

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO. 1651 OF 2008

EIH Limited

.. Petitioner

vs.

Municipal Corporation of Greater  
Bombay and ors.

.. Respondents

Mr. H.N. Vakil, Mr. Rushil Mathur i/b Mulla & Mulla & CB& C for the  
Petitioner.

Ms K.H. Mastakar for BMC.

**CORAM : M. S. SONAK, J.**

**DATE : 20 JANUARY 2016.**

**P.C. :-**

1] The learned counsel for the Petitioner, fairly accepts that nothing survives in this petition.

2] Even otherwise, the petition was based upon the ruling of this Court in Writ Petition No. 2120 of 2004 (MCGM and Ors. Vs. Dalamal Tower Premises Co-operative Society Ltd. & anr.) made by the learned Single Judge of this Court. 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.

3] The Division Bench of this Court vide its order dated 21 October 2015 in Appeal No. 801 of 2004 in Writ Petition No. 2120 of 2004, has held thus:

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

4] Accordingly, for the aforesaid reasons, this petition requires to be dismissed and the same is hereby dismissed. The interim orders, if any, are vacated.

5] In case any amounts have been deposited by the Petitioner in this Court, in pursuance of any orders made in this petition, the Respondent-MCGM shall be entitled to withdraw the same alongwith any interest, if any accrued thereon.

**(M. S. SONAK, J.)**