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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.39 OF 2014

Prakash P. Kukreja	...Petitioner
V/s.	
State of Maharashtra & Ors.	...Respondents

Mr.Prakash P. Kukreja – Petitioner in person.
Mr.M.M. Pabale, A.G.P. for the Respondent Nos.1 to 3.
Mr.Vinod Mahadik for the M.C.G.M. - Respondent No.4.
Mr.Vijay Hiremath for the Respondent No.5.
Mr.A.P. Kulkarni for the Respondent No.6.
Mr.R.R. Lanjekar I/b Mr.M.L. Patil for the Respondent No.7.
Mr.J.G. Reddy (Aradwad) for the Respondent No.8.
Mr.Rohit Sukhadeo for the Respondent Nos.9 and 10.
Mr.S.D. Shinde for the Respondent No.11.
Mr.S.M. Kamble for the Respondent No.12.
Mr.Milind Prabhune I/b Mr.S.S. Aradhye for the Respondent No.20.
Mr.S.K. Gunjkar for the Respondent No.21.
Mr.Samir Kumbhakoni for the Respondent No.29.

CORAM : PRADEEP NANDRAJOG, C.J. &
N.M. JAMDAR, J.
DATE : 30TH APRIL, 2019.

P.C. :-

1. Heard the petitioner who appears in person and the

learned counsel for the respondents. The petitioner restricts arguments to the implementation of sections 29-B to 29-E of the Bombay Provincial Municipal Corporations Act, 1949. The said sections were inserted in the Statute Book on 3rd July, 2009.

2. The said sections read as under :-

“29B. Determination of areas. - The State Government shall, by order published in the *Official Gazette*, determine, -

(a) the areas into which each electoral ward may be divided ; and

(b) the territorial extent of each area, which shall necessarily include the entire geographical territory in which all persons mentioned in the electoral roll of any polling booth in such territory, or if the Government so decides, two or more contiguous polling booths (not exceeding five such polling booths) in such territory, are ordinary resident.

29C. Meetings of Area Sabha . - (1) The Chairperson of the Area Sabha shall convene a meeting of the Area Sabha. The secretary of the Area Sabha shall, thereafter issue a notice of the meeting specifying the date, time and place, as is fixed by the Chairperson. Every such meeting shall be given wide publicity in the area of Area Sabha :

Provided that, the period of not more than six months shall elapse between the two meeting of the Area Sabha.

(2) If the chairperson fails to convene four meetings of the Area Sabha continuously, within a period of two years, as provided under sub-section (1), the State Government shall, upon a reference being made by the Commissioner, by order in the *Official Gazette*, disqualify the Chairperson for being a Councillor.

(3) Every meeting of the Area Sabha shall be presided over by the Chairperson of Area Sabha and shall be conducted in such manner as may be prescribed.

(4) The Secretary of the Area Sabha shall, -

(a) make necessary arrangements for the meeting and record the minutes of the meeting and forward the same with the approval of the Chairperson to the ward office and the Corporation ;

(b) obtain information from the Corporation or any of its offices regarding the action taken by the Corporation or the office concerned, as the case may be, on the suggestions made by the Area Sabha and present the same in the meeting ;

(c) attend other works incidental to clauses (a) and (b).

29D. Functions and duties of Area Sabha . - An Area Sabha may, having regard to the actual conditions obtaining in the municipal area, perform and discharge the following functions and duties, namely :-

(i) to suggest the priority of schemes and development programmes to be implemented in the area of the Area Sabha and forward the same to the Wards Committee, for inclusion in the developmental plans of the Wards Committee or the Corporation, as the case may be ;

(ii) to suggest the location of street lights, street or community water taps, public walls, public sanitation units and such other public amenities within the area of the Area Sabha ;

(iii) to identify the deficiencies in the water supply, sewage disposal, public sanitation, storm water management, roads and street lighting arrangements in the area of the Area Sabha and

suggest remedial measures ;

(iv) to assist the activities of public health centres in the area of the Area Sabha, especially in prevention of diseases and family welfare and create arrangements to report on the incidence of epidemics and natural calamities ;

(v) to remind the Area Sabha members of their obligations to pay municipal taxes and user charges.

29E. Rights and powers of Area Sabha . - An Area Sabha may, subject to the procedure that may be prescribed in this behalf, exercise the following rights and powers, namely :-

(i) to get information from the concerned officials of the Corporation as to the services they will render and the works they propose to do in the area :

(ii) to be informed by the Wards Committee about , -

(a) decisions concerning the jurisdiction of the Area Sabha made by the Wards Committee or the Corporation including the action taken on the suggestions made by the Area Sabha ;

(b) the follow up action taken on the decisions concerning the jurisdiction of the Area Sabha ;

(iii) to impart awareness on matters of public interest such as cleanliness, preservation of the environment and prevention of pollution ;

(iv) to have attendance of ward level officers dealing with water supply, road and street lighting, conservancy, sewage disposal, public sanitation, storm water and solid waste management and other civic amenities in the meetings of the Area Sabha ;
and

(v) to co-operate with the Wards Committee in the provision of sanitation arrangements and other civic amenities in the area”.

3. The corresponding amendments in section 2 defined an area in relation to the Area Sabha to mean an area determined under section 29B and the Area Sabha means the body of all the persons registered in the electoral rolls pertaining to all polling booths in the area. With reference to section 29B, an area into which each electoral ward may be divided are published in the Official Gazette for the reason from each ward a corporator is elected. This exercise has obviously been completed. The territorial extent of the area as per clause (b) of section 29B would obviously envisages the area of the ward. Thus, the petitioner essentially seeks to enforce sections 29C to 29E which required chairperson of the area sabha to convene a meeting or the area sabha. As noted above, an area sabha means the registered voters whose names are entered into the electoral rolls pertaining to the ward in question.

4. The functions and duties of the area sabha and the rights and powers are as per sections 29D and 29E.

5. The object of the Legislation is to further participative democracy.

6. Having expanded the participative role of the voters in the wards, the Municipalities should implement the same.

7. But the problem is that the Amending Act has not come into force. The same recognises that the Government has to notify a date from which its provisions shall come into force and such notification has not been issued.

8. Keeping in view the laudable object of the amendments the State should consider to notify the date from which the amendments came into operation. Regretfully a Court cannot issue a mandamus to do so. We can only recommend to the Government to be earnest and do the needful.

9. We dispose of the petition with the hope that the Government in the spirit of the legislation considers notifying the appointed date at the earliest.

10. The sum of ₹25,000/- deposited by the petitioner in the afore noted public interest litigation pursuant to the order dated 25th November, 2016 shall be refunded to the petitioner as per rules.

(N.M. JAMDAR, J.)

(CHIEF JUSTICE)