IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13501 OF 2022
WITH
WRIT PETITION NO.13514 OF 2022
WITH
WRIT PETITION NO.13508 OF 2022

Ambuja Cement Ltd. ...Petitioner

Versus

The State of Maharashtra,
through Secretary Law & Judiciary
Dept. & Anr. ...Respondents

Mr. Ishaan V. Patkar a/w. Mr. Durgesh Desai i/b Alaksha Legal for the Petitioner.
Ms. P. N. Diwan, AGP for Respondent No.1.
Mr. N. R. Bubna for Respondent No.2.

CORAM : G. S. KULKARNI,
JITENDRA JAIN, J.J.

DATE : 14th DECEMBER, 2023.

P.C. :-

1. We have heard Mr. Patkar, learned counsel for the Petitioner and Ms. Diwan, learned counsel for Respondent No.1-Corporation and Mr. N. R. Bubna for Respondent No.2. The Petitioner is primarily aggrieved by the re-assessment order dated 3rd January 2022 and in pursuance of which a Notice of Demand dated 3rd January 2022 in Form "J" under Rule 33(11) of the Municipal Taxation Rules framed by the Municipal Corporation under the provisions of the Maharashtra

Municipal Corporations Act, 1949 (for short "MMC Act") as issued to the petitioiner. The prayers in the petition are required to be noted, which reads thus:-

> *"(a) that this Hon'ble Court be pleased to issue a declaration that the Rules 48(3)(b) and Rule 48(2)(c)(iii) of the Bombay Provincial Municipal Corporations (Local Body Tax) Rules, 2010 are ultra vires the Maharashtra Municipal Corporation Act, 1949 and therefore liable to be struck down;*
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> *(b) that the Hon'ble Court be pleased to issue a writ of certiorari and/or any other writ, direction or order quashing and setting aside the Reassessment Order dated 3rd January 2022 being Exhibit A to this Petition;*
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> *(c) that pending the final hearing and disposal of this petition, the Hon'ble Court be pleased to stay the operation of the Reassessment Order dated 3rd January 2023 being Exhibit A to this petition;*
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> *(d) Ad-interim reliefs in the nature of prayer clause (c);*
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> *(e) For costs of this petition;"*

2. Mr. Bubna, learned counsel for Respondent No.2 at the outset has raised an objection that the writ petition ought not to be entertained on the ground that the Petitioner has an alternate remedy of assailing the demand/reassessment order by taking recourse to the provisions of Section 406 of the MMC Act, against any tax fixed or charged. Sub-section 2(c) of Section 406 inter alia provides for an appeal against any tax including interest and penalty. Thus, the contention of Mr. Bubna is that the Petitioner needs to take recourse to the remedy of an appeal as provided under the MMC Act. In support of such contention, Mr. Bubna has placed reliance on a decision of this Court in the case of **Kokuyo**

Camlin Ltd. Vs. State of Maharashtra & Ors.[1], which was also a case arising from a levy of the local body tax by the Respondents therein, namely the Vasai-Virar Municipal Corporation. A similar objection to the effect that writ petiton be not entertained as an alternate remedy being available to the petitioner, was raised. This Court considering a catena of judgments in regard to the assessee requiring to take recourse to the remedy of an appeal did not entertain the petition and relegated the Petitioner therein to take recourse to the remedy of an appeal under Section 406 of the MMC Act.

3. In response to such objection as raised on behalf of the Municipal Corporation, Mr. Patkar would draw our attention to prayer (a) of the petition, to contend that the Petitioner is seeking a declaration that Rule 48(3)(b) and Rule 48(2)(c)(iii) of the MMC Act (local body tax Rule 2010) are ultra-vires, the MMC Act, 1949 and are liable to be struck down on the ground that there is no substantive provision under the MMC Act, which would empower the Municipal Corporation to levy interest and penalty. It is, therefore, his submission that such prayers are required to be entertained.

4. In our opinion, the contention has urged by Mr. Patkar that there is no substantive provision under the MMC Act providing for the

1 2023 (5) Bom. C.R. 406

authority on the Municipal Corporation to levy interest and penalty cannot be accepted, inasmuch as, there are specific provisions under the Act authorising the Municipal Corporation to levy interest and penalty. The statutory position in this regard was noted by this Court in the case of **Kokuyo Camlin Limited (supra)** as relied on by Mr. Bubna.

5. Sections 127 of the MMC Act provides for taxes to be imposed under the Act. Sub-section 3 thereof categorically provides that municipal taxes shall be levied and assessed in accordance with the provisions of "the Act and the Rules". In pursuance of powers as conferred under the MMC Act, rules have been framed by the Municipal Corporation, wherein, under Rule 33 pertains to the assessment of local body tax. Sub-rule 8 of Rule 33 specifically incorporates that any assessment made under these rules shall be without prejudice to any penalty interest of prosecution for an offence under the Act. Further sub-rule 10 thereof provides that an order imposing a penalty or interest under Rule 48 or an order of forfeiture with or without interest, penalty or interest or both, in respect of any penalty may be incorporated in the order of assessment relating to the period made under the said rule. Further, Rule 48(2) and (3) provides for imposition of penalty and interest in certain cases. It is well settled that assessment would include a reassessment. Thus, Mr. Patkar's contention that there is no provision whatsoever under the Act providing for levy of interest or penalty is not well founded, in view of the specific provisions as noted by us.

