IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3826 OF 2023

The Institute of Science, Poona ... Petitioner
v/s.
Pimpri Chinchwad Municipal Corporation & ors. … Respondents

"Mr. Shantanu Adkar a/w. Mr.Sanket S.Bora a/w. Ms.Vidhi Punmiya i/b. SPCM Legal for the petitioner."

Mr Shrikrishna R. Ganbavale a/w. Mr. Kush M. Lahankar for respondent No.1/PCMC.
Ms M. P. Thakur, AGP for State-respondent No.2.

CORAM : G.S. KULKARNI & R.N.LADDHA, JJ.

DATE : 29th March 2023

P.C. :

We have heard Mr.Shantanu Adkar, learned counsel for the petitioner and Mr Ganbavale, learned Counsel for the respondent-PCMC.

2. The dispute, raised in the present proceedings, pertains to the levy of property taxes by the respondent-Municipal Corporation in regard to the property of the petitioner–Institute. The contention of the

petitioner is to the effect that levy of General Tax, Street Tax, Education Cess, Education Notice Fee, Water Benefit Tax etc. as recorded in the bills issued to the petitioner is arbitrary and illegal, being contrary to the provisions of Section 134 of the Maharashtra Municipal Corporation Act, 1949 (for short 'MMC Act') and more particularly the provisions of Section 132 read with Section 148A. Petitioner's contention is that the petitioner being a trust and a charitable institution, the general tax being levied on buildings and lands being used for public charitable purpose is illegal. It is the petitioner's contention that similarly, under the provisions of Section 148A, the levy of education cess on the petitioner institution is also illegal.

3. It is on such contention the petitioner is before the Court in the present proceedings assailing Notice of Demand raised on the petitioner by the respondent-Municipal Corporation for the period 2018-19 to 2022-23 dated 2 March 2022, 19 December 2022 and 26 February 2023. The prayers as made in the petition need to be noted, which read thus:

> *"A. to issue a Writ of Certiorari or Writ in the nature of Certiorari or any other Writ, Order or Direction, calling for the records of the Petitioner's case and after going into the legality and proprietary thereof to quash and set aside the impugned property tax bill cum notice of demand for the period 2018-19 to 2022-2023 dated 2nd March, 2022, 19th December, 2022 and 26th February, 2023; and/*

or

B. to issue a Writ of Certiorari or Writ in the nature of Certiorari or any other Writ, Order or Direction calling for the records of the Petitioner's case and after going into the legality and proprietary thereof quash and set aside the impugned action of attachment and seizure of the Petitioner's premises by the Respondent No. 1 dated 2nd March 2022 and 20th March, 2023; and/or

C. to issue a Writ of Prohibition or Writ in the nature of Prohibition or any other Writ, Order or Direction prohibit the Respondent No. 1 from taking any coercive action or garnishee proceedings against the Petitioner arising out of the impugned property tax bill cum notice of demand for the period 2018-19 to 2022-2023 dated 2nd March, 2022, 19th December, 2022 and 26th February, 2023; and/or

D. to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other Writ, Order or Direction to direct the Respondent No. 1 to endeavour to spread awareness of the various exemptions available under the Maharashtra Municipal Corporation Act, 1950 to the organisations carrying the activities of charitable nature; and/or

E. to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other Writ, Order or Direction direct the Respondent No. 1 to quote the relevant provision under the Maharashtra Municipal Corporation Act, 1950 corresponding the particulars of Tax as levied and demanded vide the property tax bill cum notice of demand for the period 2018-19 to 2022-2023 dated 2nd March, 2022, 19th December, 2022 and 26th February. 2023; and/or

F. that pending the hearing and final disposal of present petition this Hon'ble Court may be pleased to provide

> *interim and ad-interim relief in terms of prayer clause 'B'; and/or*
>
> *G. that pending the hearing and final disposal of present petition this Hon'ble Court may be pleased to provide interim and ad-interim relief in terms of prayer clause "C'; and/or*
>
> *H. to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other Writ, Order or Direction direct the Respondent No. 1 to refund the illegal and unwarranted tax collected towards for the period 2013 to 2018; and/or*
>
> *I. For costs of this petition.*
>
> *J. For any other relief as may be deemed fit in the facts and circumstances of this case."*

4. On a perusal of the record, it appears that the petitioner had made an application dated 22 May 2017 seeking an exemption from payment of taxes which was replied by the respondent-Municipal Corporation vide communication dt.31 May 2017 (Exhibit C2, page-51), rejecting the petitioner's request for an exemption. Our attention is also drawn to a recent communication by the respondent-Municipal Corporation addressed to the petitioner being communication dated 26 February 2023, whereby the petitioner's application dated 2 January 2023 again requesting for exemption from the payment of taxes has been rejected. Learned Counsel for the petitioner has submitted that reasons, as set out in the said rejection, are certainly inadequate and cannot stand the test of law, more particularly relying on the decision of

the Division Bench of this Court in *Sindhu Educational Trust vs. State of Maharashtra*[1].

