not accept such a drastic proposition."

4. Insofar as the facts of the present case are concerned, we do not intend to dwell on the merits of the rival contentions, suffice it to observe that it is the petitioner's case that although the local body tax at a given point of time was

payable in relation to the transactions/trade in question, however, considering certain instances as also the nature of the transactions which are concerned, the petitioner was not liable to pay the local body tax and/or the local body tax would not at all be leviable considering the 2015 policy as applicable to the Municipal Corporation, namely, the policy whereunder a dealer having turnover of less than Rs.50 crores was exempt from making payment of the local body tax. It is the petitioner's contention that the petitioner's job workers were exempted from the levy of local body tax and in any case liability to pay local body tax, could not be fastened on the petitioner, considering the nature of the transactions in question.

5. Be that as it may, in our opinion, these are all issues which can be effectively gone into by the Appellate Authority, as it is appropriate that the petitioner avails of the alternate remedy of a statutory appeal, so that all the factual issues which the petitioner intends to raise are effectively gone into by the Appellate Authority in adjudicating the rival contentions, so as to come to an appropriate conclusion, in accordance with law as to whether the petitioner needs to be made liable for payment of local body tax. This also for the reason that we do not find that any exceptional case has been made out by the petitioner that we should exercise our discretion by entertaining the present petitions.

6. Learned counsel for the respondents has fairly stated that if the appeal is filed by the petitioners within three weeks from today, the Appellate Authority can decide the said appeal within a period of eight weeks thereafter. Such stand taken on behalf of the Municipal Corporation, in our opinion, is fair and justified in the facts of the present case. We are accordingly inclined to relegate the petitioner to an remedy of appeal as provided for under section 406(6) of the Maharashtra Municipal Corporation Act. We may also observe that one of the reason for the petitioner to approach this Court in the present proceedings and not resort to the remedy of an appeal to the appellate authority, was the petitioner's concern of a deposit of the disputed tax, which is a condition precedent for the petitioner's appeal to be entertained by the Appellate Authority as provided for in sub-section (8) of Section 406 as noted above. In such context, we may also observe that a co-ordinate Bench of this Court had passed an order dated 2 March, 2021 (similar order came to be passed on 18 February, 2022 in Writ Petition No. 3480 of 2021 and Writ Petition No. 1608 of 2022 respectively) by which the petitioners therein were directed to deposit 20% of the local body tax determined as a condition of stay of the impugned order. The said order has continued to operate. However, similar order of 20% deposit was not passed on Writ Petition No. 1297 of 2022. For convenience, we may refer to one of the order dated 2 March, 2021 passed in Writ Petition No. 3480 of 2021, which reads thus:

"O R D E R

1. Heard Mr. Sriram Sridharan, learned counsel for the petitioner.

2. Issue notice.

3. Smt. S. D. Vyas, learned AGP waives notice for respondent No.1 whereas Ms. Swati Sagvekar, learned counsel waives notice for respondent Nos.2 and 3.

4. After hearing learned counsel for the parties and on due consideration impugned notice of demand dated 09.02.2021 issued by respondent No.2 is hereby stayed subject to petitioner depositing 20% of the local body tax determined at Rs.1,56,72,546.00.

5. Stand over to 19.04.2021."

7. From the perusal of the above order, it is quite clear that the orders are passed at the ad-interim stage before the respondents could appear in the present proceedings and argue the matter. We may observe that the mandate of law, as sub-section (8) of Section 406 may provide, namely the legislature itself has not provided for any discretion for waiver of the pre-deposit of the amount of tax as demanded, which is a pre-condition for the appeal to be entertained. In such context, learned counsel for the respondent has drawn our attention to an order passed by the Division Bench of this Court in the case of Indian Oil Corporation Ltd. vs. State of Maharashtra & Ors., which was also a case of levy of local body tax by the respondent- Vasai Virar City Municipal Corporation. This Court while disposing of the said petition observed that the petitioner had an alternate and efficacious remedy to file an appeal under section 406 of M.M.C. Act and directed the petitioner to deposit the entire

amount. It would be appropriate to note the order dated 6 August, 2014, which reads thus:

ORDER

"1. The petition is directed against the impugned order dated 23 July, 2014 made by Vasai Virar City Municipal Corporation demanding from the petitioner Local Body Tax in an amount of Rs.5,19,45,071/- alongwith interest apart from penalty which is five times the tax demand,i.e., Rs.25,97,00,000/.

2. Mr. Damle, learned counsel for the respondents submits that the petitioner has alternate and efficacious remedy to file an appeal under Section 406 of the Maharashtra Municipal Corporation Act (the Act).

3. In view of above, we dispose of this petition with the following order :

(A) The petitioner is granted liberty to prefer an appeal against the impugned order upto 14 August 2014;

(B) If the petitioner deposits the amount of Local Body Tax demanded by Respondent No. 2 under the impugned order dated 23 July, 2014, i.e., Rs.5,19,45,071/- together with interest (but not the penalty amount), then the petitioner's appeal shall be entertained by the Appellate Authority without insistence on any further deposits or by application of the bar of limitation. Such amount shall have to be deposited by the Petitioner by 14 August 2014;

(C) Subject to the above, upto 14 August, 2014 and during the pendency of such appeal, there shall be a stay on the enforcement of the impugned order.

4. It is clarified that we have not gone into the merits of the controversy sought to be raised in the petition and all contentions are kept open.

5. This petition is disposed of in the aforesaid terms."

8. In the aforesaid circumstances, we are of the clear opinion that the present petitions need not be entertained as the petitioner has an alternate

remedy of a statutory appeal. We, accordingly, dispose of these petitions by the following order:

i) The petitioner shall take recourse of the remedy of statutory appeal as provided under section 406 (6) of the Maharashtra Municipal Corporation Act in assailing the assessment orders in question.

ii) Let such appeal be filed within a period of three weeks from today and if the same is filed, the Appellate Authority shall decide the same without raising an objection as to limitation as the petitioner was bonafide pursuing the present proceedings.

iii) The petitioner shall deposit the balance amount of local body tax as levied/demanded by the respondent/Corporation as per the mandate of sub-section (8) of Section 406 of the Maharashtra Municipal Corporation Act as a pre-condition for the appeal to be entertained and adjudicated.

(iv) All contentions of the parties on the merits are expressly kept open.

(v) The Appellate Authority shall decide the appeals without being influenced by prior adjudication for the financial years

2011-12, 2012-13, 2013-14 and 2014-15, being order in appeal dated 11 January, 2022.

(vi) We expressly keep open the challenge as raised by the petitioner to the vires of provisions of Rule 48 of the Maharashtra Municipal Corporation (Local Body Tax), 2010.

9. The petitions stand disposed of in the above terms. No costs.

(JITENDRA JAIN, J.) (G. S. KULKARNI , J.)