IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4308 OF 2023

Saleem Bismillah Shaikh Decd. Thr. Lhrs .Petitioners
Vs.
Pune Municipal Corporation thr. Municipal Commissioner & Ors. .Respondents

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Mr. Prashant Darandale for the Petitioners.
Mr. Abhijeet Kulkarni for Respondent-PMC.

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

P.C.:

1. We have heard learned counsel for the parties on this petition. The petitioners claim to be the owners of non-residential property bearing Survey No. 37, Hissa No. 2/2, area 2.5 R out of a total area admeasuring 5 R situated at Kondhawa Industrial Estate, Kondhawa Budruk, Pune – 411048.

2. It is the case of the petitioners that the said property was jointly owned by one Mr. Momin Builder, M/s. J. K. Enterprises and Mr. Azgarbhai Shaikh. It is stated that at a later point of time, Mr. Azgarbhai

Shaikh sold his respective share in the property to Mr. Mashoor alias Mazar Momin. On 06 July, 2013, the petitioners' deceased father, is stated to have purchased the said share of the property from erstwhile owner Mr. Mashoor alias Mazar Momin. It is the case of the petitioners that the petitioners are carrying out a commercial activity from the said property.

3. The grievance of the petitioners is that on 13 February, 2023 the petitioners were served with a warrant issued under Rule 45 (Form H) of Chapter VIII of the Taxation Rules. This, according to the petitioners, was without a prior intimation and issuance of a bill under Rule 41 and without compliance of Rule 42, and that directly such a warrant came to be issued and executed in respect of the property in question. The petitioners have contended that such attachment of the petitioners' property by the respondent-corporation is illegal.

4. The petitioners have also contended that immediately after receiving of the said warrant, the petitioners through their advocate raised a complaint dated 17 February, 2023 to the respondent-corporation. The grievance in respect of demand of property tax was raised and that too for the period from 2014 till 2022. It is also the petitioners' contention that in response to such complaint as made by the petitioners, the corporation served the petitioners incomplete property tax summary details for the said period. The petitioners have grievance in regard to rateable value which is being fixed in relation to the said property, which according to the petitioners, is not correct and as per law. In these circumstances, being aggrieved by the action of the municipal corporation in attaching the petitioners' property, the present petition has been moved praying for the following reliefs:-

> "a) That the Hon'ble Court be pleased to issue a writ of Certiorari or writ in the nature of Certiorari, or any other appropriate writ, order or direction under the Article 226 of the Constitution of India thereby quash and set aside the impugned notices, warrant issued against the Petitioners under Rules of Chapter VIII of the Taxation Rules of the Maharashtra Municipal Corporation Act 1949 and after ascertaining the legality thereof quash and set aside the demands for payment made by the Respondents pursuant thereto the exorbitant bills disproportionate to retable value;
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> b) Pending the hearing and final disposal of the Petition, the Hon'ble Court be pleased to restrain the Respondents, their servants, officers and agents from carrying out an auction sale of the property and taking any coercive steps to recover amount from the Petitioners on the basis of illegal demands for payment made by the Respondents pursuant thereto by bills disproportionate to retable value;
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> c) Pending the hearing and final disposal of the Petition, the Hon'ble Court be pleased to direct Corporation to reassess the property for the purpose of property tax in accordance with law and further provide the details of the calculation of the rateable value and amount of Property Tax."

5. Mr. Kulkarni, learned Counsel for the respondent-Corporation contends that although the property is stated to have been purchased by the petitioners' father in 2013, no notice as per the requirement of such rule of Chapter VIII of the Taxation Rules as contained under Schedule D of the MMC Act was issued to the municipal corporation and accordingly, corporation was bound to take action by issuing the warrant of attachment for recovery of the property taxes. Learned counsel for the petitioners is also not in a position to show that there was compliance of the said provision.

6. Learned counsel for the petitioners would submit that in the above circumstances the petitioners are willing to make a representation to the Municipal Corporation and set out all the correct facts, so that the municipal corporation can take appropriate steps to issue a bill in regard to the property taxes in favour of the petitioners. He submits that in view of the record of the Municipal Corporation having remained to be updated, warrant of attachment has also been issued in the name of erstwhile owner, which, according to him, is not the correct position. It is also the contention as urged on behalf of the petitioners that only a part of the property has been purchased by their father and therefore, the warrant of attachment would be also required to be separately issued to the other part of the property for which property taxes are stated to have not been paid which is not of the ownership of the petitioner, although it may form part of the same survey number. Such rectification would be required to be undertaken by the respondent-corporation if what has been contended on behalf of the petitioners, is the correct position, after appropriate compliances are made by the petitioners.

7. Having heard the learned Counsel for the parties and having gone through the relevant documents with their assistance, in the peculiar facts and circumstances of the case, we permit the petitioners to make a representation and/or appropriate compliances with the municipal corporation, so that the municipal corporation after considering such representation/compliances, shall ascertain the correct position in regard to the property of the petitioner for the purpose of levy of the property taxes and after undertaking such exercise, issue appropriate bill for the property taxes, in respect of the property “actually owned” by the petitioners, for the period for which property taxes have remained to be paid.

8. Let such representation/compliances be made by the petitioners within a period of two weeks from today. If such representation is made by the petitioners to the Controller and Assessment of Tax within a period of two weeks from today, the municipal corporation shall not take any coercive action under the warrant of attachment, to the extent of the property belonging to the petitioners, till the municipal corporation takes an appropriate decision on the representation, in accordance with law.

9. Ordered accordingly.

10. We accordingly dispose of the petition in terms of the above observations.

11. All contentions of the parties are expressly kept open.

12. No costs.

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