



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 308 OF 1995

Nanded Municipal Council,
Nanded, through its Chief Officer

...Appellant
(Orig. Defendant)

Versus

Ibrahim Khan S/o Mustafa Khan,
Age 58 years, Occupation: NIL,
R/o Nizam Colony, Nanded

...Respondent
(Orig. Plaintiff)

WITH
SECOND APPEAL NO. 81 OF 1997

Nanded Municipal Council,
Nanded, through its Chief Officer

...Appellant
(Orig. Defendant)

Versus

Ramchandra S/o Haribhau Mahajan,
Age 45 years, Occupation: Medical Practitioner,
R/o H.N. 1.6.883 of village Jangamwadi,
Nanded. Tq & Dt. Nanded

...Respondent
(Orig. Plaintiff)

...

Mr. S. V. Kurundkar, Advocate for Appellants
Ms. S. G. Chincholkar, Advocate for Respondent

...

CORAM : R.M. JOSHI, J
DATE : JANUARY 09, 2024

COMMON JUDGMENT :

1. These Appeals filed under Section 100 of Code of Civil Procedure take exception to the judgment and decree passed in R.C.S. No. 679 of 1988 & R.C.S. No. 108 of 1987 by learned Trial Court decreeing the suit granting perpetual injunction against Naned Municipal Council from recovering house tax and other charges from Plaintiffs and dismissal of RCA Nos. 248 of 1991 & 138 of 1990 filed against these judgments.

2. The facts which led to the filing of these Appeals can be narrated in short as under:

Plaintiffs are owners of properties being house nos. 1-6-787 and 1-6-883 situated at village Jangamwadi. It is the case of the Plaintiffs that the village wherein the properties are situated does not fall within the limits of Nanded Municipal Council. It is specific case of the Plaintiffs that for want of jurisdiction, Council cannot recovery any taxes in respect of area not covered by Nanded Municipal Council. On the basis of these averments, perpetual injunction is sought from recovering taxes from Plaintiffs.

3. Nanded Municipal Council by filing written statement

opposed the suits. It is contention of the Council that Plaintiffs house is situated within the jurisdiction of Municipal Council and as such, it is within its right to recover taxes.

4. Trial Court framed issues at Exh. 16. Plaintiffs examined himself and relied upon various documents indicating village Jangamwadi fall within the area of Group Grampanchayat Nasratpur. Notification of 1961 is relied upon indicating the same. Reference is also made to the notification of 1987 showing merger of village Asadulabad from Group Grampanchayat to Nanded Municipal Council. Learned Trial Court on the basis of evidence led by the Plaintiffs decreed the suits. These judgments and order came to be confirmed in First Appeals.

5. Learned Counsel for the Defendant – Municipal Council submits that the learned Trial Court has committed error in not considering the fact that the area/boundaries fixed by the erstwhile ruler continued to remain as it is until the same is changed in compliance with the provisions of Section 6 of the Maharashtra Municipalities Act. It is thus, his contention that the judgments of the trial Court passed by ignoring the said provision cannot sustain. In

addition thereto, he placed on record notification issued by the Government of Maharashtra of formation of Nanded Waghala City Municipal Corporation, Nanded.

6. Learned Counsel for the Plaintiffs supported the impugned judgments.

7. Following substantial question of law is framed for determination:

“Whether judgment and decree passed by the First Appellate Court confirming the judgment of the trial Court in ignorance of provisions of Section 6 of Maharashtra Municipalities Act is perverse and deserves interference”

8. Plaintiffs have come out with specific case about the village Jangamwadi not falling within the local limits of Nanded Municipal Council. In order to support the said case Plaintiffs have relied upon notification issued in the year 1961 indicating village Jangamwadi falling within the jurisdiction of Group Grampanchayat Nasratpur. Plaintiffs thus have discharged their initial burden of proving that the area where the suit properties are situated does not fall within the limits of Municipal Council as it falls in the area covered by Group Grampanchayat, in order to make the same amenable to the taxes

levied by the Council. The onus, therefore, shifted upon the defendant to prove that the properties situate within the jurisdiction of Municipal Council. No evidence is led by the defendant in this regard.

9. Now before this Court for the first time it is sought to be contended that the boundaries fixed by the erstwhile ruler in area of Marathwada shall continue to remain the same until changed by following procedure contemplated by Section 6 of Maharashtra Municipalities Act. Perusal of the record does not show that any such plea was raised by the Council before the Trial Court. Written statement is also silent on this issue. The point sought to be canvassed not being pure question of law cannot be permitted to be raised at this stage. Suffice it to say that on the basis of pleadings and evidence on record learned Trial Court has rightly come to the conclusion that the suit properties do not fall within the jurisdiction of limits of Nanded Municipal Council. Hence, Municipal Council had not right to levy taxes upon it. Perpetual injunction granted by learned Trial Court, therefore, does not deserve interference. The substantial question of law is answered in negative, as no perversity is found in the findings recorded by both Courts below.

10. It is however clarified that the said orders shall operate only till the time that the concerned village is lawfully brought within the limits of the Municipal Council or Municipal Corporation, as the case may be.

11. In view of above observations, Appeals stand dismissed. Pending applications, if any, are also disposed of.

(R. M. JOSHI, J.)

Malani