

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

WRIT PETITION NO.10111 OF 2018

Kamal Sunderdas Bathija and Anr. ... Petitioners

Vs

State Election Commission and Ors. ... Respondents

Mr.Subhash Jha a/w Sanjana Pardeshi a/w Harekrishna Mishra i/b Law
Global for the Petitioner.

Ms.Priyanka Chavan i/b Sachindra Shetye for the Respondent No.1.

Smt.S.D. Vyas, "B" Panel Counsel for the Respondent Nos.2, 3 and 7.

Mr.Vijay Dinkarrao Patil for the Respondent Nos.5 and 6.

Mr.L.M.Acharya i/b Anish Khandekar for the Respondent No.8.

Mr.Amritpal Singh Khalsa for the Respondent No.9.

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

TUESDAY, 18TH SEPTEMBER, 2018

P.C. :

1 This Writ Petition under Article 226 of the Constitution of
India prays for issuance of writ of certiorari or any other appropriate
writ, order or direction, declaring that the resignation of the respondent

No.9-Smt.Meena Kumar Ailani is obtained forcibly and that the sole attempt is to illegally install in her place, the 8th respondent as a Mayor of the Ulhasnagar Municipal Corporation.

2 Upon such a Writ Petition being filed and which is not by the 9th respondent, but by the petitioner who is her younger brother and claiming to be voter so also interested in preserving and protecting democratic norms and principles, Mr.Vijay D. Patil appearing for the Commissioner of the Ulhasnagar Municipal Corporation, on instructions, states that the election to the post of Mayor is yet to be notified. Though the respondent No.9 has resigned and which has resulted in a vacancy of the post of Mayor of this Municipal Corporation, the further steps contemplated by law are yet to be taken.

3 In the circumstances, the Writ Petition is premature. All that the Commissioner of the Ulhasnagar Municipal Corporation has done is to inform the Divisional Commissioner, District Thane about the vacancy caused on account of the resignation of the respondent No.9. The further steps are yet to be taken.

4 To our mind, whether the resignation of the respondent No.9 was obtained by force or otherwise and whether that has resulted in a vacancy being caused for the post of Mayor are highly disputed questions of fact. The factual dispute about the ineligibility or disqualification of the respondent No.8 to hold the office of a Councillor of the Ulhasnagar Municipal Corporation or the post of Mayor would require the petitioner to establish and prove that such a resignation as is tendered is not voluntary, but under force and coercion and, therefore, not lawful. Secondly, if that is not a valid and legal resignation, then there is no vacancy. Thirdly and assuming everything in favour of the respondent No.8, still, she is not eligible and qualified to hold the post. We do not think that we can entertain the Writ Petition under Article 226 of the Constitution of India in such circumstances. Therefore and by accepting the statements made by Mr. Patil, on instructions, as undertaking to this Court, we hold that the Writ Petition is not maintainable, both, because it is brought at a stage when the election to the post of Mayor is yet to be notified and secondly, the dispute is purely factual and would require adjudication at the hands of such authorities as are established by the Maharashtra Municipal Corporation Act 1949. The provisions which carve out

disqualification for being elected and continuing as a Councillor take within its import, further remedy or process of adjudication into the disputed issue. For that, the petitioner can approach the competent authority under the law. The Writ Petition is, therefore, disposed of.

5 Needless to clarify that the petitioner can always approach the competent authority and seek its intervention in the event the petitioner is of the opinion and feels aggrieved by the 8th respondent continuing as a Councillor or being elected as a Mayor of the Municipal Corporation.

B.P. COLABAWALLA, J.

S.C. DHARMADHIKARI, J.