

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

WRIT PETITION NO.1626 OF 2018

Shrimant Chhatrapati Udayan
Raje Pratapsinh Maharaj
Bhonsale

...Petitioner

Versus

The State of Maharashtra and
Ors.

...Respondents

...
Mr. S.G. Karandikar i/b. Mr. S.D. Chavan for the Petitioner.
Mr. A.I. Patel, Addl. G.P. with Ms P.N. Diwan, AGP for the
Respondent Nos.1 and 2.
Mr. S.S. Patwardhan with Mr. Bhushan Mandlik for the Respondent
No.3.
Dr. Milind Sathe, Senior Advocate with Mr. D.V. Deokar and Mr.
Pinakin Modi i/b. M/s. Parimal K. Shroff and Co. for the Respondent
No.4

**CORAM : A.A. SAYED &
SMT. ANUJA PRABHUDESSAI, J.**

DATED : 28th NOVEMBER, 2019

P.C.:-

The substantive prayer clauses of the Petition read as follows:-

- (a) That this Hon'ble Court may be pleased to issue the writ of certiorari or writ in the nature of certiorari or any other writ, order thereby directing to quash and set aside the Government Notification dated 21.9.2017 (Exhibit "K").

(a1) By issuing appropriate writ in the nature of mandamus or direction, respondent no.1 be directed to exercise statutory powers under Sections 156 and 328 MLRC, 1966 and make provision of incorporating entry of lis pendens in the 7x12 extract in the State of Maharashtra.

2. So far as prayer clause (a) is concerned, it is not in dispute that the issue is covered by the decision of the Division Bench of this Court in Writ Petition No.7040 of 2013 ***Pramod Moreswar Tattu vs. Sub-Divisional Officer, Baramati and Ors. Dated 17th July, 2018*** whereby the challenge to the Notification dated 21-09-2017 was turned down by the Division Bench.

3. So far as prayer clause (a1) is concerned, it is a settled position in law that the Court cannot issue any mandamus to enact laws. Dr. Milind Sathe, the learned senior counsel for the Respondent No.4 has rightly relied upon the judgment of the Supreme Court in the case of ***Suresh Seth vs. Commr. Indore Municipal Corporation and Ors. (2005) 13 SCC 287***, para 5 whereof reads as follows:-

“Learned counsel for the appellant has also submitted that this Court should issue directions for an

appropriate amendment in the M.P. Municipal Corporation Act, 1956 so that a person may be debarred from simultaneously holding two elected offices, namely that of a member of the Legislative Assembly and also of Mayor of a Municipal Corporation. In our opinion, this is a matter of policy for the elected representatives of people to decide and no direction in this regard can be issued by the Court. That apart this Court cannot issue any direction to the legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In *Supreme Court Employees' Welfare Assn. v. Union of India* (1989) 4 SCC 187 (SCC para 51) it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority. This view has been reiterated in *State of J & K v. A.R. Zakki* 1992 Supp (1) SCC 548. In *A.K. Roy v. Union of India* (1982) 1 SCC 271 it was held that no mandamus can be issued to enforce an Act which has been passed by the legislature. Therefore, the submission made by the learned counsel for the appellant cannot be accepted."

4. In light of the above, the Petition is dismissed.

(ANUJA PRABHUDESSAI, J.)

(A.A. SAYED, J.)

Megha
Parab

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by Megha Parab
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