



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

CIVIL REVISION APPLICATION NO. 40 OF 2023

Sakharam G. Mahadik	}	
Having address at Anuradha	}	
Bhojnalay Civil Hospital	}	
Road, Sangli & Another.	}	...Applicants

Versus

Swagat Builders and Developers	}	
Registered Partnership Firm,	}	
Through its Partner Manjusha	}	
Balasaheb Patil, Through its	}	
Power of Attorney Holder, Shri.	}	
Balasaheb Jagannath Patil, Resid-	}	
ing at Ganaraj Apartment, Flat	}	
No. 3, 21/A, North Shivaji Nagar,	}	
Sangli- 416 416 & Others.	}	...Respondents

WITH

CIVIL REVISION APPLICATION NO. 52 OF 2023

Sangli Miraj Kupwad City Muni-	}	
cipal Corporation Through its	}	
Commissioner, Having office at	}	
Sangli Miraj Kupwad City Muni-	}	
cipal Corporation, Opp. City Police	}	
Station, Rajwada Chowk, Sangli-	}	
416 416.	}	...Applicant

Versus

Swagat Builders and Developers	}	
Registered Partnership Firm,	}	
Through its Partner Manjusha	}	
Balasaheb Patil Through her	}	
constituted attorney, Shri.	}	
Balasaheb Jagannath Patil, Resid-	}	
ing at Ganaraj Apartment, Flat	}	

No. 3, 21/A, North Shivaji Nagar, }
Sangli- 416 416 & Others. } ...Respondents

Mr. Vikram N. Walawalkar a/w Mr. Amey C. Sawant, Mr. Virendrasingh V. Tapkir for the Applicants in CRA/52/2023.

Mr. Kuldeep U. Nikam a/w Mr. Prasad Avhad, Mr. Surajsingh Malas, for the Applicants in CRA/40/2023.

Mr. Ishaan Kapse for Respondent No. 1.

CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : 3rd AUGUST, 2023.

PRONOUNCED ON : 19th AUGUST, 2023.

Judgment :

1. Both the Civil Revision Applications arise out of the orders passed in applications filed under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (C.P.C.) in Special Civil Suit No. 100 of 2022. The Revision Applicant in CRA No. 52 of 2023 is defendant No. 1 and the Revision Applicants in CRA No. 40 of 2023 are defendant Nos. 3 and 4 in the Special Civil Suit No. 100 of 2022. As the orders arise out of applications filed in Special Civil Suit No. 100 of 2022, the matters were heard together and is being decided by this common judgment.

2. For the sake of convenience the parties are referred to by their status before the trial Court.

3. The facts of the case are that the plaintiff firm through its partner filed Special Civil Suit No. 100 of 2022 on 9th March, 2022 *inter alia* seeking recovery of sum of Rs. 95,84,520/- alongwith interest thereon from defendant Nos. 1 to 4, and for a declaration that all resolutions, remarks and orders passed by defendant No. 1, Municipal Corporation in respect of the payment of compensation to defendant Nos. 2 to 4 are illegal, void, fraudulent and beyond the authority and as such are liable to be rejected. The plaintiff also prayed for implementation of the Government Notification dated 29th April, 2005 to include the acquired land in the reservation of the adjacent plot and consequential rectification of the layout.

4. The Revision Applicant in CRA No. 52 of 2023 filed an application on 05th May, 2022 under the provisions of Order 7 Rule 11(d) of C.P.C. seeking rejection of the plaint. It was contended that as per the provisions of Section 487 of the Maharashtra Municipal Corporation Act, 1949 (“MMC Act, 1949”) there is a requirement of pre-suit notice which has not been complied with in the present

case and as such the institution of the suit is barred. The second ground on which the rejection was sought, was that under the provisions of Section 487(1)(b) of the MMC Act, 1949 the suit is to be instituted within a period of six months from the date of accrual of the cause of action. The third objection raised was that considering the provisions of Section 149 of the Maharashtra Regional Town Planning Act, the jurisdiction of the civil Court is barred.

