

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

WRIT PETITION NO. 2798 OF 2016

Hansraj s/o Machrumal Sindhi (Makhijani) ... Petitioners

Versus

Municipal Council, Chalisgaon and another ... Respondents

WRIT PETITION NO. 2799 OF 2016

Ghanshyamdas s/o Laxmandas Kukreja and others ... Petitioners

Versus

Municipal Council, Chalisgaon and another ... Respondents

WRIT PETITION NO. 2800 OF 2016

Kewalram s/o Ghanshyamdas Wadhwani ... Petitioner

Versus

Municipal Council, Chalisgaon and another ... Respondents

WRIT PETITION NO. 2801 OF 2016

Jotumal s/o Chuharmal Sindhi ... Petitioner

Versus

Municipal Council, Chalisgaon and another ... Respondents

WRIT PETITION NO. 2802 OF 2016

Ghanshyamdas s/o Laxmandas Kukreja and others ... Petitioners

Versus

Municipal Council, Chalisgaon and another ... Respondents

WRIT PETITION NO. 2803 OF 2016

Nandlal s/o Nenumal @ Bhikumal Sindhi (Lund)
and another ... Petitioners
Versus

Municipal Council, Chalisgaon and another ... Respondents

WRIT PETITION NO. 2804 OF 2016

Ramesh s/o Ramchand Israni (Lund) ... Petitioner
Versus

Municipal Council, Chalisgaon and another ... Respondents

WRIT PETITION NO. 2805 OF 2016

Ghanshyamdas s/o Machrumal Makhijani ... Petitioner
Versus

Municipal Council, Chalisgaon and another ... Respondents

WRIT PETITION NO. 2806 OF 2016

Jayramdas s/o Machrumal makhijani and others ... Petitioners
Versus

Municipal Council, Chalisgaon and another ... Respondents

WRIT PETITION NO. 2807 OF 2016

Smt. Dhamabai w/o Totaram Pawani and others ... Petitioners
Versus

Municipal Council, Chalisgaon and another ... Respondents

.....
Mr. S. S. Choudhari, Advocate for petitioners
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CORAM : SUNIL P. DESHMUKH, J.

DATE : 9th MARCH, 2016

ORDER :

1. This is virtually a second round for similar purpose.
2. An issue, referring to Section 149 of Civil Procedure Code, 1908, had been framed as an additional issue by the trial court. The same had been subject matter of writ petition bearing No. 11156 of 2014 and companion writ petitions and Hon'ble Single Judge of this court under his order dated 01-12-2015 has observed in paragraphs No. 5 and 6 thus;

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.*

3. It appears that said decision of the Hon'ble Single Judge had been subject matter of Special Leave Petitions before the Supreme Court. However, those were withdrawn on 16-12-2015.

4. It is thereafter an application came to be moved purporting to be under Order XIV, Rule 5(2) of the Code of Civil Procedure. The trial court having regard to the background as aforesaid found it difficult to accede to the request.

5. Learned counsel Mr. Choudhari appearing for petitioners strenuously urges to indulge into re-exercise of discretion in favour of petitioners, particularly submitting that there are no pleadings in respect of the additional issue so framed. The pleadings do not give any rise to said issue.

6. However, while it is being so urged, one will have to take into account that these were the very submissions which were advanced in the first round against the framing of additional issue and were dealt with in writ petition No. 11156 of 2014 and companion writ petitions. These very submissions had been considered and aforesaid observations have emerged. Those were also subjected to challenge before the Supreme Court. However, the Special Leave Petitions were abandoned.

7. In the circumstances, it would not be appropriate to reconsider the very submissions advanced earlier on, in the writ petitions referred to herein above, decided by this court.

8. The writ petitions, as such, are not being entertained and are rejected.

9. At this stage, learned counsel Mr. Choudhari urges this court that it may be left open for the petitioners to argue in respect of powers of the rule under Sub-Rule 2 of Rule 5 of Order XIV, of Code of Civil Procedure during hearing of the suit. Petitioners such submissions would be for the court to consider, having regard to the background.

(SUNIL P. DESHMUKH, J.)

sms