

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 71 OF 2021

- 1) Bhagatram s/o Rawalmal Balani
Age: 55 years, Occu: Business,
R/o. 20, Shribaba Judiyaram Niwas,
Sindhi Colony, Jalgaon, Tq. & Dist. Jalgaon
- 2) Dattu @ Dattatray s/o Devram Koli,
Age: 65 years, Occu: Business,
R/o. 37, Kanchan Nagar Jalgaon,
Tq. & Dist. Jalgaon
- 3) Sadashiv Ganpat Dhekale
Age: 67 years, Occu: Business,
R/o. 75, Aadarsh Nagar,
Jalgaon, Tq. & Dist. Jalgaon
- 4) Smt. Latabai Ranjit Bhoite
Age: 50 years, Occu: Business,
R/o. Ahilya Niwas, Bhoite Nagar,
Jalgaon, Tq. & Dist. Jalgaon
- 5) Kailas s/o Narayan Sonawane,
Age: 54 years, Occu. Business,
R/o. Plot No.9, Near Shanipeth Mandir,
Jalgaon, Tq. & Dist. Jalgaon ... Applicants

Versus

- 1) Prashant s/o Suresh Naik
Age: 40 years, Occu: Agri.,
R/o. Shri Sant Dnyaneshwar Chowk,
Mehrun, Jalgaon, Tq. & Dist. Jalgaon
- 2) The Municipal Commissioner,
Municipal Corporation City Jalgaon ... Respondents

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Mr. K. C. Sant, Advocate for applicants

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CORAM : R. G. AVACHAT, J.

DATED : 28th SEPTEMBER, 2021

PER COURT :-

. Heard.

2. The challenge in this revision application is to the order, rejecting the applicants' application for rejection of the plaint in Special Civil Suit No.100 of 2020.

3. The applicants herein are the Councillors of the Municipal Corporation. They have been convicted of the offences punishable under Sections 177, 201, 406, 409, 420, 465, 468, 471 read with 120-B, 109 and 34 of the Indian Penal Code and also under Sections 13(1) (c) and 13(1) (d) of the Prevention of Corruption Act and sentenced to suffer imprisonment of not less than two years. Their appeal from conviction has been pending. Sentence has been suspended, conviction not. As such, the applicants herein appear to have incurred disqualification to continue to serve as Councillors.

Section 12 of the Maharashtra Municipal Corporations Act (for short 'MMC Act') reads as under:-

"12. Questions as to disqualification to be determined by the Judge.

(1) If any doubt or dispute arises whether a councillor has ceased to hold office as such under section 11, such councillor or any other councillor may, and at the request of the Corporation, the Commissioner, shall refer the question to the Judge.

(2) On a reference being made to the Judge under sub-section (1), such councillor shall not be deemed to be disqualified until the Judge after holding an inquiry in the manner provided by or under this Act determines that he has ceased to hold office."

The aforesaid provision undoubtedly indicates that the concerned Councillor is required to prefer a Reference to the Judge in terms of Section 12(2) of the MMC Act.

4. Perused the papers relied on. The respondent No.1 herein, had in fact, preferred a Reference as has been expected under Section 12(2) of the Act. It, however, appears from the impugned order that the learned trial Judge himself has registered it as a Suit. It, thus, appears to be a mistake on the part of the trial Court. The learned Advocate for the applicants herein may be justified in contending that the procedure for deciding the Reference and the suit are altogether different. When the remedy of Suit is not

available, the plaint therein is liable to be rejected. According to him, the trial Court has observed in the impugned order that the applicants herein may also be restrained from participating in the proceedings of the Municipal Corporation.

5. In view of this Court, the purpose would be served with a direction to the trial Court to re-register the said proceeding as a Reference under Section 12(2) of the MMC Act and proceed it to decide in accordance with the procedure prescribed therefor.

6. It is made clear that an inquiry is supposed to be made before passing any order under Section 12 of the MMC Act. No interim relief in the nature of restraining the concerned Councillors from participating in proceedings of the Corporation may be passed. In view of the same, the Civil Revision Application stands disposed of in terms of following order:-

ORDER

The trial Court is directed to re-register Special Civil Suit No.100 of 2020 as a Reference under Section 12(2) of the MMC Act and decide the same in accordance with the procedure prescribed therefor, at the earliest.

[R. G. AVACHAT, J.]

SMS