6. Insofar as, the provision of an appeal is concerned. We accept Mr. Bubna's contention that the Petitioner has an alternate remedy to challenge the reassessment order and the notice of demand in relation to the local body tax. The legal position on such issue was considered by the Division Bench of this Court quite extensively in the decision in **Kharghar Co-operative Housing Society Federation & Anr. Vs. Municipal Commissioner, Panvel Municipal Corporation & Ors.**[2], which has also been followed in the decision in **Kokuyo Camlin Limited (supra)**. In such decision, the Court has also considered the principles on maintainability and entertainability of the writ petition as laid down by the Supreme Court in the decision in **M/s. Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer cum Assessing Authorities & Ors.**[3]. The relevant observations as made by the Court in **Kokuyo Camlin Ltd. (supra)**, are required to be noted, which reads thus:-

> *"17. In our opinion, such contentions as urged by the petitioner are also contrary to the observations of the Division Bench of this Court in case **Kharghar Co-op. Housing Societies** (supra) when in the context of payment of municipal taxes the Division Bench referring to the provisions of Section 406 and considering the several decisions of the Supreme Court in **Shivram Poddar Vs. Income Tax Officer, Central Circle II, Calcutta and Anr.**[4]**; Income-Tax Officer Lucknow Vs. M/s S.B. Singar***

2 2023 Bom. C.R. (3) 505
3 2023 AIR (SC) 781
4 AIR 1964 SC 1095

Singh & Sons & Anr.[5] ***; Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. & Ors.***[6]***; M/s. Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer-cum-Assessing Authority & Ors.***[7] *has held that the petition under Article 226 of the Constitution assailing the assessment and demand order ought not to be entertained and the proper remedy would be to challenge the assessment order by taking recourse to the statutory remedy of an appeal. Such decision is squarely applicable in the facts of the present case, as contention of the petitioner is similar to one considered by the Division Bench in* ***Kharghar Co-op. Housing Societies' case*** *(supra). The relevant observations of the Division Bench are required to be noted which read thus:-*

> *"36. Be that as it may, we would also consider as to whether the grounds on which the present petition has been filed, in any manner are precluded to be raised, in such statutory appeal. As noted above, primarily the grounds as raised by the petitioners in the present petition are, firstly, non-adherance to the provisions of law in assessment and levy of property taxes which is quite vague, secondly, no authority to levy retrospective tax and thirdly, principles of natural justice not being followed.*
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> *37. We are not impressed with any of the grounds as urged by the petitioner so as to pursuade us to entertan 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.*
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> *38. 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*

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5 (1976)4 SCC 325

6 (1985)1 SCC 260

7 2023 SCC OnLine SC 95.

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.

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49. The procedure for levy and collection of municipal taxes falls under ***Chapter XI*** *of the MMC Act titled as* ***"Municipal Taxation"****. Section 127 which falls under the said Chapter, is the charging Section, providing that the Municipal Corporation, inter alia, is authorised to impose taxes and one of them being property taxes. Section 128 provides for the prescribed manner in which the Municipal taxes may be recovered by the Rules. Section 128-A provides that the property taxes leviable on buildings and lands in the City under the Act shall include water tax, water benefit tax, sewerage tax, sewerage benefit tax, general tax, education cess, street tax and betterment charges. Section 129 provides for property taxes leviable on rateable value, or on capital value, as the case may be and at what rate. The entire chapter dealing with Municipal Taxation comprises of provisions of Section 127 to Section 152-1A. This apart, Chapter VIII falling under Schedule 'D' of the MMC Act provides for Taxation Rules, which contains* ***Rules 1 to 63*** *dealing with the assessment of taxes. It can certainly be said that the provisions of "Chapter IX (Municipal taxation)" from Section 127 to 152-1A of the MMC Act read with the "Taxation Rules" (Rule 1 to 63) incorporated thereunder is a Code by itself. Thus, on one hand the MMC Act provides substantive provisions in regard to the municipal taxation. Read with these provisions is the provision of*

Section 406 which forms an inextricable concomitant, of the taxing provisions, when it provides for a statutory remedy of an appeal. Thus, such provision which is integral to the mechanism of the taxing provisions, necessarily is required to be given its highest weightage, when the Court considers whether a challenge to levy or demand of tax being raised in the proceedings under Article 226 of the Constitution of India could be entertained. The petitioners' contention to disregard this provision is not the correct approach."

7. In the light of the above discussion, we find no merit in the present petition, it is accordingly rejected, however, keeping open the remedy of the Petitioner to take recourse to the provisions of appeal as provided under Section 406 of the MMC Act.

8. At this stage, Mr. Patkar states that the Petitioner intends to file a statutory appeal within a period of four weeks from today. If that be so, only to enable the Petitioner to file the appeal and move an appropriate interim application, the Municipal Corporation for a period of four weeks shall not take any coercive action against the Petitioner. This limited protection as granted by us ought not to be construed as any expression, on the merits of the rival contentions.

9. All contentions of the parties on the proposed appeal to be filed by the Petitioner are expressly kept open.

10. Disposed of in the aforesaid terms. No costs.

[JITENDRA JAIN, J.] **[G. S. KULKARNI, J.]**