

FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11315 OF 2015

Office Notes, Office
memorandum of Coram,
appearance, Court's
orders or directions &
Registrar's orders.

Court's or
Judge's orders.

Mr. S.M. Oka i/b. Mr. Sagar Joshi for the petitioner.

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CORAM : M. S. SONAK, J.**DATE : 18th NOVEMBER, 2015.****P.C. :-**

1. Not on board. Upon production taken on board.
2. Challenge in this petition is to the order dated 07/10/2015 by which the Civil Judge Senior Division, Thane has directed that the reference made under Section 12 of the Maharashtra Municipal Corporation Act, Act 1949 (Said Act) shall proceed as between the Commissioner, Thane Municipal Corporation, the petitioner Mrs. Vimal Bhoir, the winning candidate and Smt. Meenakshi Dudhawade, the defeated candidate.
3. Mr. Oak, learned counsel for the petitioner submits that in a reference under Section 12 of the Said Act there can be only two parties i.e. the Corporation and the candidate in respect of whom the issue of dis-qualification has arisen. Mr. Oak

further points out that this position has been virtually accepted by the Civil Judge, in so far as the proposed intervention by Mr. Amit Sarriya, another corporator is concerned. Mr. Oak therefore submits that there was no scope to permit the intervention of Mrs. Meenakshi Dudhawade.

4. Section 12 of the Maharashtra Municipal Corporation Act 1949 (Said Act) provides that where any doubt or any dispute arises whether any, that the councilor has ceased to hold the office as such under Section 11 such councilor or any other councilor, and at the request of the corporation, the Commissioner shall refer to the question of Judge.

5. In this case, despite doubt or dispute having been arisen, the Corporation, had initially, not made any reference to the Judge as contemplated by Section 12 of the Said Act. Therefore, the defeated candidate i.e. Meenakshi Dudhawade was constrained to institute a Writ Petition in this court seeking a Writ of Mandamus to the Corporation to make the reference. Ultimately, this Court issued necessary directions, pursuant to which the reference can be made to the Civil Judge.

6. Considering the aforesaid background it is only proper that Smt. Meenakshi Dudhawade, the defeated

candidate is permitted to intervene and take part in the reference made before the Civil Judge. The purpose to such reference is basically to determine whether the councilor has ceased to hold office in terms of Section 11 of the said Act. It is possible that the Corporation does not place the entire material before the Civil Judge or does not co-operate in the matter of proper resolution of such doubt or dispute. In the present case as noted earlier corporation was even reluctant to make the reference and it is only in pursuance of orders obtained by defeated candidate that the Corporation ultimately made the reference to the Civil Judge. Viewed from this perspective there is no jurisdictional error in the making of the impugned order. In fact the impugned order will assist the Civil Judge to determine the issue referred in a fair and proper manner.

7. The apprehension expressed by Mr. Oak that if this is permitted, several persons might seek intervention is belied by the circumstance that intervention was declined to Mr. Sarriya.

8. Therefore, no case is made out to interfere with the impugned order. The petition is therefore dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)