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

**SECOND APPEAL NO. 161 OF 1996 (AURANGABAD)
SECOND APPEAL NO. 64 OF 1988 (BOMBAY)**

Dhule Municipal Council,
Dhule

..APPELLANT

VERSUS

1. Dhule Motor Owners Co-operative
Consumers Stores, Dhule,
Through its Chairman
Shri Mohanlal Maniklal Bafna.

2. Mohanlal Maniklal Bafna,
Chairman,
Dhule Motor Owners Co-operative
Consumer Stores, Dhule.

..RESPONDENTS

Mr Rahul Raghuwanshi, Advocate h/f Mr. R.B.
Raghuwanshi, Advocate, Advocate for appellant

CORAM : N.W. SAMBRE, J.

DATE : 15th JUNE, 2017

ORAL ORDER :

Heard Mr. Raghuwanshi, learned Counsel for
the appellant-original defendant.

2. Regular Civil Suit No. 391 of 1987 was
brought in action by the Dhule Motor Owners Co-

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operative Consumers Stores Ltd., Dhule through its Chairman against the present appellant for declaration that resolution passed by Nagar Palika on 15th May, 1987 charging Rs.5/- for sealing trucks is *ultra vires* and against the provisions of the Maharashtra Municipalities Act, 1965 and bye laws and perpetual injunction is also sought restraining the Municipal Council from charging the said amount of Rs.5/- as per resolution.

3. The said suit came to be dismissed by the judgment and decree dated 5th August, 1987 passed by Joint Civil Judge, Junior Division, Dhule. However, in appeal at the behest of original plaintiffs-respondents herein, learned District Judge, Dhule allowed the same vide judgment and order dated 14th December, 1987. As such, present second appeal by original defendant.

4. I have heard Mr. Raghuwanshi, learned Counsel for the appellant, who has tried to impress upon the Court on two grounds ; (a) that suit of

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the defendant itself was not maintainable in view of provisions of Section 303 of the Maharashtra Municipalities Act, 1965 and (b) that general body of the Municipal Council is a supreme one and has every authority to levy such charges so as to execute very provisions of the Act. According to him, as such, the appeal is liable to be allowed.

5. Respondents though served, none appears for them.

6. What could be noticed from the record and relevant statute book is relevant statutory provisions of octroi have already undergone substantial amendment in view of subsequent policy of the State Government. During pendency of present appeal, the judgment of the lower appellate Court decreeing the suit was not stayed, as such, present appellant had no authority to collect the amount during pendency of this appeal.

7. In the aforesaid background, having regard

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to the fact that levy of octroi in the Municipal Council itself is abolished, the appeal, in my opinion, has rendered infructuous. As such, the second appeal is disposed of accordingly.

(N.W. SAMBRE, J.)

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