(2009) 09 BOM CK 0081

In the Bombay High Court

Case No : Writ Petition No. 6247 of 2008

Shri. Ajitsingh Bhimsingh Deore APPELLANT

Vs

Sahebrao Bhata Wagh, Chief Executive Officer, Zilla Parishad and Gramsevak Gram Panchayat RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 129, 129(2), 14(1), 14A, 16(2)
Bombay Village Panchayats Rules, 1959 — Rule 8
Constitution of India, 1950 — Article 227

Citation : (2009) 6 BomCR 88

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : G.V. Wani, for the Appellant; M.S. Deshmukh and K.M. Nagarkar, holding for B.S. Mundhe, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—Rule. Rule returnable forthwith. Heard finally with the consent of the parties.

2. This Writ Petition takes exception to the Judgment and Order passed by the Additional Commissioner, Nashik Division, Nashik in Gram Panchayat Appeal No. 43 of 2008 dated 6/9/2008 confirming the Judgment and Order passed by the Additional Collector, Jalgaon in Dispute No. 14 of 2008 dated 13/5/2008.

3. The background facts of the case are as under:

The petitioner herein is an elected Member of Gram Panchayat, Wadgaon Mulane, Tq. Pachora, Dist. Jalgaon and working as Dy. Sarpanch. A Tax bill as contemplated u/s 129 of the Bombay Village Panchayat Act came to be issued to the petitioner for house bearing No. 332 situated at Wadgaon Mulane, Tq. Pachora, Dist. Jalgaon. According to the petitioner, the said bill has been prepared on 25/4/2007 and same is for the year 20072008. It is the case of the petitioner that the said house stands in the name of Rajendra Bhimsingh, who is brother of present petitioner. It is the case of the petitioner that, in fact he is not the owner of the said house nor there is any joint family. According to the petitioner, he resides at different place and he is holding ration card issued in his favour, which shows that he is not residing in the premises, for which tax bill has been issued.

4. It is further case of the petitioner that on non payment of the said bill within stipulated period, immediately an application for disqualification was moved against him before the Collector u/s 14A of the Bombay Village Panchayat Act, 1958 (for short '' the Act '') bearing Dispute Application No. 14 of 2008. The petitioner appeared before the Collector and after hearing the petitioner, the Collector allowed the application and order of disqualification u/s 14A of the Act has been passed against the petitioner.

5. The petitioner being aggrieved by the Order of the Collector, preferred Appeal before the Commissioner, Nashik Division, Nashik bearing Gram Panchayat Appeal No. 43 of 2008. The said Appeal came to be dismissed on 6/9/2008. Hence, this Writ Petition.

6. The learned Counsel for the petitioner submitted that the specific ground was raised before the Additional Commissioner that the bill that had been issued, is not due on the date when it has been issued. Learned Counsel further submits that said bill pertains to the current year and it does not amount to be a bill due as contemplated under the law. Learned Counsel further submitted that the house belongs to his brother and they have joint family and petitioner is residing at different place and, therefore, had no knowledge of the said bill. Learned Counsel further submitted that the proper procedure in regard to disqualification proceedings u/s 14A of the Act has not been properly followed. Learned Counsel further submitted that the State of Maharashtra has issued Circular on 6/4/2006 prescribing the procedure and said Circular has not been followed by the parties while disqualifying the present petitioner. Learned Counsel further submitted that the alleged bill had not been served on the petitioner as required u/s 129 (2) of the Act. It is further submitted that the Order of disqualification has to be passed by the Collector as required u/s 16 (2) of the Act and in the instant matter, it has been passed by the Additional Collector. It is further argued that the Appeal is required to be heard by the learned Commissioner , however, notice for hearing and actual hearing has taken place before the Additional Commissioner and, therefore, the Order passed by the Additional Commissioner is without jurisdiction. It is submitted that the Additional Commissioner has not considered these important points and the Appeal of the petitioner came to be dismissed. Learned Counsel further submitted that the alleged bill is not at all the amount due towards village panchayat on the date of issuance of the bill. It is further submitted that no proper opportunity of hearing was given to the petitioner by the authorities.

Learned Counsel further submitted that on 6/9/2008 when Additional

Commissioner passed order, said order was without jurisdiction. Learned Counsel further invited my attention to Rule 8 of the Maharashtra Village Panchayat Tax and Fees Rules, 1960 and submitted that the tax shall be leviable for the year beginning on 1st April and ending on 31st March and shall not come into force except on the following dates, viz. 1st April, 1st July, 1st October or 1st January, in any year and if it comes into force on any day other than the 1st April, it shall be leviable by the quarter till the 1st April next following. Learned Counsel further submitted that the composite bill of one year can not be issued. Learned Counsel placed reliance on the reported Judgment of this Court reported in Angha Ajit Bhatkar Vs. State of Maharashtra and Others,

Therefore, learned Counsel submitted that the Writ Petition deserves to be allowed. Learned Counsel relief on pleadings in the petition and grounds therein in support of his contention.

7. Learned Counsel appearing for the respondent submitted that this Court in L.P.A. No. 154 of 2008 in case of Namdeo Pandhare v. State of Maharashtra, in paragraph 5 it has held that in the light of Section 182 (1) of the Bombay Village Panchayat Act, the delegation of power by the State Govt. either to the Commissioner or to any other Officer to exercise any of the powers which may be exercised by the State Government under the Bombay Village Panchayat Act can be conferred. The Division Bench while hearing said L.P.A., has noticed the Judgment of this Court in case of Atmaram Chapa Sandanshiv and anr. v. Shamshadbi Bashir Shah Fakir and Ors. Reported in 2008 (3) Mah.L.J. 906 and the Judgment of the Supreme Court in case of Vijay Vs. State of Maharashtra and Others, and after hearing the parties, came to the conclusion that the Additional Commissioner is competent to decide the case. Therefore, the learned Counsel would submit that the contention raised by the counsel for the petitioner that the Additional Commissioner has no jurisdiction to hear the Appeal filed by the petitioner, has no force.

