

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1264 OF 2020**

Dadaso Jaysingrao Koli ... Petitioner
V/s.
The State of Maharashtra & Ors. ... Respondents

Mr.D.V.Sutar with Mr.P.V.Jadhavar for the Petitioner.

Mr.A.I.Patel Addl.G.P. with Mr.R.P.Kadam AGP for the Respondent-State.

Mr.P.M.Jadhav for Respondent No.3.

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**CORAM : R. D. DHANUKA AND
MADHAV JAMDAR, JJ.**

DATED : 18TH DECEMBER, 2020.

P.C:-

1. It is admitted position that the Petitioner was elected on 22/10/2018 for Ward No.6-A of the Municipal Council which was reserved for Scheduled Tribe (ST) category.

2. As per section 9A of the Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965, (hereinafter referred to as “the said Act”), person desirous of contesting election on a seat reserved for the Scheduled Castes, Scheduled Tribes or, as the case may be, Backward Class of Citizens, shall be required to submit, along with the nomination paper, Caste Certificate issued by the Competent Authority and the Validity Certificate issued by the Scrutiny Committee in accordance with the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, De-

notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification) of Caste Certificate Act, 2000, and in any case within one year from the date of election.

3. It is admitted position that the Petitioner has not submitted caste validity certificate and, therefore, the Petitioner is not entitled for relief as prayed in the petition and there is not substance in the petition.

4. The Government Resolution dated 9/1/2020 which is challenged in the petition is on the basis of section 9A of the Act. The Full Bench of this Court in the Case reported in 2017 (1) Mah. L.J. 431 in the matter between **Anant H. Ulahalkar and Another Vs. Chief Election Commission and Ors.** has held with respect to above referred Section 9 (A) of the Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships Act, 1965 that scheme of Section 9 (A) is a special provision and complete code. Section 9 (A) has provided for a statutory fiction, which is evident from the use of expression “his election shall be deemed to have been terminated retrospectively and he shall be disqualified being a Councillor”. Statutory fiction must be allowed to have its full play. It is further held in paragraph 99 as follows:

“The validation of caste claim of the elected Councillor by the Scrutiny Committee beyond the prescribed period would have no effect upon the statutory consequences prescribed under the second proviso to section 9-A i.e. deemed retrospective termination of the election of such Councillor and his disqualification for being a Councillor. The subsequent validation or issue of the Validity Certificate will therefore be irrelevant for the purpose of restoration of the Councillor’s election but, such validation will obviously entitle him to contest the election to be held on account of termination of his election and the consequent vacancy caused thereby. In the result, we

hold that the time limit of twelve months prescribed in the two provisos to section 9-A of the said Act, within which an elected person is required to produce the Validity Certificate from the Scrutiny Committee is mandatory. Further, in terms of second proviso to section 9-A if a person fails to produce Validity Certificate within a period of six months from the date on which he is elected, his election shall be deemed to have been terminated retrospectively and he shall be disqualified for being a Councillor. Such retrospective termination of his election and disqualification for being a Councillor would be automatic and validation of his caste claim after the stipulated period would not result in restoration of his election. The questions raised, stand answered accordingly.”

5. The said Full Bench judgment of this Court is upheld by the judgment of the Supreme Court reported in **2019 (3) SCC 220 in the matter between Shankar Raghunath Devre (Patil) Vs. State of Maharashtra & Ors.**

6. Hence this Writ Petition is dismissed. No orders as to costs.

[MADHAV JAMDAR, J.]

[R. D. DHANUKA, J.]