Jvs.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 11 OF 2022

Sharad Baliram Patil	**}**	**Petitioner**
versus		
Bhiwandi Nizampur City	**}**	
Municipal Corporation & Ors.	**}**	**Respondents**

Mr. Amit Gharte for the petitioner.

Mr. N. R. Bubna for respondent no. 1.

Ms. Deepa Chavan with Ms. Reshmarani Nathani and Mr. Hemal i/b. Navdeep Vora and Associates for respondent no. 2.

Mr. P. P. Kakade, Government Pleader with Mr. O. A. Chandurkar, Additional Government Pleader and Ms. N. M. Mehra, AGP for respondents 3 and 4.

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.
DATE: 20th FEBRUARY 2024

P.C.:

1. Heard Mr. Gharte, learned counsel representing the petitioner, Mr. Bubna, learned counsel representing respondent no. 1-Corporation and Ms. Deepa Chavan representing respondent no. 2.

2. This petition, ostensibly in public interest, is filed with the prayers, *inter alia*, to issue an appropriate writ or direction to respondent no. 1 for initiating appropriate process and action against respondent no. 2 for recovery of the Local Body Tax (LBT) amounting to Rs. 174 crores along with interest. Certain other prayers have also been made.

3. On 14th February 2024, the Court passed the following order: -

> *"**P.C.***
> *1. Ms. Deepa Chavan, learned Counsel has put-in appearance on behalf of Respondent No.2 and has submitted that the notice for recovery of Local Body Tax (LBT) issued to Respondent No.2 was cancelled by order dated 10th February 2015 passed by the Additional Commissioner (Tax) of Bhiwandi Nizampur City Municipal Corporation. She has also stated that the said document dated 10th February 2015 was filed as a part of Affidavit-in-Reply filed by Respondent No.2 in Writ Petition No.9231 of 2015.*
> *2. Office is directed to place the entire paper book of Writ Petition No.9231 of 2015 along with this matter on the next date.*
> *3. Learned Counsel representing Respondent No.4 shall also furnish the information to the Court as to whether before filing the Affidavit-in-Reply in the said Writ Petition a copy thereof was served upon the Petitioner or not.*
> 4. *Stand over to **20th February 2024, high-on-board.**"*

4. Pursuant to the said order dated 14th February 2024, the paper book of Writ Petition No. 9321 of 2015 has been placed before us. The said paper book shows that the said writ petition was filed by the petitioner of the instant PIL petition. To the said writ petition respondent no. 2 had filed affidavit in reply enclosing therewith the order/letter dated 10th February 2015, whereby, the notice issued to the respondent no. 2 for recovery of LBT was cancelled.

5. The prayer clauses of the writ petition are reproduced hereunder: -

> *"a) this Hon'ble Court may be pleased to issue a writ of mandamus and/or any other writ, order or direction, thereby directing the Respondents No. 1 to initiating appropriate process/action as per Section 128 of the Maharashtra Municipal Corporation Act, 1949 against the Respondent No. 2, for recovering of an LBT amount of Rs. 174 crores along with an interest;*

b) this Hon'ble Court be pleased to direct the Respondent No. 1, to initiate appropriate prosecution against the Respondent No. 2, as per Section 152L(b) of the Act, for furnishing false return statement to the Tax Department of Respondent No.1;
c) this Hon'ble Court be pleased to initiate appropriate action including penal proceedings against the concerned officer of the Respondent No. 1, for not initiating appropriate proceedings including process under Section 128 of the Maharashtra Municipal Corporation Act, 1949 against the Respondent No. 2, thereby causing the Corporation a loss to the tune of Rs. 174 crores;
d) Pending the hearing and final disposal of the present Petition this Hon'ble Court be pleased to direct the Respondent No. 2, to deposit an amount of Rs. 174 crores in this Hon'ble Court, if the Respondents No. 2 desires to be heard in this Petition; so that the real intent/object of depositing the disputed tax amount as per Section 406 of the Maharashtra Municipal Corporation Act, 1949 be complied with; and further the Respondent No. 1 be permitted to withdraw the said amount."

6. Writ Petition No. 9321 of 2015 was disposed of as withdrawn by this Court by means of the order dated 9th December 2020 with liberty to file a writ petition in the nature of a PIL petition in respect of the same subject matter.

7. Thus, it is apparent that the petitioner was very well aware of the order/letter dated 10th February 2015, whereby the notice issued to respondent no. 2 was cancelled by respondent no. 1 for recovery of LBT. However, while filing the instant petition in the shape of PIL petition, the petitioner has not made any mention of the said order/letter dated 10th February 2015. To the contrary, a prayer has been made for issuing direction to initiate action/process for recovery though the petitioner was very well aware of the order/letter dated 10th February 2015 whereby the notice for recovery was cancelled. Such non-disclosure amounts to suppression of material fact. It is needless to say that while invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, every single individual or party is supposed to approach the Court with clean hands, which will mean disclosure of all relevant and material facts.

8. In view of the aforesaid, we are not inclined to entertain the PIL petition, which is hereby dismissed.

9. Before parting, we may observe that the facts of the case clearly call upon us to impose costs on the petitioner, however, we refrain from doing so as Mr. Gharte, learned counsel for the petitioner submits that non-disclosure of the order/letter dated 10^{th} February 2015 in this PIL petition might have occurred on account of mistake by his office.

10. An additional factor, which we must note and record our appreciation for, is the fact that by our order dated 14^{th} February 2024 the learned counsel appearing for Respondent no. 4 was to furnish information to the Court as to whether the affidavit in reply filed in Writ Petition No. 9231 of 2015 was served upon the petitioner. Ms. Chavan today informed us that since a substantial amount of time had elapsed, her instructing advocates were unable to locate any acknowledgment of service of the said affidavit upon the petitioner. Despite this, Mr. Gharte, however, very fairly submitted that an unaffirmed copy of the said affidavit was found in his papers. This conduct we find most fair and commendable.

JAYANT VISHWANATH SALUNKE

Digitally signed by JAYANT VISHWANATH SALUNKE
Date: 2024.02.21 17:51:26 +0530

(ARIF S. DOCTOR, J.) **(CHIEF JUSTICE)**