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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 2033 OF 2017**

Shri.Maruti Kondiba Gavali

... Petitioner

Versus

The Commissioner, Navi Mumbai Mun.
Corporation and Ors.

... Respondents

Mr. S.B. Deshmukh for the petitioner.

Mr. Sandeep V. Marne for the respondent.

Mr.V..N. Sagare, AGP for the respondent State.

**CORAM : SHANTANU KEMKAR &
PRAKASH D. NAIK, JJ.
DATED : FEBRUARY 14, 2017.****P.C.**

Not on board. In view of the urgency, taken on production board.

2. The grievance of the petitioner is that shows cause notice was issued to him on 17.12.2016 Exh. "Q" by the Education Officer of respondent Municipal Corporation. Reply to the same was filed by the petitioner on 04.01.2017 Exh. "R". The Education Officer on 10.01.2017 directed the petitioner to appear before the Additional Commissioner (Services) on 17.1.2017 for hearing of the matter. But before that he himself had rejected the petitioner's reply

holding that the same is not satisfactory. Thereafter according to petitioner, the hearing took place before Additional Commissioner (Services) but the impugned order has been passed on 3.2.2017 Exh. "U" by the Commissioner.

3. In the circumstances, learned counsel for the petitioner submits that there is gross violation of principles of natural justice. He submits that firstly the Education Officer could not have rejected the petitioner's reply to the show cause notice and then secondly the Additional Commissioner who had heard the matter ought to have decided the matter or the Commissioner should have heard the matter and should have decided the same. Having not done so, according to the petitioner, the impugned order as also the communication are liable to be quashed.

4. On the other hand, leaned counsel for the respondent has justified the action of the respondents and contended that since no prejudice has been caused to the petitioner, the order cannot be said to be illegal or liable to be quashed.

5. We have considered the submissions made by the learned counsel for the parties and we have also gone through the annexures filed along with the petition. Having gone through the same, we are of the view that before the matter was heard and

decided, the Education Officer could not have rejected the petitioner's reply to the show cause notice. We are also of the view that it is a settled legal position that the person who hears the matter should decide it. In the present case, the matter was heard by the Additional Commissioner and decision was given by the Commissioner. As a result, in our considered view, the impugned order cannot be sustained. We accordingly set aside the impugned communication as also the impugned order dated 3.2.2017, however, with a liberty to the respondent Corporation to consider petitioner's reply to the show cause notice afresh and pass appropriate orders after giving due opportunity of hearing to the petitioner by the Authority who will be deciding the show cause notice. With the aforesaid liberty, petition is disposed of. All the contentions of the parties are kept open.

(PRAKASH D. NAIK, J.)

(SHANTANU KEMKAR, J.)