8. Learned Counsel appearing for respondent No. 1 further invited my attention to the findings recorded by the Additional Commissioner and submitted that the Additional Commissioner has recorded the finding that the house No. 332 is joint family property and the petitioner''s residence in voter''s list is shown as House No. 332. Therefore, learned Counsel would submit that once both the authorities have come to the conclusion that House No. 332 is joint family property, of which petitioner is a member and his address in the voter''s list is shown as House No. 332, in that case, this Court may not interfere in writ jurisdiction to up set the findings recorded by the authorities below. Learned Counsel further invited my attention to Section 14 (1) (h) explanation of the Bombay Village Panchayat Act, 1958 and more particularly (ii), which reads as under:

(ii) Failure to pay any tax or fee due to the panchayat by a member of an undivided Hindu family, or by a person belonging to a group of unit, the members of which are by custom joint in estate or residence, shall be deemed to disqualify all members of such undivided Hindu family or as the case may be all the members of such group or unit .

9. Learned Counsel for the respondent No. 1 further submitted that Rule 8 of the Bombay Village Panchayat Tax and Fees Rules provide that tax shall be leviable for the year beginning on 1st April and ending on 31st March. Therefore, learned Counsel invited my attention to page 11, which is demand notice for tax, which in foot note at Sr. No. 1 shows that the Gram panchayat has demanded the outstanding bills for 20052006 and further for the year 20062007. Therefore, the learned Counsel for respondent No. 1 submitted that in the light of provisions of Rule 8 of said Rules, said demand notice for bill, is perfectly sustainable. Learned Counsel further invited my attention to the reported Judgment of this Court in case of Gangubai Laxman Bansode and Others Vs. State of Maharashtra and Others, and more particularly paragraph 11 of the said Judgment and submitted that this Court has interpreted provisions of Section 14 (1) (h) explanation (ii) and confirmed the view of the Additional Collector in that case and, therefore, in this case also the authorities below have correctly interpreted said Sections and under Article 227 of the Constitution of India, interference by this Court is not warranted.

10. I have heard learned Counsels appearing for the respective parties, also perused the petition, annexures thereto and impugned Judgment and Order of the Additional Commissioner. The Collector as well as the Additional Commissioner have recorded the findings of facts that the house No. 332 situated within the limits of Gram Panchayat Wadgaon Mulane, was owned by father of the petitioner/appellant. After the death of the father of petitioner, only name of the brother of the petitioner was recorded as owner of the said house. The present petitioner filed complaint stating therein that since the house No. 332 is joint family property and the petitioner has share in the said house and his name should be entered in record. On an application filed by the petitioner and since the names of all legal heirs of the father of the petitioner were not entered in the record, house No. 332 again came to be recorded in the name of father of the petitioner. It is also further observed that the residential address of the petitioner in the voter''s list is shown House No. 332 and in view of the fact that the petitioner being member of joint family, though notice was issued to the members of the family, no tax bill has been deposited within prescribed time limit and, therefore, the petitioner is disqualified u/s 14 (1) (h) to continue as member of the Panchayat. Therefore, it appears that this finding is concurrent finding on facts recorded by the authorities below.

11. So far first contention of the learned Counsel for the petitioner that the Additional Commissioner has no power or jurisdiction to decide the Appeal, has no force in view of the Judgment of this Court in L.P.A. No. 154 of 2008 dated 11/9/2008. So far second contention of the learned Counsel for the petitioner that he is resident of Pachora and to that extent, ration card is issued in his name and, therefore, he is not residing in house No. 332 and said house is the property belonging to his brother, can not be accepted in view of the concurrent

findings on facts recorded by the Collector as well as Additional Commissioner as stated herein above. The third contention of the learned Counsel for the petitioner on interpretation of Rule 8, has no force since it clearly appears that the demand notice is in consonance with provisions of Rule 8 of the Bombay Village Panchayat Act and Rules. It clearly appears on perusal of Rule 8 of the said Rules that the bill for whole year can be issued, that too, in advance. Though the learned Counsel has placed reliance on the reported Judgment of this Court in case of Angha Ajit Bhatkar Vs. State of Maharashtra and Others, , it clearly appears that the facts of that case are different. In that case, the tax bill served on petitioner therein, were not lawfully due. In the instant case, authorities below have clearly held that the tax amount was due towards the joint family residing in house No. 332 of village Wadgaon Mulane. I find considerable substance in the arguments advanced by the learned Counsel for the respondent that the present case squarely falls under the provisions of Section 14 (1) (h) explanation (ii). The reliance placed by the learned Counsel for respondent No. 1 on reported Judgment of this Court in Gangubai''s case (cited supra), in the facts of this case, is also relevant.

12. Therefore, taking overall view of the matter and in view of the fact that the authorities below have taken a reasonable and plausible view and have arrived at correct conclusion. Therefore, interference under extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India, is not warranted. Rule discharged. Hence, Writ Petition is dismissed. Interim relief stands vacated. Civil Application, if any, stands disposed of in view of disposal of main Writ Petition.

