

V/s.

Assistant Ward and Anr.	Commissioner/Central ...	Respondents
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Mr. Sudhanva Bedekar with Mohammad Najni, for the Petitioner.

CORAM : N.J. JAMADAR, J.

DATE : 6TH MAY 2025.

PC:

1. Heard the learned counsel for the petitioner.
2. The challenge in this petition is to an order dated 25th April 2025 whereby the learned City Civil Court has refused to register the suit assailing the legality and validity of a notice under Section 354-A of the Mumbai Municipal Corporation Act, 1888 in view of the bar contained in Section 515-A of the said Act.
3. Learned counsel for the petitioner informed the Court that notice of today's listing has been served on the respondent nos. 1 and 2. To facilitate the respondent nos. 1 and 2 to appear, the matter was deferred to the Second Session and the advocate who usually appears for the Municipal Corporation was requested to appear before this

Court in the Second Session.. Learned counsel informed the Court that the notice of the posting of the matter in the Second Session was also given by e-mail to the respondents. None appears for the respondents.

4. Learned counsel for the petitioner invites attention to the Court to a Division Bench judgment of this Court in the case of '*Abdul Karim Ahmed Mansoori Vs. Municipal Corporation of Greater Mumbai and Anr*¹', wherein, it was observed that the Division Bench judgment in the case of '*Abdul Razzaq Sunesra vs Municipal Corporation of Greater Mumbai and Ors.*²', in which the constitutional validity of Section 515-A, has been upheld, does not hold that ouster of the Civil Court's jurisdiction is so complete that a Civil Suit cannot be taken on file or the plaint cannot be registered at all. Even in the recent decision in the case of *Asif Fazal Khan Vs. The Municipal Corporation of Greater dated 17th April 2025*, in Para No. 33.1 and 33.2, the Division Bench had adverted to the enquiry expected of the Civil Court when a suit is instituted challenging the notices issued by the Municipal Corporation.

5. Thus, the question as to whether the learned Judge, City Civil Court could have refused to register the plaint and examine the tenability of the suit after considering the averments in the plaint, arises for consideration.

6. Issue notice to the respondents, for final disposal, returnable on 9th May 2025

7. In addition to the court notice, the petitioner is at liberty to serve the respondents by private service and file an Affidavit of

1 (2013) SCC online Bom 1218

2 (2013) SCC online Bom 832

Service.

8. In the meantime, there shall be an ad-interim relief in terms of prayer clause (c).

(N.J. JAMADAR, J)