5. As regards the Revision Applicant in CRA No. 40 of 2023 is concerned, the application was preferred on 18th June, 2022 seeking rejection of the plaint on the ground that the plaint challenges the resolutions which were passed in the year 2015 and as such was barred by limitation. It may be noted that learned Counsel for the Revision Applicant in CRA No. 40 of 2023 at the outset pointed out that although the application was filed under the provisions of Order 7 Rule 11(d) of the C.P.C. at the time of argument submission were also advanced as regards non-disclosure of the cause of action, which was considered by the trial Court, as is evident from the issues which are framed by the trial Court.

6. To the application under Order 7 Rule 11, the plaintiff filed the

say on 18th June, 2022 and contended that the question of limitation is a mixed question of law and fact and that the cause of action has been distinctly stated to have arisen in the month of September, 2019. It was further contended that as stated in paragraph 17 of the the plaint, the pre-suit notice was given in the year 2017 and that without prejudice to the same the acts of Municipal Corporation cannot be said to be done in pursuance or execution of the Act and, therefore, no such notice is in fact required.

7. As regards the application filed by defendant Nos. 3 and 4 is concerned, the plaintiff in their reply dated 01st July, 2022 contended that the suit has been filed for recovery of the compensation which is illegally paid to the defendants and the defendants are assuming that suit is for challenging the resolution passed by the Municipal Corporation. It was further contended that issue of limitation is mixed question of law and fact.

8. The trial Court while considering the application filed by the Municipal Corporation below Exhibit 34, considered the averments in the plaint that the payment of the compensation to defendant Nos. 2 to 4 in the year 2015 came to the knowledge of the plaintiff in

September, 2019 and that the issue of limitation is a mixed question of law and fact and can be considered after the evidence has been led. The trial Court considered the notice dated 19th January, 2017 as pre-suit notice and that the period of six months prescribed in Section 487(1)(b) of the MMC Act is not co-related with the date of issuance of the notice. As regards the application of Section 149 of the MRTP Act is concerned, the trial Court held that the relief sought by the plaintiff was in respect of the compensation for the acquisition and as such rejected the application.

9. The trial Court while considering the application filed by defendant Nos. 2 and 3 below Exhibit 40 framed the issue as to whether the suit is barred by limitation or does not disclose a cause of action. The trial Court held that the averments of the plaint discloses that the cause of action has arisen on 16th September, 2019 which was the date on which the plaintiff became aware that the compensation has been paid in the year 2015 to defendant Nos. 2 to 4. The trial Court held that the question of limitation can be decided after the evidence is led. As regards the absence of cause of action, the trial Court considered the discrepancy pointed out that the agreement for sale was in the name of Manjusha Patil in her

individual capacity whereas the development agreement has been executed in favour of Swagat Builders through their partner Manjusha Patil as also the submissions that the area given to the plaintiff for development was reservation free area and as the area given for development was after deducting the area under reservation, the plaintiff was not entitled to the compensation and held that the submissions required evidence to be led and as such rejected the application.

10. Mr. Walawalkar, learned Counsel appearing for the Revision Applicant in CRA No. 52 of 2023 has taken this Court through the averments in the plaint and would contend that the relief for recovery of the amount of compensation is founded on the basis of the resolutions passed by the Municipal Corporation and without the resolutions being set aside, the relief of recovery of amount of compensation does not survive. As such he would contend that the provisions of Section 487 of the MMC Act, 1949 squarely applies. He would further submit that the trial Court has erred by considering the notice of 2017 as a pre-suit notice and even if it is construed as a pre-suit notice, the suit is barred by limitation under the provisions of Section 487(1)(b) of the MMC Act, 1949. In support of his submissions, he relies upon the decisions in the case

of (i) *Noor Mohd. Shami Shaikh & Anr. V/s. Maharashtra Housing and Development Board & Ors.*¹ (ii) *Laxmichand kalyanji V/s. Municipal Corporation of Greater Bombay*² (iii) *Satish Dalichand Shah V/s. Municipal Corporation of Greater Bombay*³ and (iv) *Kolhapur Zilla Rajya Abkari Parvana Dharak Samajik Seva Sangh, Kolhapur V/s. Kolhapur Municipal Corporation*⁴.

