IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 351 OF 2023
WITH
CIVIL APPLICATION NO. 7945 OF 2023

Shri. Ajantha Education Society,
Pandit Jawaharlal Nehru Mahavidayalay
Aurangabad through its Secretary,
Shri. Prakash Baburao Kale,
Age : 59 Years, Occ. Agriculture and business,
R/o. Aurangabad. .. Appellant
(Original Plaintiff)

V E R S U S

Municipal Corporation, Aurangabad
Through its Commissioner,
Aurangabad. ..Respondent
(Orig. Plaintiff)

....
Advocate for the Appellant : Mr. Pramod Fulchand Patni
....

CORAM : SANDIPKUMAR C. MORE, J.
DATE : 08.07.2024

ORDER:-

1. Heard the learned counsel for the appellant/society i.e. the original plaintiff on admission.

2. The present Second Appeal appears to have filed against the concurrent findings of both the learned Courts below.

Brief facts are as under :-

3. The appellant/plaintiff is a charitable trust registered with Charity Commissioner, Aurangabad and is imparting

education to the students. It is having school & college building at CTS No. 127/P Plot No.NS-1 at Shivajinagar, Cidco, Garkheda, Aurangabad. The aforesaid property has been allotted to the plaintiff/society by the CIDCO for the purpose of education. The plaintiff/society thereafter developed the property by erecting building and started it's activity. However, on 04.12.2012 the respondent/Corporation i.e. original defendant raised bill in respect of the property tax for the financial year 2011-2012 against the premises of plaintiff/ society. The notice was issued in the financial year of 2012-2013. Thereafter, on 12.08.2013 the plaintiff/society has made representation to the defendant/Corporation and thereby claimed exemption of tax as per Section 132(1)(b) of the Maharashtra Municipalities Act. However, Corporation without deciding the said representation, issued bill of demand. As such, on 10.09.2013 the plaintiff/society was constrained to file Special Civil Suit No. 14 of 2013 against the defendant/Corporation for declaration that imposition of taxes on their premises is illegal, null and void-ab-initio, and also for permanent injunction restraining the Corporation from recovering the taxes on the strength of bill No. 81042 amounting to Rs. 16,53,368/- from the year 2011 to 2014. The suit claim was mainly based on the contention that plaintiff/society being the charitable trust was entitled for exemption from payment of property tax as contemplated under Section 132(1)(b) of the Act. The learned trial judge i.e. the learned Civil Judge, Senior Division (Corporation Court) Aurangabad vide judgment and order dated 03.03.2021 dismissed the suit. The plaintiff/society then preferred an appeal against the said judgment and order on 17.07.2021 before the learned District Judge-3, Aurangabd (hereinafter referred to as the learned First Appellate Court) vide Regular Civil Appeal No. 78 of 2021. However, the learned First Appellate Court also dismissed the said appeal vide judgment and order dated 30.11.2022. Hence this Second Appeal.

4. The learned counsel for the appellant/plaintiff vehemently argued that both the learned Courts below have dismissed the suit and appeal of the appellant/plaintiff merely by holding that the plaintiff/society is having alternate remedy to file appeal as per the Section 406 of the Maharashtra Municipal Corporations Act. According to him, even though a provision of appeal is made under the said section, but the Civil Court still can entertain the dispute regarding legality of such imposed tax. According to him, the plaintiff/ society being the trust is engaged in charitable purpose, such as,

imparting education to the students. According to him, both the Courts below failed to give finding in respect of legality of the tax imposed upon the plaintiff/society and merely rejected their claim by holding that they are having alternate remedy under Section 406 of the Maharashtra Municipal Corporations Act of filing appeal before the concerned authority. Therefore, he finally concluded that the Second Appeal needs to be admitted on the substantial question of law as to whether the plaintiff/ society is entitled for exemption of tax as per Section 132(1)(b) of the Maharashtra Municipal Corporations Act. He also relied on various judgments as follows

(i) **Shivmanik Dattatraya Shivangikar Vs. Larur Municipal Council And Another (***1978 Mh.L.J. 826*)

(ii) High Court of this Bench in the case of

Abhinav Manav Vikas Sanstha Vs. The State of Maharashtra and another (*Writ Petition No. 8043 of 2020*

(iii) **Gorakshan Sanstha Vs. Akola Municipal Corporation** *2018(5) ABR 227:: AIRONLINE 2018 BOM 523*

(iv) **Dhulabhai Vs. State of Madhya Pradesh** (*1969 Mh.L.J.*)

(v) **Mafatlal Industries Ltd And Others Vs. Union of India And Others** *(1997) Supreme Court cases 536*

(vi) **Devinder Singh And Others Vs. State of Haryana and Another** *(2006) 5 Supreme Court Cases 720*

(vii) **New Manek Chowk SPG And WVG Mills Co. Ltd ETCV,**

Municipal Corporation of the City of Ahmedabad And Others (*AIR 1967 Supreme Court 1801)*

viii) **Sant Kanwarram Education And Social Welfare Society And Others Vs. Municipal Corporation of City of Amaravati** *(2009(1) Bo,.C.R. 778)*

ix) **Balkrishna Vora Vs. Poona Municipal Corporation** *(1963 Mh.L.J. 325)*

According to him, the aforesaid judgments indicates that no specific barring provision for filing civil suit is there in the Maharashtra Municipal Corporations Act.

