IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1566 OF 1999

Shri Gyatridevi Sansthan
Gyatridevi Mandir, Jalna
(A Public Trust Registered Under
the Bombay Public Trusts Act)
Through one of its Trustees
Shri A.R. Sharma
Age 61 years, Occ. Business
r/o Sadar Bazaar,
Jalna. ..Petitioner

Versus

1. The State of Maharashtra
(Summons to be served on the
Govt. Pleader, High Court
Building at Aurangabad)

2. The Assistant Collector
Collectorate, Jalna.

3. The Tahsildar
Tahsil Office,
Jalna. ..Respondents

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Advocate for the Petitioner : Mr. A.H. Kasliwal
AGP for Respondent/State : Mr. K.S. Patil

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : JUNE 27, 2025

ORAL JUDGMENT :-

1. The petitioner/trust impugns legality and validity of notice of demand dated 10.01.1999 issued by respondent no.3 calling upon petitioner/trust to pay an amount of Rs.2,37,585/- towards arrears of Non Agricultural Tax.

2. Mr. Kasliwal, learned advocate appearing for petitioner submits that the petitioner/trust has not used land for non-agricultural purpose. Because some work of levelling of land was undertaken by trust, impugned notice of demand has been served. Mr. Kasliwal submits that although on 12.06.1989, petitioner/trust was granted permission to lease out property by Joint Charity Commissioner, Aurangabad, actual non-agricultural use was never started. By referring to provisions of Section 44, 114 and 115 of Maharashtra Land Revenue Code, 1966, he submits that NA assessment has to be made on the basis of nature of use of land for non-agricultural purpose. In present case, the respondent/authority assessed liability without ascertaining nature of use and passed impugned order. According to Mr. Kasliwal, there is no basis for assessing dues to the tune of Rs.2,37,585/-.

3. Per contra, Mr. Patil, learned AGP submits that the petitioner/trust has sold out the land to co-operative societies and thereafter, it is being used for non-agricultural purpose. According to respondent, petitioner started non-agricultural use of land which can be gathered from panchnama that was prepared by revenue authorities.

4. Having considered submissions advanced, it would be necessary to delve into the relevant provisions under Maharashtra Land Revenue Code. Section 113 provides the power to District

Collector to fix standard rate of non-agricultural assessment. Section 114 provides different purposes of use of agricultural land and assessment is expected to be made on the basis of nature of non-agricultural use. Section 115 deals with date of commencement of non-agricultural assessment, which states as under :

> *"[Except as otherwise directed by the State Government in the case of co-operative societies and housing boards established under any law for the time being in force in this State, the non-agricultural assessment] shall be levied with effect from the date on which any land is actually used for a non-agricultural purpose."*

5. Looking to the scheme of Code, it is expected that before assessment and levying of non-agricultural tax, it is for the Collector or revenue authority to decide the date of commencement of non-agricultural use and also delve into nature of use. In present case, nothing is placed on record to discern basis for assessment of non-agricultural tax and issuing impugned notice to petitioner. Only reliance is placed on Government Resolution No. GCR and FD-UNF-1967/I-R dated 09.03.1970, which deals with change in use of land from agriculture to non-agricultural purpose. However except reference, it has not been explained that how that government resolution applies in facts of present case.

6. Mr. Kasliwal placed his reliance on judgment of this Court in case of **Agricultural Produce Market Committee Vs. State of Maharashtra** reported in **2005 (Supp) Bom. C.R. 893**. This Court in para 8 of judgment has observed thus :

"that section 115 of Maharashtra Land Revenue Code specifically states that non-agricultural assessment is to be levied from the date on which the land is actually used fo non-agricultural purpose. Here all the lower authorities have not tried to find out the date on which the petitioner APMC has actually put the acquired land to non-agricultural use".

7. This Court in para 9 of judgment has observed thus :

"Perusal of section 114(1) of M.L.R. Code shows that it contemplates different rates of n.a. assessment for industrial use vide its Clause 1(b), different rate for commercial use vide Clause (c) and still another rate for any other non-agricultural purpose vide Clause 1(d). According to Counsel for petitioner, the case of the petitioner falls under the non-agricultural purpose as defined in section 14(d), however, the authorities below have erroneously treated it as the case falling under section 114(1)(c). As there is no definite material available on record in this respect it is not possible for this Court to express any opinion on this controversy."

8. In that view of matter, this Court deems it fit to quash and set aside the impugned order and relegate the matter to respondent/authorities to reconsider the matter in light of aforesaid observations and after granting an opportunity of hearing to petitioner/trust, pass a fresh order.

9. Writ Petition stands disposed of in aforesaid terms.

(S.G. CHAPALGAONKAR, J.)

Mujaheed//