

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

71 WRIT PETITION NO. 8089 OF 2013

UDGIR MUNICIPAL COUNCIL
VERSUS
SWAMI VIVEKANAND SHIKSHAN PRASARAK MANDAL, AHMEDPUR

...
Advocate for Petitioner : Mr. Barde Parag Vijay
Advocate for Respondents : Mr. Gunale V.D. for R/sole
...

CORAM : S.V. GANGAPURWALA, J.
DATE : 29.08.2017

P.C. :

. The present respondent has filed suit for injunction restraining the respondent from recovering the taxes. The present petitioner filed an application for framing preliminary issue of jurisdiction. The Court rejected the application, however, while rejecting the application held that the Court has jurisdiction. The said order is assailed.

2. Mr. Barde, the learned counsel submits that the petitioner had moved application for framing preliminary issue, however, instead of framing the preliminary issue with regard to jurisdiction the trial Court proceeded to hold that it has jurisdiction over the subject matter.

3. According to the learned counsel, the plaintiff has a remedy of appeal as such the jurisdiction of the Civil Court is barred.

4. Mr. Gunale, the learned counsel submits that the Court has rightly held that it has jurisdiction. If the procedure is not followed then the jurisdiction of Civil Court exist. The Court has rightly passed the order.

5. The present petitioner had filed application for framing a preliminary issue. The Court could have either allowed or rejected the application, if it would have allowed the application, the Court could only have framed preliminary issue. However, while rejecting the application, the Court could not have given finding on the jurisdiction without framing an issue of jurisdiction.

6. In light of the above I set aside the impugned order.

7. Considering the fact that much time has lapsed, it would be appropriate for the trial Court to frame the issue of jurisdiction along with all other issues and try those issues together without being influenced by the observations made while passing the impugned order.

8. The trial Court shall expedite the disposal of the suit and would preferably dispose it of within nine months. Writ petition accordingly allowed in above terms.

(S.V. GANGAPURWALA)
JUDGE