11. *Per contra*, Mr. Kapse, learned Counsel appearing for the plaintiff submits that the cause of action has been distinctly stated to have arisen in the month of 2019 and the suit having been filed in the year 2022, the issue of limitation is a mixed question of law and fact and as such requires evidence to be led. He would further submit that as regards pre-suit notice, the same has been given in the year 2017, although it is specifically pleaded that the act of the Municipal Corporation in preferring the resolutions is an illegal act, no notice was required. He would submit that the passing of the general body resolution is not an act of the corporation and as such Section 487 of the MMC Act, 1949 has no application. He would further submit that even if the suit does not survive against defendant No. 1, the same survives against defendant Nos. 2 and 3

1 2014 (1) Mh.L.J.

2 AIR 2002 Bombay 217.

3 AIR 2005 Bombay 442.

4 2006 (2) Mh.L.J.

and as such cannot be rejected. In support of his contentions he relies upon the decisions in the case of (i) *Aurangabad Smart City Development Corporation Ltd. & Anr. V/s. Maharashtra State Board of Waqf*⁵ (ii) *Madhav Prasad Aggarwal & Anr. V/s. Axis Bank Limited & Anr.*⁶ and (iii) *Chhotanben & Anr. V/s. Kiritbhai Jalkrushnabhai Thakkar & Ors.*⁷.

12. In support of his application Mr. Nikam appearing for Revision Applicant in CRA No. 40 of 2023 submits that although the application sought rejection on the ground of limitation, it is evident from the order which has been passed that the grounds of non-absence of cause of action was also taken into consideration by the trial Court. He has invited the attention of this Court to the additional compilation of documents which has been tendered on record and has pointed out that the agreement had been executed with Manjusha Patil and not with the plaintiff and the agreement was in respect of the suit property excluding the area under reservation. He would further submit that the development agreement clearly specifies that the same is in respect of the land excluding the area under reservation.

5 2021 SCC OnLine Bom 630

6 (2019) 7 SCC 158

7 (2018) 6 SCC 422

13. Considered the submissions and perused the papers with the assistance of learned Counsel appearing for the parties.

14. Before advertng to the facts of the case it would be profitable to re-produce the provisions of Order 7 Rule 11 of the C.P.C. which reads as under:

[R 11] Rejection of plaint.- The plaint shall be rejected in the following cases-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) Where it is not filed in duplicate;
- (f) Where the plaintiff fails to comply with the provisions of rule 9:]

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

15. The provisions of Order 7 Rule 11 of the C.P.C. was considered

by the Apex Court in the case of ***Dahiben vs Arvinbhai Kalyanji Bhanusali***⁸ wherein the principles were analyzed and guidelines were laid in paragraph 23 which reads thus:

23.2 The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3 The underlying object of Order VII Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4 [In Azhar Hussain v. Rajiv Gandhi](#) this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the Court in the following words :

“12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil

8(2020). 7 SCC 366

action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

23.6. Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.8. Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

24.11. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in [Liverpool & London S.P. & I Assn. Ltd. v. M.V.Sea Success I](#) which reads as :

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12. In *Hardesh Ores (P.) Ltd. v. Hede & Co.* the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the Court cannot embark upon an enquiry whether the allegations are true in fact.

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.

23.14. The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra*. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case.

23.15. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.”

16. It is settled that for the purpose of considering an application under the provisions of Order 7 Rule 11, the averments in the plaint are germane. The plaintiff has filed Special Civil Suit No. 100 of 2022 seeking the relief of recovery of the amount of compensation in respect of acquisition of the suit property from defendant Nos. 1 to 4 alongwith interest. The other reliefs which

are sought as regards the resolutions which were passed by the Municipal Corporation, by reason of which the compensation was given to defendant Nos. 2 to 4 and for implementation of the notification dated 29th April, 2005.

