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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 1035/2016 & CM APPL. 27803/2017, 4751/2017, 48223/2016**
PRIYANKA GAUTAM Appellant

Through: None.

versus

STATE ELECTION COMMISSION & ORS Respondents
Through: Mr. Sumeet Pushkarna, Standing
Counsel & Mr. Devanshu Lahiry,
Advocate (M-9598193233).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER
% **20.02.2018**

Counsel for the Respondents submits that the present appeal would not be maintainable and has become infructuous, inasmuch as the appeal relates to elections to the Municipal Council conducted in 2012. Thereafter, the new body has also been constituted with the Municipal Elections which were conducted in 2017.

The present appeal appears to have been filed in view of the order dated 20th December, 2016 in Writ Petition Civil 11929/2016. The same is set out herein below:

“1. The present petition has been listed subject to an office objection with regard to its maintainability, as the petitioner seeks to assail the judgment dated 3.12.2016 passed in a suit for declaration, mandatory and perpetual injunction instituted by the respondent No.3, against her and several others for declaring as void, the election of the petitioner/defendant No.3 for the Municipal Elections-2012, in respect of Ward No.215.

2. It has been enquired from Mr. Uppal, learned Senior Advocate appearing for the petitioner as to how would a writ petition lie against a judgment passed by the learned trial court in a civil suit.

3. Mr. Uppal, learned Senior Advocate appearing for the petitioner states, on instructions, that he may be permitted to withdraw the present petition, while reserving the right of the petitioner to assail the impugned judgment dated 3.12.2016, in accordance with law.

4. Leave, as prayed for, is granted. The writ petition is dismissed as withdrawn, along with the pending applications.”

When this appeal was listed on the first date on 2nd January, 2017, the Court had passed an interim order directing that the impugned judgment and decree would not be given effect to by Respondents Nos.1 and 2 till the next date.

Mr. Sumeet Pushkarna, Standing counsel further submits that under Section 15 of the Delhi Municipal Corporation Act, 1957, an election petition ought to have been preferred under Section 15 (3) to the designated Tribunal and thereafter, the Appellant in the present case has filed the civil suit for declaration. The suit was decreed and the election was held to be void, however, the Appellant was held to be not declared as a successful candidate as the election itself was held to be void.

The matter was passed over in the morning and none had appeared for the Appellant. Even on second call, there is no appearance. In view of the submissions made by Mr. Pushkarna, the appeal and all pending applications are dismissed.

PRATHIBA M. SINGH, J

FEBRUARY 20, 2018/R