5. It is significant to note that the learned counsel for the appellant/society is claiming that the society being the education society is engaged in business of imparting education to the students and therefore, the premises of the society, being used for public charitable purpose, under Section 132 (1)(b) has total exemption from paying general taxes to be recovered by the concerned Municipal Corporation. According to him, both the learned Courts below did not consider this aspect as to whether the plaintiff/society is exempted from paying such tax, in view of the aforesaid Section of Maharashtra Municipalities Act. He further submitted that both the learned Courts below have rejected

the claim of plaintiff/society merely on the ground that there is alternate remedy provided under Section 406 of the Act which the plaintiff/society has not followed. Admittedly, under Section 406 of Maharashtra Municipal Corporations Act, there is provision of filing appeal against any rateable value or tax fixed or charged under this Act and therefore, efficacious remedy is available to the person aggrieved about imposition of such tax. Though the said observation is made by the learned trial Court in it's judgment, but on going through the said judgment itself, it is clearly evident that, it is not the sole ground or reason or finding for rejecting the claim of the plaintiff/society. Admittedly, the learned trial Court has placed reliance on the observations of the Hon'ble Supreme Court in the cases of ***Dhulabhai and others Vs. The State of Madhya Pradesh and another, 1968 (3) SCR 662***), ***Mafatlal Industries Ltd and others Vs. Union of India and others, 1997 (5) SCC 536*** and ***Devinder Singh and others Vs. State of Haryana and another 2006(5) SCC, 720*** to come to the conclusion that there is alternate efficacious remedy available to the plaintiff/society under the aforesaid Section. However, it does not mean that the learned trial Court did not consider the main issue as to whether the plaintiff/ society, indulging in charitable activities, is exempted from payment of general taxes under Section 132 (1)(b) of the Act. The learned counsel for the appellant/society also placed reliance on the other judgments of this Court (supra) wherein it is observed that illegality in the act of imposing tax by the Corporation can be challenged before the Civil Court despite there being remedy available in the Maharashtra Municipal Corporation Act under Section 406 or any other provision under the other Acts.

6. It is extremely important to note that, the learned counsel for the appellant/society in the beginning itself had submitted that the core question, whether the appellant/society is exempted from payment of general tax under Section 132 (1)(b) of the Maharashtra Municipalities Act, is not answered by both the learned Courts below and therefore, appeal needs to be admitted on such substantial question of law. However, it is significant to note that both the learned Courts below have considered the aforesaid aspect and for that purpose I would like to reproduce issue No.1 framed by the learned trial Court to which it has given negative finding.

> *" Whether plaintiff proves that property bearing CTS No.127/part, Plot No. NS-1 situated at Shivajinagar (E),*

CIDCO, Garkheda Area, Aurangabad, is exempted from tax under the provision of Section 132(1)(b) of Bombay Provincial Municipal Corporation Act (now Maharashtra Municipal Corporations) Act ? ''

Likewise, the learned First Appellate Court has also framed point No.1 in the appeal itself as follows :-

" Is it proved that the plaintiff is exempted from the tax under the provision of Section 132(1)(b) of the B.P.M.C Act ? ''

and has given negative finding thereon.

7. It is extremely important to note that while deciding this issue or point, both the learned Courts below have considered the documents relied upon by the plaintiff/society and the oral evidenced led by its witness (P.W. No.1) Prakash Kale, in whose evidence it has come on record that around one thousand students are taking education in the School and College run by the plaintiff/society. He has specifically admitted in his cross-examination that he did not know how many divisions were sanctioned by the Government while providing Grants to institution. According to him, the appellant/society is on the area of 30000 sq. ft. and as per approved plan they have constructed college building on it. Most importantly he stated

in the cross-examination that there are other income sources to the School and College except Government Grants through fees collected from the students, collection of building development funds, collection of charges for laboratory and computer lab from the students, collection of admission fees, examination fees, and also donations from the institutions. He has clearly admitted in his cross-examination further that the appellant/society is not giving total free education to the students. Thus, from the evidence of the witness of education society itself it has come on record that they are not giving free education to the students.