17. The case of the plaintiff is that the suit property bearing Survey No. 136 admeasuring 4 hectare 45 R was owned by defendant No. 2 and that the plaintiff a registered partnership firm is engaged in the business of developing the property. It is averred that defendant No. 2 for financial constraint decided to develop the suit property and by agreement dated 24th April, 2000 on the agreed consideration defendant No. 2 agreed to hand over the rights of development in the suit property only for the purpose of carrying on the development and other ancillary reasons such as handing over the reserved area, accepting the compensation for representing defendant No. 2 in the Court cases, irrevocable power of attorney dated 26th June, 2002 was executed. It is pleaded that on 25th June, 2002 a registered development agreement was executed along with the irrevocable power of attorney dated 27th September, 2006 and power of attorney dated 27th September, 2006. It is claimed that based on these documents, the development rights have been given to the plaintiff alongwith the

irrevocable power to hand over the reserved portion and to accept compensation in respect of the same. It is pleaded that the entire consideration has been paid by the plaintiff to defendant No. 2. It is further pleaded that as per the revised development plan dated 01st June, 1977, as regards Survey No. 184 the roads admeasuring 24 meters and 18 meters were proposed.

18. It is pleaded that as regards Survey No. 184, the area affected by the proposed road was 5511 square meters, in respect of which the plaintiff was entitled to the compensation and had requested defendant No. 1 to acquire the same by agreement in the year 2006 and accordingly defendant No. 1 had agreed by communication dated 05th October, 2006 and while handing over the possession, the right to receive the compensation was reserved and as such it is incumbent upon the Municipal Corporation to hand over the compensation to the plaintiff.

19. It is pleaded that the plaintiff got an order for converting the land into non-agricultural land and as per the layout sanctioned by defendant No. 1 Municipal Corporation, the proposed D.P. road is shown as 30 meters. It is further pleaded that as per the

notification of the Urban Development Department, the 30 meters road was further reduced to 24 meters. It is claimed that when a communication was made by the Municipal Corporation for the purpose of amalgamation of the excluded portion of 6 meters into the adjacent plot and for compensation for the acquired plot, the Pune Municipal Corporation by communication dated 16th September, 2019 informed the plaintiff that the compensation in respect of 30 meters road was already given.

20. It is further pleaded that for purpose of handing over the compensation to the defendant No. 2 resolutions passed by the Standing Committee of the Municipal Corporation are illegal and liable to be cancelled, as the compensation is required to be given to the plaintiff. It is further pleaded that by D.P. plan, the earlier 30 meters wide road had been reduced to 24 meters and in spite thereof the Municipal Corporation has paid compensation in respect of 30 meters wide road, which is illegal. The cause of action is stated to have arisen in the month of September, 2019, when it came to the knowledge of the plaintiff that the defendants in collusion with each other have obtained the compensation through fraud.

21. From a reading of the plaint, the case of the plaintiff is that by the development agreement and irrevocable power of attorney, there was a transfer of the ownership rights in favour of the plaintiff. It is further the case that by virtue of an agreement between the plaintiff and defendant No. 1, the area under reservation was handed over to defendant No. 1 Municipal Corporation and as such defendant No. 1 ought to have paid over the compensation to the plaintiff and not to defendant No. 2 i.e. the original owner. As the compensation has been paid over by defendant No. 1 Municipal Corporation pursuant to the resolutions of the general body meeting, a declaration is sought that the general body resolutions are illegal and not binding for recovery of the compensation from defendant Nos. 1 to 4. The plaintiff also claims that by collusion, the defendant No. 1 has illegally handed over compensation for 30 meters D.P. road which had been reduced to 24 meters.

22. The rejection of the plaint has been sought by defendant No. 1 Municipal Corporation by virtue of the bar operating under the provisions of Section 487 of the MMC, Act, 1949 which reads thus:

(1) No suit shall be instituted against the Corporation

or against the Commissioner, or the Transport Manager, or against any municipal officer or servant, in respect of any act done or purported to be done in pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act :-

(a) Until the expiration of one month next after notice in writing has been, in the case of the Corporation, left at the chief municipal office and, in the case of the Commissioner or of the Transport Manager or of a municipal officer or servant delivered to him or left at his office or place of abode, stating with, reasonable particularity the cause of action and the name and place of abode of the intending plaintiff and of his attorney, advocate, pleader or agent, if any, for the purpose of such suit, nor

(b) unless it is commenced within six months next after the accrual of the cause of action.

