

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 5th OF JULY, 2024

WRIT PETITION No. 17290 of 2024

(MS PARKSON DECOR GALLERIA PRIVATE LIMITED THROUGH DIRECTOR PRASHANK GUPTA

Vs

INDORE MUNICIPAL CORPORATION INDORE AND OTHERS)

Appearance:

(SHRI VISHAL BAHETI, LEARNED COUNSEL FOR THE PETITIONER) .

*(SHRI ANIKET NAIK, LEARNED COUNSEL FOR THE RESPONDENTS NO.1
& 2)*

ORDER

1. Heard on the question of admission.
2. This writ petition has been filed by the petitioner under Article 226 of the Constitution of India, against the order dated 22.06.2024 (Annexure P/5), and sealing of the shop of the petitioner passed by the respondent No.2/The Assistant Revenue Officer, Indore Municipal Corporation, Indore and sealing of the rented premises of the petitioner for alleged recovery of property tax.
3. Shri Vishal Baheti, learned counsel for the petitioner has relied upon the decision rendered by the co-ordinate Bench of this Court in *W.P. No.13560/2018 (Sohel Ansari vs. Indore Municipal Corporation and another) dated 27.8.2018* wherein also, in a petition filed by a tenant, it has already been held that the Municipal Corporation has no right to seal or lock the rented premises for

recovery of property tax. Thus, it is submitted that the petition deserves to be allowed.

4. Shri Aniket Naik, learned counsel for the respondents no.1 & 2 Municipal Corporation, Indore has filed a preliminary reply and it is submitted that the petition itself is not maintainable as it has been filed by the tenant who is not even tenant of the original owner, but of a lessee. It is also submitted that the Indore Municipal Corporation would also not be able to attach the rent as provided under Section 134 (6) of the M.P. Municipal Corporation Act, 1956 (hereinafter referred to as “the Act of 1956”), as the rent agreement itself is of 2017 and that too without any escalation clause nor there any extension clause provided in the said agreement. It is also submitted that the petitioner has challenged the demand notice issued to the owner of the property, whereas, the petitioner being a tenant cannot challenge the aforesaid notice and thus, on this count also the petition deserves to be dismissed.

5. Heard. On due consideration, and on perusal of the documents filed on record, this Court finds that the issue raised in the petition has already been decided by the co-ordinate Bench of this Court in the case of *Sohel Ansari* (supra), which read as under:-

“ By this writ petition, the petitioner has challenged the action of respondent no. 1 in putting lock on the rented shop of petitioner. The petitioner's case is that he had taken the shop at 159 MG Road Paliwal Tower Indore on rent from respondent no. 2 and respondent no. 2 had committed default in payment of property tax, therefore, the shop of petitioner has been illegally locked by respondent no.1. Respondent no. 1 has filed reply and taken the stand that the impugned action has been taken by respondent no. 1 to

recover the property tax which was due and payable by respondent no.2. Having heard the learned counsel for the parties and on perusal of the record it is noticed that issue of jurisdiction of respondent no. 1 Municipal corporation to seal or lock the rented premises for recovery of property tax is already settled by this court wherein it has been held that Municipal corporation has power to attach the rent but it does not have the power to seal the rented premises for recovery of property tax. In this regard in the matter of *Saleem Mansoori and others Vs. Municipal Corporation and others reported in 2009(3) MPLJ 519* it has been held as under:

(6) A close perusal of the aforesaid provisions reveals that, it is within the power of the municipal corporation, to recover the property tax charged and levied on the owner even from the occupier of said premises in the manner and to the extent as is provided in the act. Whereas, section 134 (6) stipulates that in case of property tax, by the attachment of rent due in respect of the property. A conjoint reading of section 141 (2) and section 134 (6) reveals that the recovery of property tax, if it is to be effected on an occupier who happens to be tenant which can only be by attachment rent due in respect of the said property. Learned counsel for the respondent - corporation has failed to show any provision which empowers the municipal corporation to effect recovery by putting a lock over the property in occupation of a tenant to effect recovery of property tax.

The Coordinate Bench of this court also in the matter of Kewalram Jaswani Vs. Indore Municipal corporation and another in WP no. 7260/18 vide order dated 4/4/2018 taking note of the provision of Municipal Corporation Act has held that the law does not provide for placing a lock over the premises which is being used by the tenant.

Considering the legal position this court vide interim order dated 20th July 2018 had directed the respondents to open the lock put-up in the shop of petitioner.

Counsel for petitioner has informed that lock has now been opened.

Learned counsel for respondent no. 1 submits that premises in question was locked because respondent no. 1 was not aware of the fact that it was a tenanted premises. Having regard to the aforesaid factual and legal position and also taking into account of the fact that respondent no. 1 municipal corporation has no right to seal or lock the rented premises for recovery of property tax, the present writ

petition is disposed off by restraining the respondent no. 1 from putting the lock in the premises in question for the recovery of property tax. However, the respondent no. 1 would be at liberty to attach the rent and take other action as has been provided under the Act.”

(emphasis supplied)

6. A bare perusal of the aforesaid order reveals that this Court has already relied upon the earlier decision in the case of ***Saleem Mansoori and others vs. Municipal Corporation and others*** reported as ***2009(3) MPLJ 519***, and has held that the Municipal Corporation has no right to seal or lock the rented premises for recovery of property tax.

7. In such circumstances, the present petition is also hereby *disposed of*, with a direction to the respondents No.1 & No.2 to refrain them from putting the lock in the premises rented by the petitioner for recovery of property tax, and the locks which have already been sealed be removed immediately. However, the respondents No. 1 & 2 shall be at liberty to attach the rent and take other action as has been provided under the Act.

8. With the aforesaid direction, the petition stands *disposed of*.

(SUBODH ABHYANKAR)
J U D G E