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

WRIT PETITION NO. 858 OF 2019

Shri Tukaram Krishna Patil

..... Petitioner.

V/s

Smt. Ujwala Shrikrishna Modak and Ors

..... Respondents.

Mr. B.D. Joshi a/w Mr. Neel Helekar a/w Darshana Pawar for the
Petitioner.

Mr. P.K. Dhakephalkar, Senior Counsel with Mr. Altaf Khan i/b Nilesh
Acharya for Respondent No.1.

Mr. Mayur Jadhav i/b S.B. Shetye for Respondent No.3.

Ms. Gauri Jadhav a/w Mr. Vinod Mahadik for Respondent Nos. 2 and
4.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 17, 2019

P.C.:-

1] Heard the learned Counsel for the Petitioner and the learned
Senior Counsel for Respondent No.1 and the learned Counsel for
Respondent No.2, 3 and 4.

2] The contention of Mr. Joshi, the learned Counsel appearing on
behalf of the Petitioner is, the proceedings initiated against the

Petitioner are under Section 33 in the form of Election Petition. According to him elections of the Respondent – Municipal Corporation were held in May, 2017 and the applications under Section 33 of the Mumbai Municipal Corporation Act were presented sometime in November, 2019. He would urge that if the proceedings are under Section 33, still the fact remains that same are required to be tried by the Chief Judge as is prescribed under Section 33. He would further urge that if not under Section 33, presuming that the proceedings initiated against the Petitioner are under Section 18 for disqualification, still the fact remains that proceedings must go before the Chief Judge and not the Additional Chief Judge. So as to substantiate his claim, attention of this Court is invited to the provisions of Sections 18 and 33 of the Mumbai Municipal Corporation Act and Sections 7 and 8 of the Presidency Small Cause Courts Act, so as to insist that proceedings before the Court should have been maintainable before the Chief Judge and not Additional Chief Judge.

3] Though, the learned Senior Counsel for Respondent No.1 submits that proceedings are even maintainable before the Additional

Chief Judge, according to him, he has no objection even if the proceedings are taken up by the Chief Judge and he consents for quashing of the order which is impugned in the Petition only to the extent of issue of jurisdiction. According to him, considering the nature of proceedings initiated against the Petitioner, Chief Judge be directed to expedite the proceedings.

4] The learned Counsel for Respondent Nos. 2 to 4 have no objection if this Court passes an appropriate order in the matter.

5] As such, without going into the merits as to whether Additional Chief Judge of Small Causes Court has jurisdiction to entertain the proceedings which is claimed to be initiated by Respondent No.1 under Section 18 of the Mumbai Municipal Corporation Act, it is directed that Election Petition No.168 of 2017 be placed before the learned Chief Judge, Small Causes Court. The submission made by the learned Senior Counsel for Respondent No.1 that the Petition is under Section 18 of the Mumbai Municipal Corporation Act is accepted.

6] In view of of above, the learned Chief Judge, Small Causes

Court, is directed to decide the proceedings expeditiously.

7] Writ Petition is allowed in the aforesaid terms.

(NITIN W. SAMBRE, J.)