

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
1.WRIT PETITION NO. 632 OF 2016**

Mira Bhayander Munciiipal Corp.  
and Anr. Petitioners

 $V_S$ 

Shri Ramsamuch Dayaram Roy  
and Ors .. Respondents

**WITH**

## 2.WRIT PETITION NO. 685 OF 2016

Mira Bhayander Munciiipal Corp.  
and Anr. Petitioners

 $V_S$ 

Shri Vinodkumar F. Chopra and  
Ors .. Respondents

**WITH**

### 3. WRIT PETITION NO. 2390 OF 2016

Mira Bhayander Municipal Corporation & Anr

 $V_S$ 

Shri Ashokkumar Ramkrishna  
Doifode and Ors .. Respondents

**WITH**

#### 4. WRIT PETITION NO. 4879 OF 2016

Mira Bhayander Municipal Corporation & Anr

 $V_S$ 

Sureshkumar Phulchand Jain and  
Ors .. Respondents

**WITH**

## 5. WRIT PETITION NO. 599 OF 2016

Smt. Urmila Prakash Thakur

 $V_S$ 

Shri Ramsamuch Dayaram Roy  
and Ors .. Respondents

**WITH****6.WRIT PETITION NO. 12548 OF 2015**

Smt. Urmila Prakash Thakur

Petitioner

Vs

Sureshkumar Phulchand Jain and  
Ors

.. Respondents

Mr B.S.Shukla, Advocate for petitioners in WP/12548/16, 599/16 and Respondent No.2 in WP/632/16, WP/2390/16, WP/4879/16.

Mr. M.S. Lagu, Advocate for petitioners in WP/632/16, 2390/16, 4879/16 and Respondents no.2 and 3 in WP/12548/2015 and WP/599/2016.

Mr Sandesh Patil i/b Chintan Shah, Advocate for Respondent no.1 in all Petitions.

CORAM : R.G.KETKAR,J.

DATE : 27/04/2016

**PC:**

1. Writ Petition No. 685 of 2016 is not on Board. By consent, taken up for admission.
2. Heard Mr. B.S.Shukla, learned counsel for the petitioners in WP/12548/16, WP/599/16 and for respondent no.2 in WP/632/16 , WP/2390/16 and WP/4879/16, Mr. M.S.Lagu, learned counsel for petitioners in WP/632/16, WP/2390/16, WP/4879/16 and for respondents no. 2 and 3 in WP/12548/15 and WP/599/16,. Mr. Mayuresh Lagu, learned counsel for petitioner-Corporation and Mr. B.S.Shukla, learned counsel for respondent no.3 in WP/685/2016. Mr. Sandesh Patil, learned counsel for respondent no.1 in all petitions.

3. Rule. Learned counsel for the respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and petitions are taken up for final hearing.

4. Writ Petitions No.632/16, 685/16, 2390/16 and 4879/16 are preferred by Municipal Corporation for the City of Mira Bhayander (for short, 'Corporation') and Ward Officer challenging the Judgments and Orders dated 20.10.2015 passed by the learned District Judge-10, Thane in Misc. Civil Appeals.

5. Writ Petitions No. 599 of 2016 and 12548 of 2015 are preferred by original defendant no.3 challenging the Judgments and orders dated 20.8.2015 passed by the learned District Judge-10, Thane. By these orders, the learned District Judge allowed Appeals preferred by the plaintiffs and directed both the parties to maintain status quo and follow the directions contained in the judgment. While disposing of the Appeals, learned District Judge requested the trial Court to dispose of these matters within six months from the date of the communication of the order. It was further made clear that due to unavoidable reason or inspite of the sincere attempt made by the plaintiffs, if the plaintiffs fail to lead evidence, then learned trial Court is at liberty to grant reasonable time for extending the status-quo order.

6. I have heard Mr. M.S.Lagu, learned counsel for the Corporation, Mr. B.S. Shukla, learned Court for defendant no.3

and Mr. Sandesh Patil, learned counsel for the plaintiffs in all the petitions.

7. Mr. Lagu submitted that in reply to applications for injunction filed by the plaintiffs, Corporation specifically raised objections on two grounds, namely, (i) suit is hit by provisions of Section 487 of the Maharashtra Municipal Corporations Act, (for short, 'Act') as the plaintiffs failed to give mandatory notice and (ii) that in view of Section 433A of the Act, suit challenging notice issued by the designated Officer of the Corporation under section 260 of the Act is not maintainable. He submitted that the learned trial Judge rejected the applications for interim relief filed by the plaintiffs. However, while allowing Appeals, learned District Judge did not deal with this aspect and observed in paragraph 13 that he left these points to be considered and decided by the trial Court as defendants did not file application under Order VII, Rule 11 or under section 9-A of C.P.C.

8. During the course of hearing of these petitions, I suggested to Mr Patil as to whether he is agreeable for setting aside the impugned orders passed by the learned District Judge, Thane, thereby, reviving/restoring the appeals preferred by the plaintiffs for deciding them afresh after considering the submissions advanced by the Corporation based on Section 487 and 433A of the Act. Mr. Patil submits that all the plaintiffs are present in the Court. Upon taking instructions from them, he submits that by

consent, impugned orders may be set aside and learned District Judge may be directed to dispose of all Appeals de novo and after considering all the contentions that may be advanced by the parties. Even otherwise, it is settled position in law that once objection as regards jurisdiction is raised at the time of hearing of interim relief application, the Court has no option but to consider that objection before deciding application for interim relief.

9. In view thereof, by consent of the parties, following order is passed:

(i) Impugned orders passed by the learned District Judge are quashed and set aside and Misc.Civil Appeals are restored to the file of the learned District Judge. Learned District Judge shall deal with the contentions advanced by the parties including the contentions based on Section 487 and 433A of the Act and will not leave it to the trial Court for deciding the said issue. All contentions of the parties on merits are kept open.

(ii) Parties agree that they will appear before the learned District Judge on 13.6.2016 and for that purpose no fresh notice be issued to them. Learned District Judge is requested to dispose of the Appeals within four weeks from the date of appearances of the parties.

(iv) During the pendency of the Misc. Civil Appeals, order directing to maintain status quo, is continued as ad-interim order. Continuation of the ad-interim order shall not be

construed as an expression of merits either way. Learned District Judge will decide the Appeals on the basis of the material on record and on its own merits and in accordance with law.

(v) Rule is made absolute in the above terms with no order as to costs.

(R.G. Ketkar, J.)