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

WRIT PETITION NO. 3547 OF 2015

Shri Saraswati Bhuvan Shikshan Sanstha ...Petitioner

Versus

Municipal Corporation, Aurangabad. ...Respondent

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Shri. P. P. Patni h/f Shri. P. F. Patni, Advocate for the petitioner
Shri. Sambhaji S. Tope, Advocate for respondent

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CORAM : BHARATI H. DANGRE, J.
DATE : FEBRUARY 10TH, 2022

PER COURT : -

1. Heard the learned Counsel for the petitioner and perused the impugned order passed below Exh.19, by which the plaintiff sought framing of additional issue.

2. With the assistance of the learned Counsel for the petitioner, when the writ petition along with it's annexures is carefully perused, it can be discerned that the petitioner / the plaintiff, is a trust registered under the Bombay Public Trust Act and under provisions of the Societies Registration Act, is engaged in the activity of imparting education. Claiming that it is exempted from payment of property tax, the demand raised by the Municipal

Corporation, Aurangabad demanding unpaid bill was sought to be challenged by instituting a suit which is numbered as Spl. Civil Suit no. 6/2013.

. The suit being instituted in the Court of Civil Judge Senior Division at Aurangabad, sought the following relief :

> "A. That the decree for declaration that imposition of taxes on properties mentioned more specifically in schedule which is part and parcel of this plaint are illegal, null, and void-ab-initio and without following due procedure.
>
> B. That the Defendant may be permanently restrained by writ of injunction not to recover the taxes on the strength of bills mentioned in the schedule which is part and parcel of the plaint totaling to Rs. 16,92,109/- for the period from 2010 to 2013 in respect of the properties CTS No. 5095. CTS No. 4987 and M.No.H.No. 5/21/06/P consisting of various building situated at S.B. Colony, Aurangpura, Aurangabad."

3. The aforesaid relief is sought in the backdrop of the pleading that the plaintiff is a Charitable Trust and is exempted from paying taxes as per Section 132(1)(b) of the Bombay Provincial Municipal Corporation Act. The specific pleading is to the effect that all the buildings owned by the plaintiff are put to use for education purpose and since it is not engaged in any trade or commercial purpose, nor does the plaintiff receive any rent or income from the buildings, the demand is unjustified. It is specifically pleaded that the defendant without any authority has recovered general taxes

from the plaintiff and on inquiry by the plaintiff, he has gathered information that the Municipal Commissioner of the Corporation by his order dated 12.02.2008 has granted 100% exemption of general and education tax being charged to the Charitable Educational Institutions. In the wake of the above, the relief as sought are prayed.

4. In the light of the said averment, the learned Judge framed the preliminary issue in respect of the jurisdiction to try and decide the imposition of tax under Section 132(1)(b) of the Bombay Provincial Municipal Corporation Act and by an order passed on 01.10.2014, held that the Court possess the jurisdiction to decide the issue whether the plaintiff is exempted from payment of taxes under Section 132(1)(b) of the BPMC Act and the suit was directed to be proceeded.

5. The defendant-Corporation filed the written statement and denied that the plaintiff is a charitable trust to be exempted from paying of taxes and justified it's power to impose the tax on following due procedure of law. The imposition of tax was justified through the said written statement.

6. Based on the rival contentions, the following issues were settled in the said suit :

> “1. Whether plaintiff proves that property bearing CTS No.5095, CTS No.4987, H.No.5/21/6 & 5/21/6/P, situated at S.B. Colony, Aurangpura, Aurangabad is exempted from tax under the provisions of Section 132(1)(b) of B.P.M.C. Act?
>
> 2. Whether this Court is having jurisdiction to try and entertain subject matter of present suit?
>
> 3. Whether suit is maintainable for want of notice U/sec. 487 of B.P.M.C. Act?
>
> 4. Is plaintiff entitled for declaration and injunction as prayed for?”

7. On the issues being framed, the plaintiff moved an application for framing of additional issue to the following effect :

> "Whether the defendant proves that they have levied the taxes as alleged in impugned bills by following due procedure of law as contemplated under B.P.M.C. Act or the Mumbai Municipal Corporation Act."

. Framing of the said issue has been declined under the impugned order and hence this petition is filed.

8. The learned Judge specifically referred to the provision contained in the Indian Evidence Act regarding the burden of proof and by relying upon Section 101 of the Indian Evidence Act, which contemplate that whoever desires any Court to give judgment as to any legal right or liability dependent upon the existence of facts

which he asserts, must prove that those facts exist and when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person, the learned Judge recorded that the plaintiff has filed a suit alleging the competency of the authority to subject it to taxation and the suit is not filed alleging the irregularity in the procedure by which the tax is demanded.

. In the wake of the said, the learned Judge has rightly observed that the facts in issue are framed upon pleading/assertion by the plaintiff in the Plaint and denied by the defendant and, therefore, the framing of an issue whether the defendant prove that they have levied the taxes after following the due procedure of law cannot be formulated since in the wake of the pleadings set out in the plaint, the burden lies upon the plaintiff to make a case for the declaration as prayed by him to the effect that imposition of taxes on properties is illegal, null and void and without following due procedure of law.

9. In these circumstances, since the issue, which has already been settled in the suit is sufficient to determine the dispute between the parties and ultimately the issue will have to be framed only if it really arises between the parties. Since the declaration is sought by the plaintiff, he has rightly been cast with the burden to establish that

he is entitled for the declaration as prayed for and the issue which seek to shift the burden upon the defendant has rightly been denied.

. Since no legal infirmity is noticed in the impugned, the same is upheld and the writ petition is dismissed. Needless to state that in the wake of the dismissal of the writ petition, the Civil Judge Senior Divisional shall make every endeavour to dispose off the Spl. Civil Suit No. 6/2013, within a period of six months from today.

[BHARATI H. DANGRE]
JUDGE