IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3160 OF 2016

Super Agricultural Produce Market
Committee, Aurangabad,
Shri Chatrapati Shivaji Maharaj
Bazar Sankul Sevabhavi Sanstha,
Jadhavwadi, Aurangabad,
Through its Secretary .. Petitioner

Versus

1. The Municipal Corporation,
Aurangabad through its
Municipal Commissioner.

2. The Tax Assessor and Collector,
Municipal Corporation, Aurangabad. .. Respondents

Shri S. S. Thombre, Advocate for the Petitioner.
Shri J. R. Shah, Advocate for the Respondent Nos. 1 and 2.

WITH
CIVIL APPLICATION NO. 4533 OF 2019

Super Agricultural Produce Market
Committee, Aurangabad,
Through its Secretary .. Applicant

Versus

1. The Municipal Corporation,
Aurangabad through its
Municipal Commissioner
and another .. Respondents

Shri S. S. Thombre, Advocate for the Applicant.
Shri J. R. Shah, Advocate for the Respondent Nos. 1 and 2.

WITH
CIVIL APPLICATION NO. 833 OF 2024
IN
CIVIL APPLICATION NO. 4533 OF 2019
IN
WRIT PETITION NO. 3160 OF 2016

1. The Municipal Corporation, Aurangabad through its Municipal Commissioner and another .. Applicants

Versus

Super Agricultural Produce Market Committee, Aurangabad, Through its Secretary .. Respondent

Shri J. R. Shah, Advocate for the Applicants.
Shri S. S. Thombre, Advocate for the Respondent.

CORAM : S. G. MEHARE AND SHAILESH P. BRAHME, JJ.

CLOSED FOR JUDGMENT ON : 26.02.2025
JUDGMENT PRONOUNCED ON : 20.03.2025

JUDGMENT (*Per Shailesh P. Brahme, J.*) :-

. Rule. Rule is made returnable forthwith. Heard both sides finally with their consent at the admission stage.

2. Petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India for challenging the notices and order dated 11.03.2016 charging the tax for six sale halls recoverable from the petitioner.

3. Against the impugned notices and order appeal is

maintainable U/Sec. 406 of the Maharashtra Municipal Corporation Act, 1949 (hereafter referred as to the 'Corporation Act' for the sake of brevity and convenience). The present petition was entertained and interim directions were issued on 16.03.2016 to the petitioner to deposit Rs. 25,00,000/-. The amount was deposited. Thereafter, notices were issued demanding property tax from the petitioner and its administrative office was also sealed on 30.03.2019. Petitioner preferred Civil Application No. 4533 of 2019 for unsealing the office. In that civil application order was passed on 02nd April, 2019 directing the petitioner to deposit Rs. 50,00,000/- in two installments. Thus, the petition was being entertained on merits since its filing. Due to interim directions amount is deposited in this Court. Under these peculiar circumstances, we find that it would be inappropriate to relegate the parties to the alternate remedy. Though, the respondent corporation persistently objecting the maintainability of the petition, we deem it fit to hear the matter on merits.

4. The petitioner is incorporated U/Sec. 11 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for the sake of brevity and convenience hereinafter referred as to the "Market Committee Act"). It's market is located at Jadhavwadi, Chhatrapati Sambhajinagar. The controversy is in respect of liability to pay property tax of five sale halls located in the market committee. There are constructed shops inside the committee's premises, which are allotted to different traders. The traders are being charged

property tax by the corporation. They are paying the said tax to the respondents/corporation. The space in between the shops is the disputed premises for which the corporation has levied property tax. Admittedly, the open space between the shops is enclosed by tins. It is used by the agriculturists to store their goods or agricultural produce free of costs. This is a facility extended by market committee to the agriculturists without charges. According to the petitioner this is not a building and no tax can be leviable for the same.

5. The respondents issued demand notices of the property tax to the petitioner. Petitioner submitted reply to the demand notices on 23.01.2016. After hearing the stake holders, the respondent No. 2 passed order overruling the objection of the petitioner for leving property tax. It was held that the tax was validly levied U/Sec. 127, 128 and 129 of the Corporation Act and directed the petitioner to pay the same. Against the notices and order dated 11.03.2016, present petition is filed.

6. By order dated 02.04.2019, the respondents were restrained from taking coercive action against the petitioner on the basis of demand notices.

7. Mr. Siddheshwar Thombre, learned counsel for the petitioner submits that imposition of property tax for six sale halls amounts to double taxation and there is no sanctity for the tax. He would submit that the sale halls are not incurring any profit or revenue to the petitioner. Those are being used free of

cost and it's a facility extended to agriculturists and, therefore, no tax is leviable. It is further submitted that sale halls are actually open space between two shops and it is not a building so as to incur any tax. He would further submit that petitioner is a local body and its market funds can be utilized for the purposes enumerated in Sec. 37 of the Market Committee Act. The payment of taxes is not covered by the said provision and, therefore, it is not liable to pay any tax.

