

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

WRIT PETITION NO.11156 OF 2014
(Smt.Dhamabai w/o Tolaram Pawani and others Vs.
Municipal Council, Chalisgaon and another)
WITH
CIVIL APPLICATION NO. 6374 OF 2015

WITH
WRIT PETITION NO.11157 OF 2014
(Arjundas S/o Nathumal Waswani and others Vs.
Municipal Council, Chalisgaon and another)
WITH
CIVIL APPLICATION NO. 6375 OF 2015

WITH
WRIT PETITION NO.11158 OF 2014
(Jotumal Chuhamal Sindhi Vs.
Municipal Council, Chalisgaon and another)
WITH
CIVIL APPLICATION NO. 6377 OF 2015

WITH
WRIT PETITION NO.11159 OF 2014
(Nandlal S/o Nenumal @ Bhikumal Sindhi and another
Vs. Municipal Council, Chalisgaon and another)
WITH
CIVIL APPLICATION NO. 6376 OF 2015

WITH
WRIT PETITION NO.11160 OF 2014
(Ghanshyamdas s/o Laxmandas Kukreja and others
Vs.Municipal Council, Chalisgaon and another)
WITH
CIVIL APPLICATION NO. 6373 OF 2015

WITH
WRIT PETITION NO.11161 OF 2014
(Ramesh S/o Ramchand Israni (Lund) Vs. Municipal Council,
Chalisgaon and another)
WITH
CIVIL APPLICATION NO. 6371 OF 2015

WITH
WRIT PETITION NO.11162 OF 2014

(Ghanshyamdas s/o Laxmandas Kukreja and others
Vs.Municipal Council, Chalisgaon and another)

WITH

CIVIL APPLICATION NO. 6370 OF 2015

WITH

WRIT PETITION NO.11163 OF 2014

(Jayramdas S/o Machrumal Makhijani and others
Vs.Municipal Council, Chalisgaon and another)

WITH

CIVIL APPLICATION NO. 6372 OF 2015

WITH

WRIT PETITION NO.11164 OF 2014

(Hansraj S/o Machrumal Sindhi (Makhijani) Vs.
Municipal Council, Chalisgaon and another)

WITH

CIVIL APPLICATION NO. 6369 OF 2015

WITH

WRIT PETITION NO.11165 OF 2014

(Kewalram S/o Ghanshyamdas Wadhwani Vs.
Municipal Council, Chalisgaon and another)

WITH

CIVIL APPLICATION NO. 6367 OF 2015

WITH

WRIT PETITION NO.11166 OF 2014

(Ghanshyamdas s/o Laxmandas Kukreja and others
Vs.Municipal Council, Chalisgaon and another)

WITH

CIVIL APPLICATION NO. 6368 OF 2015

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Mr.S. S. Choudhari, Advocate for petitioners

Mr. R. N. Dhorde, Senior Counsel i/b Mr. V. R. Dhorde, Advocate for
respondent No. 1

Mr. M. K. Goyanka, Advocate for respondent No. 2

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CORAM : N.W. SAMBRE, J.

DATE : 1st DECEMBER, 2015

ORAL ORDER :

Heard Mr. Choudhari, learned Counsel for the petitioners-defendants. Pursuant to the notice under Section 179 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short, 'the Act'), (deals with removal of encroachment etc.), the petitioner initiated suit for declaration and injunction.

2. In the suit, after pleadings were completed and issues in the back ground of Order 14 of Code of Civil Procedure were settled, the defendant-respondent Municipal Corporation moved application for framing of additional issue as regards tenability of the suit of plaintiff, which application came to be partly allowed by the impugned order. As such, present writ petitions.

3. Mr. Choudhari, learned Counsel for the petitioner in all writ petitions inviting my attention to the pleadings raised in the plaint, W.S. and by relying upon the provisions of Rule 1 Order 14 of Code of Civil Procedure, would urge that in absence of specific pleadings, particularly in the light of provisions of Section 149 of the Maharashtra Regional and Town Planning Act, the issue as regards tenability of the suit as is ordered to be framed is not sustainable in law. While inviting attention of this Court to the judgment of Division

Bench of this Court in the matter of **Niwas Builders vs. Chanchalben Gandhi (since deceased through legal heirs)** reported in **2003(3) Mh.L.J. 312**, he would urge that the order impugned since is contrary to the scheme of Order 14, issue as is ordered to be framed on tenability of the suit in view of provisions of Section 149 of Code of Civil Procedure is liable to be quashed and set aside.

4. While opposing the claim, Mr. Dhorde, learned Senior Counsel for the respondent-Council supports the order impugned and would urge that the order of framing of issue particularly in the background of Section 149 of the Maharashtra Regional and Town Planning Act is based on legal provisions and specific pleadings. He would then urge that the Court must taken into account the provisions of Order 14 Sub Rule 2 of Order 2, which according to him, enables the Court to frame issue based on legal submissions/provisions. As such, he prayed for dismissal of the writ petitions.

5. Having bestowed my thought over the submissions of the parties, it is required to be noted that legal provisions are not required as part pleadings of respective parties. The issue of law is open to be raised at any stage of proceedings. Pursuant thereto, it

appears that issue as regards maintainability of suit pursuant to provisions of Section 149 of the Act as is sought to be framed in the suit before learned trial Court.

6. In my opinion, in view of the fact that framing of issue as regards tenability of suit in the back ground of Section 149 of the Act is based on legal provisions, no illegality could be noticed in the order impugned. As such, writ petitions fail, stand dismissed.

7. Mr. Choudhari, learned Counsel for the petitioner submits that interim relief granted by this Court be continued for period of four weeks. This prayer is opposed by learned Counsel for the respondents. However, having regard to the fact that interim relief is operating in favour of petitioner, the same is continued for period of two weeks from today.

8. Consequently, pending civil applications in the writ petitions stand disposed of.

[N.W. SAMBRE, J.]