(2) At the trial of any such suit-

(a) the plaintiff shall not be permitted to go into evidence of any cause of action except such as is set forth in the notice delivered or left by him as aforesaid;

(b) the claim, if it be for damages, shall be dismissed if tender of, sufficient amends shall have been made before the suit was instituted or if, after the institution of the suit, a sufficient sum of money is paid into Court with cost.

(3) Where the defendant in any such suit is a municipal officer or servant, payment of the sum or of any part of any sum payable by him in, or in consequence of the suit, whether in respect of costs, charges, expenses, compensation for damages or otherwise, may be made, with the previous sanction

of the Standing Committee or the Transport Committee from the Municipal Fund or the Transport Fund, as the case may be.

23. Perusal of the above provision indicates that there is a bar to institution of the suit unless a notice of one month in writing has been served upon the Municipal Corporation stating with reasonable particularity the cause of action and other details. The second requirement is that the suit has to be instituted within a period of six months from the accrual of the cause of action. As regards the issuance of pre-suit notice is concerned, the communication dated 19th January, 2017 is sought to be pressed as pre-suit notice. The said communication of 19th January, 2017 calls upon the Municipal Corporation to make the payment of the compensation on the basis that on 05th October, 2006 the area under the reservation was handed over to the Municipal Corporation and in spite of funds being available from the State Government and despite repeated reminders, the amount of compensation has not been received. The communication further states that if the compensation is not paid within a period of 15 days, legal proceedings will commence. Upon a reading of the said communication dated 19th January, 2017, the cause of action appears to be the non-payment of the compensation by the

Municipal Corporation. The said communication does not refer to any of the resolutions of the year 2015 which are now sought to be challenged by way of the present suit, nor does it refer to the payment by the Municipal Corporation to defendant No. 2 based on these resolutions. The requirement of a pre-suit notice under the provisions of Section 487(1)(a) of the MMC Act mandates the stating with reasonable particularity the cause of action. If the communication of 19th January, 2017 is perused, in my view the same cannot constitute a pre-suit notice in respect of the cause of action in Special Civil Suit No. 100 of 2022 i.e. the passing of resolutions of the year 2015 and the consequent payment of the compensation to defendant No. 2.

24. Another obstacle which comes in the way of the plaintiff is the period of limitation, which has been prescribed under Section 487(1)(b). The provisions of Section 487 prescribes a special period of limitation which is six months after the date of accrual of cause of action. The cause of action which has been pleaded in the suit is the payment of compensation to defendant No. 2 which came to the knowledge of the plaintiff in September, 2019. The photocopy of the suit is annexed to the proceedings, however the same does not contain the date of filing. During arguments the date of filing of

suit was stated by the Revision Applicants as 9th March, 2022 which was not disputed by learned Counsel for the Respondents. As such the suit is *ex facie* barred by limitation.

25. Learned Counsel appearing for the respondent-plaintiff has sought to contend that the question of limitation is a mixed question of fact and law, which requires evidence to be led. In the present case it is stated by the plaintiff itself that the cause of action arose in the month of September, 2019 and calculating the period of six months from the date of acquiring knowledge in September, 2019, the period of six months expired in March, 2020. It is only when there is a disputed question of fact as regards limitation evidence will be required to be led. In the present case the averments in the plaint and the date of the filing of the suit clearly shows that the suit is *ex facie* barred by the law of limitation.

26. The trial Court while rejecting the application has considered that the date of knowledge was of the year 2019 and as such the same is within the limitation as regards the challenge to the resolutions of the year 2015. The trial Court failed to take into consideration the provisions of Section 487(1)(b) of the MMC Act which prescribes a special period of limitation of six months. As

regards the issuance of the pre-suit notice is concerned, the trial Court has considered the communication of 19th January, 2017 as the pre-suit notice without appreciating the cause of action mentioned in the pre-suit notice. The trial Court rejected the application by considering that the issue as far as the limitation is concerned, can be taken into consideration after evidence has been led and that the provisions of Section 487 of the MMC Act does not intend the suit to be filed within a period of six months, after the issuance of the notice. In that respect, the decision of Division Bench of this Court in the case of ***Satish Dalichand Shah*** (supra) squarely applies. In that case this Court was considering the provisions of Section 527 of the Mumbai Municipal Corporation Act which is parimateria with the provisions of Section 487 of the Maharashtra Municipal Corporation Act, 1949. This Court after considering the provisions has held in paragraph 11 as under:

