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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 2204 OF 2015**

Praveen R. Shah

... Petitioner

Versus

Bhushan K. Patil and Ors.

... Respondents

Mr. Y.S. Jahagirdar, Sr. Advocate along with Lulia V. Tikamdas for the  
Petitioner.

Mr. Vishal Kanade along with Mr. D.D. Singh for respondent no. 1.

Mr. A.Y. Sakhare, Sr. Advocate along with Pallavi Thakar for  
respondent nos. 2 and 3 B.M.C.

**CORAM : M.S. SONAK, J.**

**DATED : MARCH 09, 2015**

**P.C.**

Rule. By consent of the learned counsel for the parties, rule is  
made returnable forthwith.

2. This petition takes exception to the order dated 21<sup>st</sup> January,  
2015 made by the Additional Chief Judge of the Court of Small Causes  
at Bombay (Election Court) permitting the respondent no. 1 to amend  
the election petition to set aside the election of the petitioner as

councillor of the Municipal Corporation of Greater Bombay.

3. Mr. Jahagirdar, learned senior counsel for the petitioner submitted that amendment seeks to introduce an entirely new ground in the order to set aside the petitioner's election. Accordingly, the amendment of this nature was impermissible as has been held by the Division Bench of this court in the case of **Shaikh Fateh Mohammed Mohd. Raza Vs. Kamlesh Somnath Yadad and Others, 2010(5) Mh LJ 342.**<sup>1</sup>

4. On the other hand, Mr. V.M. Kanade, learned counsel for respondent no. 1 in defence of the impugned order made following submissions :

(a) that necessary foundational pleadings for setting aside the petitioner's election on the ground that he had incurred disqualification under section 16(1) of the Mumbai Municipal Corporation Act, 1888 (said Act) were already contained in the Election Petition. By means of the amendment, only better particulars were supplied. Accordingly the bar of limitation could never come in the way of a clarificatory amendment of this nature.

(b) The amendment, is in respect of facts which were within the special knowledge of the petitioner and which were suppressed by the petitioner. Respondent no.1 could get the knowledge of such facts, by

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<sup>1</sup> 2010(5) Mh.L.J. 342

resorting to the proceedings under Right to Information Act, 2005. In such a situation, the impugned order which permits amendment, is legal and valid;

(c ) That the issue of disqualification of an elected councilor, is an issue which is required to be decided in public interest. Therefore, since the impugned order merely permits the raising of such issue, this court in exercise of its extra ordinary jurisdiction, should not interfere with the impugned order. In this regard, reliance was placed upon the decision of the Hon'ble Supreme Court in the case of Kedar Shashikant Deshpande Vs. Bhore Municipal Council and Ors <sup>2</sup>.

5. The rival contentions now fall for my determination :

If the text of the proposed amendment is perused, it is clear that respondent no.1 seeks to question the acceptance of the petitioner's nomination papers on the ground that the petitioner was disqualified for being councilor under the provisions of section 16(1D) of the said Act. The text of the proposed amendment, almost entirely makes reference to the certain illegal constructions allegedly carried out by the petitioner and on the said ground seeks disqualification of the petitioner to continue as councilor. Section 16(1D) of the said Act inter alia provides that the councilor shall be disqualified for being councilor if the said councilor has constructed or constructed by

himself, his spouse, or his dependent any illegal or unauthorized structure violating the provisions of the said Act of the M.R.T.P. Act, 1966 or the rules or byelaws framed under the said Act or such councilor has directly or indirectly been responsible for, or helped in his capacity as such councilor in carrying out such illegal or unauthorized construction or has by written communication or physically obstructed or tried to obstruct any competent authority in discharging its official duty in demolishing any illegal or unauthorized structure.

6. In the original Election Petition instituted within the prescribed period of limitation, emphasis almost entirely was upon the allegations of corrupt practices within the meaning of section 28F of the said Act. There was no specific reference to the allegations with regard to any illegal or unauthorized construction to incur disqualification under the provisions of section 16(1D) of the said Act.

7. Mr. Kanade, learned counsel for respondent no. 1 however, pointed out that in paragraphs 13 and 14 of the Election Petition, two distinct grounds had been urged. The first ground being that the petitioner was disqualified as being candidate to the election of the Municipal Corporation to ward no. 16 and his nomination was wrongfully accepted. The second ground relates to the allegations of corrupt practice. Relying upon the said pleadings, Mr. Kanade submitted that the foundational pleadings were very much there in the

original election petition and all that the amendment seeks to do is to provide certain better particulars or clarifications.

