

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 969 OF 2010

Sanjay Seksaria

.. Petitioner

vs.

Municipal Corporation of Greater Mumbai .. Respondent

None for the Petitioner.

Mr. Joel Carlos with Ms K.H. Mastakar for Respondent-BMC.

CORAM : M. S. SONAK, J.

DATE : 20 JANUARY 2016.

P.C. :-

1] Neither the Petitioner nor his advocate is present. However, rather than dismiss this petition for non-prosecution, the same is finally disposed of, in view of certain subsequent developments.

2] The challenge in this petition is almost entirely, based upon the decision of the learned Single Judge of this Court made in Writ Petition No. 2120 of 2004 (MCGM and Ors. Vs. Dalamal Tower Premises Co-operative Society Ltd. & anr.). The said decision was, however, appealed before the Division Bench. In appeal, Hon'ble Justice Mr. D.K. Deshmukh agreed with the view taken by the learned Single Judge, but Hon'ble Justice Mr. R.G. Ketkar, disagreed and recorded a dissent. The matter was thereafter referred to the Hon'ble Justice Dr. D.Y. Chandrachud (as he then was), who has

agreed with the view taken by the Hon'ble Mr. Justice R.G. Ketkar. The Division Bench of this Court on 21 October 2015 in Appeal No. 801 of 2004 in Writ Petition No. 2120 of 2004, in the aforesaid context, has made the following order.

1. *Since there was a difference of opinion expressed by D.K.Deshmukh, J. (as he then was) and brother R.G. Ketkar, J., the point which was decided by both the learned Judges was referred to the third learned Judge viz. Dr. D.Y. Chandrachud, J. Thereafter Dr. D.Y. Chandrachud, J. gave an opinion confirming the view taken by R.J. Ketkar, J. The order of reference now has been passed and the view expressed by Dr. D.Y. Chandrachud, J. and R.G. Ketkar, J. is a majority view. The Reference is therefore answered accordingly and disposed of.*

2. *It appears that R.G. Ketkar, J. had answered all the issues which were raised and argued. However, D.K. Deshmukh, J. (as he then was) had answered only one issue which was referred to the third learned Judge. Since the said issue has now been decided, parties will have to be heard on remaining issues by the Regular Division Bench.*

3. *At this stage, Mr. Sathe, the learned Senior Counsel appearing on behalf of the Respondents invited our attention to Section 98 of the Civil Procedure Code. He pointed out that since the Reference has been decided, appeal will have to be dismissed on other points. This issue shall also be decided by the Regular Division Bench.*

4. *Office to place this matter before the Regular Division Bench in which R.G. Ketkar J. is not a party.*

3] In view of the aforesaid, this petition is dismissed. The interim orders, if any, are vacated.

4] The Respondent-Corporation is permitted to withdraw the amounts alongwith interest accrued thereon, if any, that may have been deposited by the Petitioner, at the stage of obtaining interim reliefs.

5] There shall, however, be no order as to costs.

6] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)