

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.189 OF 2015
WITH
NOTICE OF MOTION (L) NO.356 OF 2015**

Harishchandra Ravji Pophale and others ... Petitioners
v/s
The Chief Executive Officer and others ... Respondents

**WITH
WRIT PETITION (L) NO.244 OF 2015**

Mahavirsingh Chauhan ... Petitioner
v/s
The Chief Executive Officer and others ... Respondents

Mr Vaibhav Joglekar with Mr S.S. Redekar for Petitioners in WP(L) No.189 of 2015.

Mr V.P. Sawant with Mr Ashok Kumar Singh for Petitioner in WP(L) No.244 of 2015 and for Respondent No.4 in WP(L) No.189 of 2015.

Mr Jagdish G. Reddy (Aradwad) for Respondent No.1 in both Petitions.

Mr Amit Shastri, AGP for Respondent No.2 in WP(L) No.189 of 2015 and for Respondent No.3 in WP(L) No.244 of 2015.

Mr P.K. Dhakephalkar, Sr. Counsel with Mr Ajay Patil for Respondent No.5.

Mr Niranjana Shimpi for Respondent Nos.6 and 7 in WP(L) No.189 of 2015.

**CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.**

DATE : 20TH OCTOBER 2015

P.C. :-

1. After having argued these Petitions on the previous occasions and even today at length, on instructions from the Petitioner, Mr Joglekar and Mr Sawant, learned counsel on behalf of respective Petitioners, seek leave to withdraw respective Petitions with liberty to approach a Civil Court by filing a civil suit challenging all the actions of the contesting Respondents.

2. While we record the statements and allow to withdraw the Petitions with liberty to file a civil suit, we clarify that we have not expressed any opinion on the maintainability of the proceedings or suit that may be lodged nor the jurisdiction of the Civil Court. All contentions of both the sides are kept open. The Civil Court shall decide the controversy on all the issues uninfluenced by any orders that are passed in Writ Petitions and those impugned in Writ Petitions.

3. As far as the issue of limitation is concerned, it is kept open. The Civil Court will decide the same after taking due note of the rival contentions. It would also advert to the necessary

provisions and uninfluenced by any of the orders of this Court will determine the said issue. It would also deal with the rival contentions on the benefit, if any, claimed under section 14(1) of the Limitation Act 1963.

4. As far as the request of Mr Joglekar and Mr Sawant to continue an ad-interim order passed in these Writ Petitions on 30th January 2015 for a period of six months from today is concerned, on account of ensuing Diwali Vacation, this request is seriously opposed by the contesting Respondents. It is also pointed out that the number of structures mentioned in the order dated 30th January 2015 is not accurate and that these structures are those which are indicated in Annexure 'F' collectively to the affidavit of the then Petitioner No.2. Now Respondent No.6 affirmed on 9th March 2015 and filed in the present Petition. While we continue the ad-interim order passed by this Court at the request of Mr Joglekar and Mr Sawant till 18th November 2015, we clarify that we express no opinion on the existence of structures. All the contentions and based on the material produced before this Court by the Petitioners shall be considered by the Trial Court as and when it takes up the

request to grant any interim and ad-interim reliefs.

5. With the above clarification, we dispose off the Writ Petitions as withdrawn. Once again we clarify that the Petitions are argued extensively but we have not expressed anything on merits as well.

6. Our order passed today does not prevent the Petitioners from seeking ad-interim and interim reliefs in addition to what were sought in the Petitions. Equally, we clarify that when the said liberty is granted, all such requests shall be subject to the pleas of the contesting Respondents on jurisdiction of the civil Court and maintainability of the proceedings so also the merits of the case.

(B.P. COLABAWALLA, J.)

(S.C.DHARMADHIKARI J.)