

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10859 OF 2016**

Smt. Rekha Chandrakant Tingre
versus
The State of Maharashtra and ors.

....Petitioner
...Respondents

Mr. R. A. Thorat, senior counsel with Mr. Mihir S. Raje, advocate for the petitioner.
Mrs. M. P. Thakur, AGP for the State.
Mr. A. P. Kulkarni, advocate for respondent Nos. 2 to 4.
Mr. V. P. Sawant along with Mr. P. M. Jadhav, advocate for respondent No.5.

**CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.**

DATE : 28th SEPTEMBER, 2016.

P. C. :

Heard Mr. Thorat, learned senior counsel for the petitioner, Mrs. Thakur, AGP for the State, Mr.Kulkarni, learned counsel for respondent Nos. 2 to 4 and Mr. Sawant, learned counsel for respondent No.5.

2. The petitioner, by this petition, seeks to challenge the order dated 16th September, 2016, passed by respondent No.3-the Commissioner, Pune Municipal Corporation. The said order is passed under Section 10(1D) and Section 11(a) of the Maharashtra Municipal

Corporations Act (for short “the MMC Act”) thereby disqualifying the petitioner from being a Councillor of the Pune Municipal Corporation for having constructed unauthorized structure in violation of the provisions of the MMC Act.

3. Mr. Thorat, learned senior counsel for the petitioner took us through the relevant provisions of the MMC Act and submitted that the Commissioner has no jurisdiction to disqualify the petitioner and, therefore, the order is bad in law and required to be quashed and set-aside.

4. Mr.Kulkarni and Mr.Sawant, learned counsel appearing for the Corporation and respondent No.5 respectively opposed the petition vehemently. They submitted the petitioner has erected unauthorized structure on the plot under reservation. They submitted that, in any case, the petitioner has an option to approach “the Judge” under Section 12 of the MMC Act and, therefore, this Court should not interfere in the writ petition.

5. We have considered the rival submissions and we have also gone through the relevant provisions of the said Act. Section 10 of the said Act talks about disqualification. Section 11 talks about

disabilities from continuing as councillor. Section 12 deals with the question as to disqualification to be determined by the Judge. Under this Section, if any doubt or dispute arises, whether a councillor has ceased to hold office under Section 11, such councillor or any other councillor may, and at the request of the Corporation, the Commissioner, shall refer the question to "the Judge". Under Sub-Section (2) of the said Section, on such reference being made to "the Judge", the concerned councillor shall not be deemed to be disqualified until the Judge after holding an inquiry in the manner provided by or under the said Act determines that he has ceased to hold office.

6. The petitioner, in this case, not only challenged the jurisdiction of the commissioner but he is also disputing that he has made an unauthorized construction. Mr. Thorat also pointed out that the petitioner has filed suits in this regard and the same are pending in the Civil Court at Pune.

7. In our opinion, the petitioner has an option to refer the dispute as to whether he is disqualified or not under Section 10(1D) to the Judge and once such dispute is referred, then, during the pendency of such dispute, the petitioner shall not be deemed to be disqualified.

8. In the above circumstances, we are not inclined to interfere in the petition inasmuch as the petitioner has an alternative efficacious remedy to approach “the Judge” under Section 12 of the MMC Act. The petition is, accordingly, disposed of.

9. Needless to mention that we have not gone into the merits and/or demerits of the contentions of the respective parties, and all rights and contentions of the respective parties are kept expressly open to be decided by the learned Judge after hearing all concerned.

10. In the event such an reference is made by the petitioner under Section 12, the same shall be disposed of by learned Judge as expeditiously as possible and preferably by 31st December, 2016.

11. All concerned to act upon a copy of this order duly authenticated by the Registry of this Court.

(ANUJA PRABHUDESSAI, J.)

[RANJIT MORE, J.]