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

WRIT PETITION NO.7946 OF 2018

Mrs.Vimal Arjun Bhoir ..Petitioner.
V/s.
Thane Municipal Corporation & Anr. ..Respondents.

Mr.S.M.Oak with Sagar A. Joshi for the petitioner.
Mr.R.S.Apte, Senior Advocate i/b. Mandar Limay for respondent No.1.
Mr.Suresh S.Shah with Saurabh Butala for respondent No.2.

CORAM : M.S.SONAK, J.

DATE : MARCH 19, 2019

ORAL JUDGMENT

Heard Mr.Oak, learned counsel for the petitioner, Mr.Apte, learned senior counsel for respondent No.1 and Mr.Shah, learned counsel for respondent No.1.

2. Challenge in this petition is to the order dated July 9, 2018 by which learned trial judge has dismissed the petitioner's application at Exhibit-71 in Civil M.A.No.232/2015 to declare that the reference made under the Maharashtra Municipalities Act, 1949 ('the said Act') is rendered infructuous and should, therefore, be disposed of as such.

3. Mr.Oak, learned counsel for the petitioner submits that the reference was made in order to determine whether the petitioner has incurred disqualification for being a Councillor in terms of section

10(1D) of the said Act. He submits that in terms of section 10(1D) of the said Act, even if the circumstances necessary to incur the disqualification are found to exist, such disqualification can only be for the remainder of the term of the Councillor from the date of declaration of the structure to be illegal or unauthorised by the concerned authority under the provisions of the said Act. Mr.Oak points out that the term of the petitioner as a Councillor has ended in February, 2017. He, therefore, submits that the reference made is infructuous and the futile and learned trial Court should have disposed of the same as such.

4. Mr.Shah, learned counsel for respondent No.2 points out that this is a case of abuse of process of law. He submits that after the reference was made, respondent No.2 has taken out an application seeking its expeditious disposal, since, the petitioner was bent upon delaying the hearing of the reference before the Reference Court.

5. He submits that such an order for expediting was in fact made by the Reference Court on October 7, 2015. He points that the petitioner challenged the said order by instituting Writ Petition No.10727 of 2015 but the same was dismissed with costs by order dated December 23, 2015. Despite all these, the petitioner succeeded in delaying the proceedings before the Reference Court and now, the petitioner alleges that the reference will be rendered infructuous. He submits that this is a classic case of abuse of process of law and,

therefore, extra-ordinary jurisdiction under articles 226 and 227 of the Constitution of India should not be exercised in favour of the said petitioner.

6. Mr.Shah further submits that section 10 of the said Act provides that a person shall be disqualified on being elected and after being a Councillor, if such a person has been disqualified by or under a law made by the legislature of the State of Maharashtra. He, therefore, submits that if a reference is ultimately answered against the petitioner and the petitioner is held to be disqualified under section 10(1D) of the said Act, then, the same will debar the petitioner from being elected as a Councillor and for continuance as a Councillor. Mr.Shah points out that, admittedly, the petitioner has been elected as a Councillor and continues to be a Councillor. Mr.Shah submits that if now this reference is declared as untenable, then, the petitioner will again delay the disposal of a fresh reference and continue to perpetuate the illegal user of the public office and for all these reasons, Mr. Shah submits that this petition may be dismissed with exemplary costs.

7. Rival contentions now fall for my determination.

8. Section 10(1) (a) (ii) of the said Act, *inter alia*, provides that a person shall be disqualified if being elected and for being a Councillor if such a person has been disqualified or under law made by the legislature of the State of Maharashtra. There is no dispute that the

said Act is a law made by the legislature of the State of Maharashtra. Therefore, it was arguable that in a pending reference it is found that the petitioner has indeed incurred disqualification for being elected and for being a Councillor, then, it is possible to say that the petitioner's elections or his continuance as a Councillor for the next term is also vulnerable. At this stage, it not necessary to express any final opinion on this issue but at the same time, at the behest of the petitioner, there is really no case made out for setting aside the impugned order and declaring the pending reference as infructuous.