“11. [Section 527](#) of the said Act has two parts. One relates to limitation for instituting suit against the decision of the authority under the Act and another relates to requirement of notice prior to institution of such suit. Clause (a) of Sub-section (1) of [Section 527](#) of the said Act relates to notice whereas Clause (b) relates to the period of limitation which prescribed six months, period next after the accrual of the cause of action. In other words, the period of six months would commence from the date following the date of cause of action. Clause (a) would require one-month notice

prior to the institution of a suit. It specifically says that no suit shall be filed before expiry of one month next after notice in writing. Undoubtedly, no period is fixed for issuance of notice as such, but the provision relating to requirement of issuance of notice is to be found in the same provisions, which deals with the period of limitation of six months for filing a suit. It would obviously mean that the notice should be served within a period of six months from the date of accrual of the cause of action. It cannot be served at sweet will of the aggrieved party, nor service of the notice after a period of six months from the date of accrual of the cause of action can automatically extend the period of limitation for the purpose of filing of a suit. No interpretation which would virtually defeat the very object behind incorporating the period of limitation for institution of a suit against an action by authority under the said Act can be allowed, besides that the provisions are very clear and, therefore, warrant no interpretation as such.

27. Another submission which has been pressed into service is that the relief which has been claimed, is recovery of the compensation amount from defendant No. 2 and that the challenge to the resolutions of the year 2015 are incidental relief. I am afraid that the submission cannot be accepted upon the reading of the plaint as a whole. As indicated above, it is the specific case of the plaintiff that by virtue of the resolutions the payment of the compensation has been made to defendant No. 2 and unless the resolutions are set aside, the plaintiff cannot establish his entitlement to the compensation. In such an event, as the challenge

is to the resolutions of the Municipal Corporation and also that the plaintiff seeks implementation of the notification dated 29th April, 2005, it cannot be said that the substantial relief claimed is recovery of compensation from defendant No. 2. The suit in my opinion is essentially a challenge to the resolutions of the Municipal Corporation whereby the compensation has been paid to defendant No. 2 and as such the provisions of Section 487 of the Maharashtra Municipal Corporation Act, 1949 squarely applies.

28. The defendant No. 2 sought rejection of the plaint on the ground that the same is barred by limitation as the resolutions of the year 2015 are sought to be challenged. However, as pointed out by learned Counsel appearing for the Revision Applicants that the trial Court had framed an issue as regards the non-disclosure of cause of action as well as limitation in view of the submissions advanced before the trial Court as regards absence of cause of action. In that context if the plaint is perused, the plaintiff is seeking compensation in respect of the area under reservation which was handed over to the Municipal Corporation. The claim is based on the development agreement and the various power of attorneys which have been executed by the original owner in favour of the plaintiff. The perusal of the first agreement of sale annexed

to the plaint would indicate that the same had been executed in favour of Manjusha Patil in her individual capacity and not as partner of the partnership firm. From the recitals of the agreement dated 24th April, 2000 it appears that for a consideration of Rs.88,00,000/- the property was agreed to be sold as against which a sum of Rs.25,10,000/- was paid and balance Rs.62,90,000/- was to be paid.

29. The second agreement which is the development agreement executed between the plaintiff partnership firm and defendant No. 2 clearly mentions that the subject matter of the development is the area bearing Survey No.184 admeasuring 2 hectare 13.95 R reservation free area out of 4 hectare 45 R agricultural land. In the description of the property also the area is mentioned as a reservation free area. In clause 2 of the agreement the reservations are mentioned which includes 100 ft. D.P. road and it is stated that excluding the reservation the balance area is handed over for development. Perusal of the power of attorney dated 29th September, 2006 which has been given by defendant No. 2 in favour of one Shivbhakti Builders and Developers of which Manjusha Patil is stated to be a partner is as regards the area which

was under reservation of school. Another power of attorney dated 26th September, 2006 has been executed by defendant No. 2 (since deceased) in favour of the plaintiff as regards the area under reservation of the D.P. road whereby the power has been given in respect of the area under reservation for accepting the compensation giving valid discharge etc. on behalf of the owner. The power of attorney is to be read in conjunction with the development agreement by which reservation free area is handed over for development. In my view, the authority is granted for accepting compensation on behalf of the owner and not in its own right.