08. It is extremely important to note that, the appellant/society is claiming exemption from tax under Section 132(1)(b) of the Maharashtra Municipalities Act. On going through the said provision, it is clearly evident that only two categories under the aforesaid provisions are entitled for getting exemption from general taxes

(i) Building and lands or portions thereof solely occupied and used for public worship.

(ii) Building and lands or portion thereof solely occupied and used for a public charitable purpose.

09. The appellant education society is definitely claiming

exemption from the general tax under second category. Therefore, for getting such exemption, they must establish that they are doing all the activities on the property of society for public charitable purpose. However, here their own witness is admitting before the Court that they collect all sort of funds, fees and necessary charges as mentioned above, other than the Government Grants. Had it been the case of appellant/society that they are doing charitable activities, then they would not have accepted such fees, donations and charges from students and other institutions. The most important admission has come from their witness that the appellant/society is not giving free education to the students totally. Therefore, the learned trial Court by considering this has given finding that the plaintiff/society failed to establish the fact that they are doing charitable activities and therefore, they are not exempted from the tax under the provision of Section 132 (1)(b) of the Maharashtra Municipalities Act as claimed. Further, even if we perused the judgment of learned First Appellate Court, it is evident that the learned First Appellate Court has also framed point in the line of substantial question of law as raised by the learned counsel for the appellant/society and by discussing the evidence on record in details, has given finding against the appellant/society. On going through the judgment of learned First Appellate court, it is clearly evident that the learned First Appellate Court has even discussed the evidence on record more elaborately than the learned trial Court by considering each and every aspect on the disputed point i.e. whether society is entitled for exemption of taxes.

10. The learned First Appellate Court not only discussed the evidence on record in detail, but also found that there was no resolution or proper authorization of the witness of the society to depose before the Court. Further, it is also observed that P.W. No.1 Prakash who deposed being the Secretary of the appellant society/trust, could not even tell the details of sanction or Grants to the public trust or about the day to day activities. He could not even tell criteria of any education institution for receiving Government Grants or how many divisions were sanctioned by the Government for providing the Grants.

11. Thus, it appears that witness Prakash of the appellant/society was not having any basic knowledge in respect of the activities of society. It is also reproduced by the learned First Appellate Court about the admissions given by

the witness of appellant/society that other than the Government Grant, the appellant/society is also collecting fees from the students under the head of building development funds, Laboratory charges, Computer Lab, and college examination fees and also donations from the other institutions. Therefore, by referring criteria for exemption under Section 132(1)(b) of Maharashtra Municipalities Act it was observed that the society was under obligation to establish the fact that they were doing the activities solely for public charitable purpose. Here the learned First Appellate Court after having considered the entire evidence on record, has come to the conclusion that by way of admission from the witness of appellant/society it has been established that the appellant/society is not doing charitable activities, but engaged in commercial profit earning business by accepting various donations as well as fees and necessary charges from the students.

12. It is further important to note that even Ward Officer Mahavir Manikchand Patni (D.W.No.1) examined on behalf of the respondent/Corporation has testified that the appellant/society is not providing any free education to the students in the College and therefore, the nature of

appellant/society is private earning school. It has also come on record that before raising bill of demand in respect of the tax, the concerned officer had visited the premises of appellant/society and thereafter raised the bill. If at all, the appellant/society was having any grievance about the amount of tax, it was their job to file appeal under Section 406 of the Maharashtra Municipal Corporation. However, even if such appeal is not filed, their challenge to the levy of the tax in view of the exemption provided in Section 132 (1)(b) of the Maharashtra Municipalities Act has also not established for want of specific evidence.

13. Therefore, considering all these aspects, even if the observation of learned trial Court about availability of efficacious remedy under Section 406 of the Act is kept aside, the main claim of the appellant/society about the exemption from the payment of tax as per Section 132(1)(b) of the Maharashtra Municipalities Act has not been established on the basis of trustworthy and reliable evidence. On the contrary, it has come on record that the plaintiff/society is not doing any charitable activities, but engaged in commercial activities while imparting education to the students in their school and college. Thus, both the learned Courts below have

appropriately and very minutely considered the evidence on record and then came to the conclusion that no such exemption as claimed by the appellant/society can be given to it. As such, the substantial question of law raised by the learned counsel for the appellant/society is answered twice by the learned Courts below and that too on the basis of evidence on record and not arbitrarily. Thus, the appellant/society is not entitled now to agitate the same issue again and again, otherwise it would be an abuse of law. Thus, the aforesaid substantial question of law being answered satisfactorily is not available at this juncture and therefore, in absence of such substantial question of law the Second Appeal must fail at admission stage. Accordingly, the Second Appeal stands dismissed at admission stage along with Civil Application No. 7945/2023 also stands disposed of.

(SANDIPKUMAR C. MORE, J.)

Y.S.K.