

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1355 OF 2014

Mata Jagdamba Mastya Utpadak Sahakari
Sanstha, Ltd., At post Foopnagari,
Tq. & Dist. Jalgaon.
Throug its Chairman
Sow. Rajni w/o Prakash Sapkale
R/o Foop Nagari At post Foopnagari,
Tq. & Dist. Jalgaon.

...Petitioner

versus

The Municipal Corporation, Jalgaon City,
Jalgaon, 17, Floor Building, V. V. Market,
Jalgaon, Tq. & Dist. Jalgaon.

...Respondent

.....
Mr. P. N. Kutti, Advocate for petitioner.
Mr. V. D. Gunale, Advocate for respondent.
.....

CORAM : N.W. SAMBRE, J.

DATED : 7TH JANUARY, 2015

PER COURT :

. With the consent of the parties, heard finally.

2. The petitioner filed a suit some time in 2007 questioning the legality and validity of the resolution of the Standing Committee of respondent-Municipal Corporation dated 27/12/2006 in the Court of Civil Judge, Senior Division, Jalgaon. When the suit has reached at

the stage of recording of evidence, present petitioner-plaintiff filed an application Exhibit-115 praying therein issuance of summons to the authorities mentioned in the said application. The application came to be rejected by the impugned order dated 20/01/2014. As such, present writ petition.

3. Mr. Kutti, learned Counsel for the petitioner-plaintiff submits that the documents are not at the command for disposal of the plaintiff. As such, he has moved an application Exhibit-115, which according to him, is permissible in view of the provisions of Order 16 Rule 6 of the Code of Civil Procedure, which pertains to summons to produce the documents.

4. He further urged that petitioner should have been permitted, in the interest of justice, so as to take up his claim to the logical end, the examination of witnesses mentioned in Exhibit-115 are necessary.

5. Mr. V.D. Gunale, learned Counsel for the respondent-defendant submits that the application is rightly rejected by learned trial Court, as according to him, requirements of Order 16 Rule 6 of Code of Civil Procedure are not satisfied by present petitioner. He submits that the petitioner has neither filed list of witnesses at an

appropriate stage mentioning that District Fisheries Development Officer or office bearers of Maharaja Fisheries Society from Gujrat will be cited/be summoned as witnesses. He further submits that what is sought to be summoned by Exhibit-115 is not only the documents but also the petitioner intend to examine independent witnesses. He prays for dismissal of the writ petition.

6. Having considered the rival contentions of the parties, upon perusal of Exhibit-115 an application for summoning witnesses and production of record, it is noticed that the petitioner without giving details of the same witnesses in the suit or otherwise moved an application at the stage of recording of evidence. What is sought by the petitioner is production of record, so also examination of witnesses in support of documents mentioned in the application. The documents mentioned in the application, if are perused and tested in the light of prayer made in the plaint, it is required to be noted that the claim in the suit is for declaration of resolution passed by the respondent Municipal Corporation is illegal and which will have hardly any bearing of the evidence of independent witnesses, which are sought to be examined.

7. Furthermore, it was open for the present petitioner to demonstrate efforts made by him so as to secure the documentary

evidence in support of his claim made in the suit. It is not in dispute that the provisions of Right to Information Act are available to the present petitioner.

8. If the application Exhibit-115 is granted, the same will amount to permitting the petitioner to use Court machinery for the purpose of carrying discreet enquiry and collecting evidence.

9. No illegality is noticed in the order impugned. As such, writ petition stands dismissed.

10. At this stage, learned Counsel for the petitioner submits that the petitioner be granted liberty to approach the public authorities for copies of documents so as to produce the same on record.

11. Liberty, subject to provision of relevant law.

[N.W. SAMBRE, J.]