8. In order to appreciate such contention, reference is required to be made to the pleadings in paragraphs 13 and 14 of the original Election Petition which read thus :

**“13. The Petitioner therefore, says and submits that firstly the Respondent no. 4 was disqualified as being candidate to the Election of Municipal Corporation Ward No. 16 and his Nomination was wrongfully accepted,** secondly the Respondent no. 4 has employed corrupt practices in the Election as stated hereinabove, therefore, his Election of Municipal Ward No. 16 is liable to be set aside and quashed. The Petitioner therefore, says and submits that this Hon'ble Court be pleased to set aside and quash the Election of Respondent no. 4 as the Municipal Corporator from the Municipal Ward No. 16 and declare the Petitioner who is having the second highest votes in the said Election has elected as the Municipal Corporator.

**14. The Petitioner says that firstly the Respondent no. 4 being not eligible to contest the said Election and** secondly the Respondent no. 4 being guilty of serious corrupt practices in the Election and he is not entitle to act as Municipal Corporator and is not entitle to appoint as Chairman/Member of any of the Committees to the Municipal Corporation. The Petitioner says that pending the hearing and final disposal of the Petition the Respondent Nos. 1 and 2 be restrained by interim Order of injunction of this Hon'ble Court from appointing the Respondent no. 4 as chairman/member of any of the Municipal Ward no. 16. the Petitioner says that the reliefs as aforesaid is not granted, unauthorized and illegally elected person shall act as the Municipal Councilor and

would recommend the expenditure of Municipal funds for the unauthorized activity and therefore, serious and irreparable prejudice will be caused to the respondent no. 1 and to the Voters of ward No. 16 in particular all the Voters of Mumbai in general. The Petitioner says that the balance of convenience is in favour of granting Order of injunction preventing the Respondent No. 4 from acting as the Municipal Corporator.” (emphasis supplied)

9. Upon perusal of the aforesaid pleadings, it is clear that there was some vague reference to the petitioner being disqualified and the consequent incorrect acceptance of his nomination paper. However, there was no specific ground that the petitioner had incurred disqualification on account of his having carried out the illegal or unauthorized construction. Further, if the application seeking permission to amend the election petition is perused, then it is the case of respondent no.1 himself that all facts and circumstances in relation to the petitioner carrying out illegal and unauthorized construction were not known to respondent no. 1 and the same came to the knowledge of respondent no.1 much after the period of limitation for instituting the election petition had expired. Therefore, it cannot be said that otherwise vague pleadings of disqualification in paragraph 13 and 14 of the election petition, had any nexus with the ground of disqualification contained under section 16(1)(d) of the said Act. The pleadings in paragraph 13 and 14 can therefore not be regarded as foundational pleadings in the context of the ground of disqualification under section 16(1D) of the said Act. The impugned order which accepts contention of Mr. Kanade is therefore, unsustainable.

10. The Division Bench of this court in the case of Shaikh Mohd (supra) upon considering the scheme of the said Act, has held that no amendment is permissible after the prescribed period of limitation for the purpose of introducing new ground of challenge. In the light of the law laid down it was not open to the election court to permit the amendment which undoubtedly seeks to raise a new ground to challenge the election of the petitioner. The decision of the Hon'ble Apex Court in the case of Kedar Deshpande (supra) is not applicable to the facts and circumstances of the present case. The Hon'ble Apex Court was not dealing with the issue of permitting amendment to election petition after expiry of the period of limitation and where such amendment was for introducing new grounds to challenge the election petition.

11. The submission that respondent no.1 was unaware of the circumstances which entailed the petitioner's disqualification under section 16(1D) of the said Act, also cannot be accepted. If the text of the proposed amendment and the documents which are sought to be relied upon in support are perused, it is clear that most of the documents were available in the public domain. That apart, it is the position in law that the election petitions under the said Act have to be instituted within the prescribed period of limitation and there is no power to condone any delay. Therefore, by resorting to the equity or equitable considerations, legal provisions which relate to the statute of limitation, cannot be

bypassed.

12. In view of the aforesaid, impugned order dated 21<sup>st</sup> January, 2015 is set aside.

13. It is however, clarified that the observations in this order are only for the purpose of examining the validity of the impugned order by which permission was granted to amend the election petition. Accordingly election court to decide the election petition as well as Miscellaneous Applications pending therein in accordance with law and on its own merits.

14. Rule is made absolute in terms of prayer clause (a) to the petition. There shall be no order as to costs.

**(M.S. Sonak,J.)**