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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

APPEAL FROM ORDER NO. 419 OF 2016

with

CIVIL APPLICATION NO. 546 OF 2016

The Commissioner, Nashik Municipal
Corporation and Anr.

... Appellants/Applicants.

V/s.

Mr. Gangadhar Karbhari Karpe.

... Respondent.

with

APPEAL FROM ORDER NO. 426 OF 2016

with

CIVIL APPLICATION NO. 553 OF 2016

The Commissioner, Nashik Municipal
Corporation and Anr.

... Appellants/Applicants.

V/s.

Mr. Shriram Pundalik Shinde.

... Respondent.

with

APPEAL FROM ORDER NO. 429 OF 2016

with

CIVIL APPLICATION NO. 556 OF 2016

The Commissioner, Nashik Municipal
Corporation and Anr.

... Appellants/Applicants.

V/s.

Mr. Shantaram Govind Karad.

... Respondent.

with

APPEAL FROM ORDER NO. 437 OF 2016

with

CIVIL APPLICATION NO. 567 OF 2016

The Commissioner, Nashik Municipal
Corporation and Anr.

... Appellants/Applicants.

V/s.

Mr. Akhilesh Jahiruddin Shaikh & Ors.

... Respondents.

Mr. R.S. Apte, Senior Advocate a/w. Vaibhav Patankar for the
Appellants/Applicants in all A.Os. & CAs.

Mr. Shyam Walve i/b. Sachin Gorwadkar for Respondents in A.Os.
419/16 & 426/16.

Mr. S.C. Daswadikar for the Respondents in AO 429/16.

Mr. S.M. Gorwadkar, Senior Advocate i/b. Sujay Gangal & Mankirat
Singh Chhabbra for the Respondents in A.O. 437/16.

CORAM : N.M. Jamdar, J.

30 June, 2016.

Oral Order :-

All these three Appeals have been clubbed together by
order dated 10 June 2016 and have been argued together and
disposed of by this common order.

2. The Appellant in all these Appeals is the Commissioner, Nashik Municipal Corporation, The Appellant challenges the order passed by the District Judge, Nashik to restore the Suit which was dismissed by the Trial Court and since the Civil Suit was restored, the parties were directed to remain present before the Trial Court and order of status-quo which was granted was continued. This order is the subject matter of these Appeals.

3. After the matter was heard for some time it was put to the learned Counsel for the Municipal Corporation that since the basic grievance of all the Respondents – Plaintiffs was that the Appellant – Municipal Corporation should not take action without following due process of law, further litigation, consequent upon restoration of the Suit, can be curtailed if the Corporation is willing to follow due process of law. The matters were accordingly adjourned.

4. The learned Senior Advocate for the Appellant - Corporation on instructions states that the Municipal Corporation has already issued notices under the provisions of the Maharashtra Municipal Corporation Act and the Respondents have challenged the same in the District Court, Nashik and the proceedings are pending the District Court. He submitted that according to the Municipal Corporation, since due process is already invoked and the matter is now sub-judice before the District Court in proceedings,

independent of the present one and that the Municipal Corporation will taken action subject to the outcome of those proceedings, the Appeal and the Suit have become infructuous. The learned Advocate for the Appellants also submits that the notices which were earlier issued and referred to in the plaint filed in the present Suits will also be withdrawn as subsequent notices have been issued.

5. The learned Counsel for the Respondents submit that their main grievance is that the Corporation should not take any action without following due process of law and if the statement as above is being made by the Municipal Corporation then their grievance in the present Suits does not survive and the Respondents will agitate their contentions in the subsequent proceedings which are pending in the District Court.

6. In view of this consensus between the parties, the Appeal from Orders and the Civil Suit also do not survive. The statements on instructions are accepted. Accordingly, the Appeals are disposed of as under :-

- (1) The Appellant – Corporation will withdraw the notices which have been issued by the Appellant – Corporation which are referred to in the present Suit within period of four weeks from today.

(2) The Appellant – Corporation will take action subject to the outcome of the proceedings which have been instituted by the Respondents challenging the notices dated 2 June 2015 and the order passed by the Municipal Commissioner dated 4 December 2015.

(3) The learned Counsel for the Respondents agree that since their grievance in these present proceedings stand redressed by the statement made by the Appellant – Corporation, the Respondents will withdraw their present Suits within period of four weeks from today. These statements are accepted.

(4) As far as Appeal from Order No. 421 of 2015 is concerned, no fresh notice is issued by the Appellant – Corporation and no proceedings are pending. It is open to the Municipal Corporation to issue appropriate notice under the Act and it is open to the Respondent to take legal recourse in pursuance to the said notice.

7. All contentions of the parties on merits are kept open.
8. The Appeals from order are accordingly disposed of. Parties shall place the copy of this order before the learned Trial Court, within two weeks from today to pass formal order of withdrawal/disposal of the Suits.
9. Civil Applications do not survive and are disposed of.

(N.M. Jamdar, J.)