

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

WRIT PETITION NO. 9897 OF 2015

Shri Mallesh Shivan Shetty ... Petitioner.
V/s.
The Commissioner, Kalyan Dombivali
Municipal Corporation & Ors. ... Respondents.

Mr. P. K. Dhakephalkar, Senior Advocate i/by Mr. Balkrishna
Gajanan Tangsali, Advocate for the Petitioner.
Mr. A. S. Rao, Advocate for Respondent Nos.1 & 2.
Mrs. M. P. Thakur, AGP, for Respondent No.3.

**CORAM : A.S.OKA & C.V.BHADANG,JJ.
DATE : 18th JANUARY, 2016.**

P.C. :

1 Heard the learned senior counsel appearing for the
Petitioner and the learned counsel appearing for the
Respondents.

2 The Petitioner, who was an elected councillor of the
Kalyan Dombivali Municipal Corporation, has been served with
the impugned notice dated 23rd September, 2015. The said
notice has been issued by the Commissioner of Municipal
Corporation, calling upon him to show cause as to why an
order, declaring that the Petitioner stands disqualified under
Clause (1D) of Section 10 of the Maharashtra Municipal

Corporations Act, 1949 (for short “MMC Act”), should not be passed.

3 First submission of the learned senior counsel appearing for the Petitioner is that the Municipal Commissioner has no jurisdiction to issue such a show cause notice as he cannot make any adjudication on the issue of disqualification. His second submission is that at the highest, the issue can be decided by the Court within the meaning of the MMC Act. Thirdly, he submits that in the election held in October, 2015, the Petitioner has been re-elected as a councillor.

4 We have considered the submissions. On 25th September, 2012 the Designated Officer of the concerned Ward of the said Municipal Corporation had passed an order, after giving an opportunity of being heard to the Petitioner, holding that the construction subject matter of the said order, made by the Petitioner is illegal. He has, therefore, directed the demolition of the said structure in exercise of the powers under section 260 of the MMC Act. In this petition, there are no averments that the said order, passed way back on 25th September, 2012, was subjected to any challenge. Moreover, the Petitioner has already replied to the show cause notice by his reply dated 28th September, 2015.

5 As far as the objection raised by the Petitioner to the jurisdiction and power of the Municipal Commissioner is concerned, it is needless to say that the said issue will be gone into by the Commissioner while passing the order on the show cause notice which is impugned in the petition. Hence, no case is made out in this petition filed under Article 226 of the Constitution of India for interference with the impugned show cause notice.

6 The Petition is rejected by keeping all the contentions of the parties expressly open.

(C.V. BHADANG,J.)

(A.S. OKA, J.)

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