30. From the documents which are annexed to the plaint it appears that the area which was given for development was an area free of reservation. Upon considering the documents it cannot be said that the suit discloses a clear right to sue for the purpose of recovery of the compensation paid for the area handed over under reservation. In view of the guidelines which has been laid down in the case of *Dahiben V/s. Arvindbhai Kalyanji Bhanusali* (supra), upon a reading of the plaint alongwith documents which are annexed, the plaint does not disclose a clear right to sue for the

purpose of seeking compensation as under the development agreement. No right of development in respect of the area under reservation was transferred and the power of attorney was in respect of acceptance of compensation on behalf of the owner and not in their own right to claim compensation. In that view of the matter, the rejection of the application filed on behalf of defendant No. 3 & 4 is unsustainable.

31. The trial Court after holding that the area under reservation was not given for development and the same was under the ownership of the original owner, however, the same is a matter of evidence and on the basis of the above the suit cannot be rejected at a threshold. The Apex Court has held if the suit does not disclose a clear right to sue or is without merits and vexatious, the litigation has to be nipped in the bud. In the present case considering the documents which are annexed to the plaint, it is clear that the area under reservation was not handed over for development. Further even if the agreement for sale of the year 2000 is concerned, the same was executed in favour of Manjusha Patil and not the registered partnership firm and as such the partnership firm did not acquire any right to sue. The suit not having disclosed a clear right to sue was liable to be rejected at the threshold.

32. In light of the above in applying the decision of the Apex Court in the case of ***Dahiben vs Arvindbhai Kalyanji Bhanusali*** (*supra*), the impugned order rejecting the application under Order 7 Rule 11 is clearly unsustainable and as such is quashed and set aside. As a consequence, the plaint stands rejected.

33. As regards the decision which has been relied upon by learned counsel for the Respondents, the Apex Court in the case of ***Chhotanben & Anr.*** (*supra*), has held in the facts of that case that the issue regarding the suit barred by limitation is triable issue. In the present case, considering the provisions of Section 487(i)(b) of the Maharashtra Municipal Corporation Act, 1949, the suit has been filed beyond the prescribed period of six months and as such, is *ex-facie* barred by limitation. The next decision of the Apex Court which has been relied upon in the case of ***Madhav Prasad Aggarwal & Anr.*** (*supra*), the Apex Court in that case has held that the plaint has to be rejected as a whole or not at all in exercise of the powers under Order 7 Rule 11 (b) of the C.P.C.. The Apex Court held that it is not permissible to reject the plaint qua any particular portion of the plaint including against some of the defendants and continue the same against the other.

34. The Apex Court held that the plaint survives against certain defendants and or properties under Order 7 Rule 11 (d) of the C.P.C. will have no application at all and the suit as a whole must then proceed to trial. In the facts of the present case, unless the resolutions of the Municipal Corporation are set aside, the entitlement of the plaintiff to the compensation cannot be determined.

35. The next decision in the case of ***Aurangabad Smart City Development Corporation Ltd. and Another*** (*supra*), wherein this Court considering the issue as to whether the suit property was waqf property and the Municipal Corporation was claiming possession of the suit property. In that context, the Court held that the notice under Section 487 of the MMC Act, 1949 was not warranted, as the act attributed to defendant No.1 Municipal Corporation in that case cannot be said to have been done or purported to be done in pursuance of the provisions of the MMC Act, 1949. In the present case, the resolutions passed by the Municipal Corporation are challenged which is an act of the Corporation. The decisions cited by learned counsel for the Respondents does not assist the case of the Respondents.

36. In view of the above, the revision applications succeed.
Special Civil Suit No. 100 of 2022 stands rejected.

(SHARMILA U. DESHMUKH J.)