

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

WRIT PETITION NO.1740 OF 2015

Marathwada Shikshan Prasarak Mandal ... PETITIONER

VERSUS

The Municipal Corporation, Aurangabad ... RESPONDENT

.....
Shri D.J. Choudhary, Advocate for petitioner
.....

CORAM: S.V. GANGAPURWALA, J.

DATED: 23rd March, 2016.

ORAL ORDER :

1. The application filed by the petitioner/ plaintiff to frame the additional issue, so as to cast burden upon the defendant to prove that the defendant levied the taxes by following due procedure of law came to be rejected. It is the contention of the plaintiff that the defendant has not adhered to the procedure. In para 7 of the plaint, the plaintiff has averred

that the defendant has not followed the procedure laid down in Chapter VIII of Schedule of the Bombay Provincial Municipal Corporations Act. It is for the plaintiff to aver and prove as to how the procedure has not been followed. Vide the issue sought to be framed, the plaintiff wants to cast burden upon the defendant. It is for the plaintiff first to aver and then to lead evidence to the effect that the defendant has not followed the procedure as laid down in Chapter VIII and thereafter the burden would shift on the defendant to show that the procedure has been followed. It is the plaintiff who is seeking the relief from the Court and against the defendant.

2. Mr. Chaudhary, the learned counsel for petitioner, in alternate, submits that, the said issue be framed in a manner it casts burden upon the plaintiff, as according to the learned counsel, the defendant cannot charge the taxes except in accordance with the procedure of law.

3. In light of the above, the impugned order is not interfered with. However, the Court may frame the issue as suggested by the plaintiff as under :

"Whether the plaintiff proves that the taxes

levied as alleged in the impugned bills are without following due procedure of law as contemplated under the Maharashtra Municipal Corporations Act."

2. Writ Petition accordingly disposed of.

(S.V. GANGAPURWALA, J.)

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