5. On the other hand, Mr Ganbavle, learned Counsel for the Municipal Corporation has raised an objection to the maintainability of this petition on the ground that as the petitioner intends to assail the bills issued by the Municipal Corporation, by which the taxes are levied on the petitioner, the petitioner has an alternate remedy of an appeal under Section 406 of the MMC Act. He submits that the petitioner has accepted the earlier rejection of his request of exemption as communicated to the petitioner by the respondent-Municipal Corporation by letter dt.31 May 2017, the petitioner, therefore, cannot maintain this petition. Mr. Ganbavle's submission is that, therefore, there is nothing illegal on the part of the respondent-Municipal Corporation in raising the bills in question, which is after examination of all the materials submitted by the petitioner and which was not acceptable to the respondent-Corporation, as informed to the petitioner by a recent communication of the respondent- Corporation dt. 27 February 2023.

6. On such backdrop, we have heard learned counsel for the parties. We have also perused the record. At the outset, we may observe that there is much substance in the contentions as raised by Mr Ganbavale

1 Writ Petition No.2866/2013 decided on 30/4/2013

that the appropriate remedy for the petitioner would be to file an appeal under Section 406 of the MMC Act to assail the property tax bills raised by the respondent-Corporation, as there are number of issues which are issues of fact including on petitioner's case on exemption.

7. For such reason, we are not inclined to examine the issues as raised by the petitioner in assailing the bills in the present proceedings. It is also our clear opinion that the specific contentions as raised by the petitioner, including exemption, can be effectively gone into in an appeal, as these are matters of evidence. The appellate authority on examining the evidence and by applying the relevant provisions of law can certainly come to a conclusion as to whether the charitable activities in relation to particular premises as claimed by the petitioner would entitle petitioner for an exemption.

8. We have noted that the petitioner has approached the Municipal Corporation on an application dt. 2 January 2023 seeking an exemption by submitting materials in support of such application. We have perused the communication dt.26 February 2023, issued by the Administrative Officer (Wakad) Tax Collection Division. On perusal of the reasons as set out in the said communication, we are of the opinion that they are certainly not sufficient in rejecting the petitioner’s

application. This, for more than one reason, firstly that the materials, as submitted by the petitioner have not been appreciated, as also reasons are not set out. When such materials along with accounts were submitted by the petitioner to the designated authority of the respondent-Municipal Corporation, such authority should have considered the exemption application by undertaking appropriate scrutiny of such material. In the event, such material was to be rejected, the authority ought to have assigned appropriate reasons as permissible in law.

9. We are accordingly of the opinion that the petitioner's exemption application dt. 2 January 2023 needs to be reconsidered by the designated officer of the respondent-Municipal Corporation in accordance with law and a fresh order thereon is required to be passed after granting to the petitioner an opportunity of being heard.

10. We permit the petitioner to make an additional representation with appropriate documents. Let such a representation be made within two weeks from today. The designated officer within one week thereafter may fix a mutually agreeable date when petitioner can be heard and appropriate orders in that regard can be passed by the designated officer within two weeks of the date of hearing. All contentions of the Municipal Corporation and the petitioner on the

petitioner's exemption application are expressly kept open.

11. In the event, the petitioner succeeds in persuading the respondent-Municipal Corporation that the petitioner is entitled for an exemption, the petitioner can certainly take benefit of such an order passed in the proceedings of the appeal. Permitting the petitioner to make such a representation/exemption application, however, does not mean that the petitioner ought not to file an appeal as the law provides, to assail the levy/bills pertaining to the property taxes and pursue the same. Filing of an appeal and any application for stay in such a appeal are independent remedies which the petitioner needs to pursue. It is also clarified that the remedy of the petitioner to assail any order passed by the designated officer on the petitioner's exemption application/representation is expressly kept open.

12. So far as the contention of the petitioner that the premises of the petitioner are sealed, Mr Ganbavale has instructions to state that the attachment in respect of such premises will continue, however, the seal would be removed. Statement of Mr Ganbavale is accepted.

13. Mr Ganbavale shall issue oral instructions immediately to the concerned officers of the respondent-Municipal Corporation to unseal the premises.

14. We accordingly dispose of the petition in the above terms permitting the petitioner to take recourse to an appropriate remedy as available in the law and to pursue the representation/exemption application with the respondent-Municipal Corporation, as observed above.

15. Ordered accordingly.

16. It is clarified that the petitioner shall file an appeal under Section 406 of the Maharashtra Municipal Corporation Act within two weeks from today and if the same is accordingly filed, it be entertained without an objection as to limitation.

R.N. LADDHA, J. ***G.S. KULKARNI, J.***

Lata Panjwani, P.S.

[Corrected as per order dated 12th April, 2023.]

CHITRA SANJAY SONAWANE

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