8. Per contra, Mr. J. R. Shah, learned advocate for the respondents repels the submissions of the petitioner on the basis of affidavit in reply. He would submit that the petitioner and its representatives were extended opportunity of hearing. By order dated 11.03.2016 the objection of the petitioner was also overruled. The petitioner is liable to pay property tax, which is in consonance with Sec. 127, 128 and 129 of the Corporation Act. It is further submitted that the petitioner is not entitled to any exemption. Neither there is provision in the Market Committee Act, nor the Corporation Act to absolve the petitioner from the liability of the property tax. It is further submitted that the petitioner is consistent defaulter. Due to the interim order passed on 02.04.2019, respondents were unable to take any action against the petitioner. It is submitted that as of March 2023 the outstanding arrears were Rs. 3,37,04,074/-.

9. Having heard both sides, what needs to be decided is as to whether the sale halls of the petitioner are chargeable for property tax under the Corporation Act or not. There is no

dispute that the petitioner has constructed shops in the premises of Market Committee at Jadhavwadi. The open space between the shops is enclosed by tin shed and it is been called as sale halls. It is being used by the agriculturists free of costs for keeping or storing their goods or the agricultural produce. The traders to whom the shops are allotted are paying individual property taxes to the respondents.

10. It would be relevant to refer to few provisions of the Corporation Act.

The Maharashtra Municipal Corporation Act, 1949

1. …..
2. …..

127. (1) For the purposes of this Act, the Corporation shall impose the following taxes, namely :—

(a) property taxes ;

(b) a tax on vehicles, boats and animals.

(2) In addition to the taxes specified in sub-section (1) the Corporation may for the purposes of this Act and subject to the provisions thereof impose any of the following taxes, namely :—
1 ** *
2** * * * * * * * *
(c) a tax on dogs ;

(d) a theatre tax ;

(e) a toll on animals and vehicles, 3 ** * * * entering the City ; *

[(f) any other tax 4 [(not being a tax on profession, trades, callings and employments),] which the 5[State] Legislature has power under the 6 [Constitution] to impose in the 5 [State].

The Corporation Act empowers the corporation to impose the property tax vide Sec. 127(1)(a). The corporation is entitled to levy property tax which is provided by Section 128-A of the Corporation Act.

11. Section 128A of the Corporation Act is as follows :

The Maharashtra Municipal Corporation Act, 1949

1. …..
2. …..

[128A. (1) Property taxes leviable on buildings and lands in the City under this Act shall include water tax, water benefit tax, sewerage tax, sewerage benefit tax, general tax, education cess, street tax and betterment charges. (2) For the purposes of levy of property taxes, the expression " building " includes a flat, a gala, a unit or any portion of the building.

(3) All or any of the property taxes may be imposed on a graduated scale. (4) Save as otherwise provided in this Act, it shall be lawful for the Corporation to continue to levy all or any of the property taxes on the rateable value of buildings and lands until the Corporation adopts levy of any or all the property taxes on such buildings and lands on the capital value thereof under sub-section (2) of section 129.]

12. The definition of building is as follows :

The Maharashtra Municipal Corporation Act, 1949

1. …..
2. …..
2(1) …..

(5) " building " includes a house, out-house, stable, shed, hut, and other enclosure or structure whether of masonry, bricks, wood, mud, metal or any other material whatever, whether used as a human dwelling or otherwise, and also includes verandahs, fixed platforms, plinths, doorsteps, walls including compound walls and fencing and the like ;

13. It is the case of the petitioner that open space between the shops is enclosed by tin shed and that is being called as sale hall and the corporation is demanding property tax for the same. The definition of building clearly covers shed. There is no provision pointed out by the petitioner from the Corporation Act granting exemption to agricultural produce market committee from paying taxes for the shed. We therefore find that the respondent corporation has legal sanctity to charge property tax for the sale halls of the petitioner. They are justified in demanding the tax.

14. The market committee is permitted to spent market funds for the purpose enumerated in Section 37 of the Market Committee Act. It is permitted to spent market fund as per Section 37(1)(b) Market Committee Act for maintenance, improvement and development of the market. Although there is

no specific clause regarding payment of taxes to the local body. However, the same is covered by Section 37(1)(b) of the Act. We have not been pointed out any provision from the concern Act to show that petitioner has been granted any exemption from payment of property tax. Therefore, we do not approve the submissions of the petitioner in this regard.

15. The activity which is being conducted in the sale hall is for the benefit of the agriculturists and that is free of charge. Just because the premises is being used free of charge cannot be decisive factor for granting exemption to the petitioner from payment of property tax. The traders who are allotted shops in the premises of the committee are paying taxes to the corporation. Those taxes are not being paid by the petitioner. Therefore, it cannot be said that imposing property tax on sale hall amounts to double taxation.

16. For the reasons stated above, we find no substance in the petition. The petitioner is liable to pay arrears of taxes since 2015-2016. The amount deposited in this Court by the petitioner needs to be released in favour of the respondents with accrued interest. We therefore, pass following order.

O R D E R

(I) The writ petition is dismissed.

(II) Rule stands discharged.

(III) The civil applications also stand disposed of.

[SHAILESH P. BRAHME, J.] **[S. G. MEHARE, J.]**

bsb/March 25