

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1866 OF 2016

Forest Development Corporation of Maha. Ltd. Thr. Its Divisional Manager, Ballarpur,
Dist. Chandrapur.

-vs-

State of Maharashtra, Thr. its Secretary to the Govt. of Maharashtra, Urban Development
Dept. Mantralaya, Mumbai and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri M. M. Sudame, Advocate for petitioner.
Shri J. Y. Ghurde, AGP for respondent No.1/State.
Shri M. I. Dhatrak, Advocate for respondent No.2.

**CORAM : B.P.DHARMADHIKARI &
A.S.CHANDURKAR, JJ.**

DATE : September 07, 2016

Heard Advocate Shri Sudame for the petitioner who urged that land identified as House No.16 or 47 in demand by respondent No.2 Municipal Council is reserved forest and therefore cannot be assessed to property tax under Section 105 of Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965.

Advocate Shri Dhatrak for respondent No.2 submits that initially an appeal which is available under Section 169 was filed before the JMFC, Rajura vide Municipal Appeal No.1/1991 challenging the demand notice dated 09/07/1994. After dismissal of that appeal, no further action has been taken.

The petitioner filed R.C.S. No.80/2012 seeking declaration

and permanent injunction. Court of Joint Civil Judge, Junior Division, Ballarpur on 31/08/2013 dismissed that suit with costs. Against this adjudication, appeal under Section 96 of the Code of Civil Procedure was filed. That has been withdrawn unconditionally later on.

Advocate Shri Dhatrak therefore submits that in this situation, these contentions are not open in present writ petition. Learned AGP appearing for respondent Nos.1 and 3 supports the arguments of Shri Dhatrak.

In view of earlier adjudication the issue has achieved finality is apparent. When in civil suit, the Trial Court has found that the plaintiff before it failed to establish that suit land was protected forest and did not attract levy of property tax, this negative finding operates as *res judicata* and we cannot in writ jurisdiction ignore it. Similarly against adjudication by learned JMFC remedy of filing revision was available and that has not been taken recourse to.

In this situation, challenge to demand notice issued later on and for the first time before this Court in writ jurisdiction is misconceived. Hence, with liberty to the petitioner to take such other steps as are open in law, we dispose of the writ petition with no order as to costs.

JUDGE

JUDGE

-: C E R T I F I C A T E :-

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