

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

WRIT PETITION NO. 362 OF 2016

Shri Shyam Pandurang Thorbole ... Petitioner
Vs
1. The State of Maharashtra & Anr. ... Respondents

Mr. Atul Damle, senior counsel i/b Ms. Nazia S.A. Shaikh for the
Petitioner.

Ms. Sushma Bhende, AGP, for the Respondent No.1.

Mr. Mandar Limaye for the Respondent No.2.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

THURSDAY, 12TH JANUARY, 2017

P.C. :

1 We have heard Mr. Damle, learned senior counsel
appearing for the petitioner. The only contention raised before us
by Mr. Damle is that the petitioner's continued suspension stands
revoked by a Resolution of the General Body of the Thane
Municipal Corporation. The petitioner seeks enforcement and
implementation of this Resolution of the General Body. It is fairly
stated that in the meanwhile and in January, 2016, the petitioner
retired on attaining the age of superannuation.

2 We have noted from the affidavit-in-reply that the Municipal Commissioner has assigned cogent and satisfactory reasons for not acceding to the request of the petitioner and the Resolution of the General Body. It has been stated by him that the petitioner was proceeded against for the offences punishable under sections 304, 336 to 338, 308, 128(b) and 34 of the IPC along with section 13(1)(d) under the Prevention of Corruption Act, 1988. He has also been booked for offences punishable under sections 7, 8, 13(a)(d) and 13(2) of the Prevention of Corruption Act, 1988. The charge is that he protected certain persons who made unauthorised construction. That is how on being satisfied that this is indeed a serious lapse and charge that he came to be suspended. Even the criminal prosecution is pending. It is in these circumstances that he has stated that the suspension cannot be revoked.

3 The Commissioner also made a recommendation to the State Government by letter dated 20th January, 2016, seeking to cancel / resile / revoke the General Body Resolution dated 4th November, 2015. Though in the affidavit filed in reply it

is stated that this proposal is pending with the Urban Development Department of the State Government, Ms. Bhende appearing on behalf of the State has tendered a compilation in which it is stated by the concerned Department official that in exercise of the powers conferred by section 451(3) of the Maharashtra Provincial Municipal Corporation Act, 1949, the General Body Resolution stands revoked and the suspension is continued. We take these three documents annexed to a communication to the Government Pleader on record and mark them "X" collectively for identification.

4 In view thereof and in law, no right vests in the petitioner to claim the relief either of reinstatement in service or revocation of suspension so also payment of the terminal benefits, including the allowances etc. that all the more we are not inclined to exercise our writ jurisdiction. In our extraordinary, equitable and discretionary jurisdiction, we do not wish to assist a party like the petitioner against whom a criminal case is pending. The writ petition is, therefore, dismissed.

B.P. COLABAWALLA, J.

S.C. DHARMADHIKARI, J.