9. As pointed out by Mr.Shah, the reference in relation to disqualification of the petitioner on account of putting up illegal construction, despite being a Councillor, was erected some time in the year 2015 i.e. March 12, 2015. Such reference is required to be decided expeditiously. However, it does appear that the petitioner was creating obstacles and reference was not being taken up for expeditious disposal. Ultimately, the Reference Court by an order dated October 7, 2015 made the impugned order that the reference be disposed of within four months and the parties were directed to co-operate in the matter of disposal of the said reference.

10. The petitioner, obviously with an intent to delay the reference, instituted a Writ Petition No.10727 of 2015 which was dismissed by an order dated December 23, 2015 by imposing costs of

Rs.5,000/- upon the petitioner. In the order dated December 23, 2015, this Court observed that the very institution of the petition is an abuse of process of law. In the said order, it was also observed that the attempt on the part of the petitioner is to delay the proceedings in the reference and such attempts cannot be permitted in the exercise of jurisdiction under Article 227 of the Constitution of India.

11. Obviously, directions were issued to the Reference Court to abide by its own order and ensure that the reference is disposed of within a period of four months as indicated in the order dated October 10, 2015. Thus, the reference could have been disposed of by February 2015 the latest.

12. Unfortunately, the reference is till date pending and in the meanwhile, the term of the petitioner as a Councillor for the relevant period came to be end by February, 2017.

13. Mr.Shah points out that this delay was entirely for the reasons attributable to the petitioner.

14. The situation as presented is quite disturbing. The petitioner had also exhibited his propensity to go to any extent to delay the matter. However, what is disturbing is the fact that the Reference Court despite its own order that the reference is to be disposed of within four months, which order despite its reiteration by this Court was not complied with, giving an opportunity to the petitioner to now

claim that the reference itself has become infructuous. The reference Court was entirely unjustified in permitting the parties to delay such reference despite the directions of this Court for expeditious disposal of the reference.

15. The conduct of the petitioner is such that disentitles the petitioner to any reliefs under Article 227 of the Constitution of India. Article 227 of the Constitution of India cannot be invoked to delay the legal process. Admittedly, the petitioner has been re-elected as a Councillor and continues as a Councillor, therefore, there is necessity to determine whether the illegal construction alleged to have been carried out by the petitioner is indeed illegal and whether the same continues. If the same is continued, then, *prima facie* section 161 would come in the way of the petitioner's continuance as a Councillor despite circumstances for his disqualification being found to exist.

16. For all the aforesaid reasons, this petition is required to be dismissed and is hereby dismissed with costs of Rs.25,000/-. The petitioner is directed to deposit the said costs before the Reference Court on or before April 5, 2019.

17. The parties to appear before the Reference Court on April 5, 2019, which is even otherwise the scheduled date.

18. If the amount of costs as indeed deposited before April 5, 2019, respondent No.2 is at liberty to withdraw the same

unconditionally.

19. If the amount of costs is not deposited despite the directions of this Court, then, without prejudice to the rights of respondent No.2, to point out to this Court factum of such non deposit, learned Reference Court is at liberty to make such order as may be appropriate under the law against the petitioner.

20. Learned Reference Court is directed to dispose of the reference on or before June 30, 2019. If any of the parties seek unnecessary adjournments, the Reference Court to ensure that the same are not granted. As it is, there are directions of expeditious disposal of the reference, which are not being complied with by the Reference Court till today.

21. At this stage, Mr.Shah, learned counsel for respondent No.2 states that respondent No.2 will have no objection if the amount of costs are paid to Tata Memorial Cancer Hospital. Accordingly, the aforesaid direction is modified and the petitioner is directed to pay costs of Rs.25,000/- to the Tata Memorial Cancer Hospital on or before April 5, 2019. The petitioner to file affidavit of compliance along with the necessary receipt before the Reference Court.

22. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)