Case Pointer
MONTHLY DIGEST-BOMBAY HIGH COURT

2024(10)MDBHC(Dig)1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Milind N Jadhav]

Civil Revision Application No 326 of 2023 **dated 03/10/2024**

Jayashree Gangadhar Hiremath vs. Nirmala Gangadhar Hiremath

SUCCESSION CERTIFICATE DISPUTE

Indian Succession Act, 1925 Sec. 372 - Maharashtra Civil Services (Pension) Rules, 1982 Rule 116 - Maharashtra Civil Services (Conduct) Rules, 1979 Rule 26 - Succession Certificate Dispute - Appellant, second wife of the deceased, challenged orders granting family pension to first wife - First wife sought a succession certificate under Sec. 372 of Indian Succession Act, claiming to be the legally wedded wife - Second wife claimed rights as nominee for pensionary benefits, but both lower courts ruled in favor of the first wife, citing the subsistence of the first marriage - Second marriage declared void - Court dismissed second wife's appeal, holding that nomination does not confer legal heirship, and ordered pension to be paid to the first wife with arrears. - Application Dismissed

Law Point: Nomination for pensionary benefits does not confer legal rights when the second marriage is void due to the subsistence of the first marriage.

भारतीय उत्तराधिकार अधिनियम १९२५ कलम ३७२- महाराष्ट्र नागरी सेवा निवृत्ती वेतन नियमावली १९८२ नियम ११६- महाराष्ट्र नागरी सेवा वर्तन नियमावली १९८० नियम २६- उत्तराधिकारी प्रमाणपत्र वाद पहिल्या पत्नीला कौटुंबिक निवृत्तीवेतन मंजूर करणाऱ्या आदेशाला मृताच्या दुसरी पत्नीने आव्हान दिले-कायदेशीर रित्या लग्न केलेली पत्नी असण्याचा दावा करून भारतीय उत्तराधिकार अधिनियम कलम ३७२ अंतर्गत पहिल्या पत्नीने वारसा प्रमाणपत्र मिळवले-निवृत्ती वेतनाच्या फायद्यासाठी नामनिर्देशित म्हणून हक्काचा दुसऱ्या पत्नीने दावा केलेला, पहिल्या पत्नीच्या उदरनिर्वाहाचा निर्वाळा देऊन तिला प्राथमिक न्यायालयांनी अनुकूलता दर्शवली- दुसरे लग्न शून्यवत घोषित करण्यात आले- नामनिर्देशन कायदेशीर उत्तराधिकार प्रदान करत नाही आणि थक्कीत रकमे सहित पहिल्या पत्नीस निवृत्तीवेतन देण्याचा आदेश देत न्यायालयाने दुसऱ्या पत्नीचे अपील फेटाळले - अर्ज फेटाळले.

कायद्याचा मुद्दा- प्रथम लग्नाच्या अस्तित्वामुळे दुसरे लग्न शून्यवत झाले असेल तर केवळ निवृत्तीवेतनाच्या फायद्यासाठी नामनिर्देशन केल्यामुळे कायदेशीर हक्क प्रदान होत नाहीत.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC2410436607**

2024(10)MDBHC(Dig)2

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before A S Chandurkar; Gauri Godse; Rajesh S Patil]

Writ Petition S T No 10918 of 2024, 10971 of 2024, 10972 of 2024 **dated 30/09/2024**

Harpritsingh Bhupindersingh Hora; Vijay Shankarlal Lalwani; Sachin Suryakant Belagade; Sanjay Marutrao Ingawale vs. State of Maharashtra; Superintendent of State Excises, Pune; Superintendent of State Excises, Satara; Superintendent of State Excises, Kolhapur

COLLECTOR'S POWERS FOR CLOSURE

Constitution of India Art. 47 - Art. 19; Bombay Prohibition Act, 1949 Sec. 143, Sec. 149, Sec. 52, Sec. 142, Sec. 11; Bombay General Clauses Act, 1904 Sec. 13; Maharashtra Country Liquor Rules, 1973 Rule 26, Rule 2, Rule 27 - Collector's Powers for Closure - Petitions challenge orders of District Collectors issued under Section 142 of Bombay Prohibition Act, closing liquor shops for a day due to public peace concerns during Ambedkar Jayanti - Petitioners argue closure of multiple shops is beyond Collector's authority, claiming "any place" in Sec. 142 refers to a singular shop - Court interprets Sec. 142, holding Collector's power extends to closing multiple places when necessary for public peace, provided written orders are issued - Held that Collector's order does not violate law, petitions referred for decision on merits - Petitions Dismissed

Law Point: Section 142 of Bombay Prohibition Act empowers Collector to close multiple liquor outlets when public peace requires it, not limited to a single location.

भारतीय राज्यघटना कलम ४७ कलम १९ - मुंबई प्रतिबंध अधिनियम १९४९ कलम १४३ कलम १४९ कलम ५२ कलम १४२ कलम ११- मुंबई सर्वसाधारण वाक्खंड अधिनियम १९०४ कलम १३- महाराष्ट्र देशी दारू नियमावली १९७३ नियम २६ नियम २ नियम २७ - जिल्हाधिकाऱ्यांचा बंदीआदेश- आंबेडकर जयंतीच्या संदर्भाने सार्वजनिक शांततेसाठी मुंबई प्रतिबंध अधिनियम कलम १४२ अंतर्गत दारू दुकाने एक दिवस बंद ठेवण्याच्या जिल्हाधिकाऱ्यांचा आदेशाला आव्हान देणारी याचिका- कलम १४२ अंतर्गत कुठलेही स्थळ याचा अर्थ एकाच दुकानाशी

संबंधित आहे, अनेक दुकाने बंद करणे जिल्हाधिकाऱ्यांच्या अधिकार कक्षाबाहेरचे आहे असा युक्तिवाद याचिकाकर्त्यांनी केला - कलम १४२ चा अर्थ लावत असताना न्यायालयाने सार्वजनिक शांततेसाठी आवश्यक असताना अनेक स्थळे बंद करण्यापर्यंत जिल्हाधिकाऱ्यांचे अधिकार क्षेत्र आहे असा निर्वाळा दिला मात्र त्यासाठी लेखी आदेश जारी केलेले असावेत- गुणवत्ताधारित निर्णयासाठी याचिका निर्दिष्ट केली गेली- जिल्हाधिकाऱ्यांचा आदेश कायद्याचा भंग करत नाही असा निर्णय - याचिका फेटाळली.

कायद्याचा मुद्दा- मुंबई प्रतिबंध अधिनियम जिल्हाधिकाऱ्यास जेव्हा सार्वजनिक शांततेस आवश्यक असेल तेव्हा अनेक दारू दुकाने बंद करण्याचे सामर्थ्य देतो, हे अधिकार एकाच स्थळापुरते मर्यादित नाहीत.

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2024(10)MDBHC(Dig)3

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Sandeep V Marne]

Writ Petition No 8537 of 2023 **dated 27/09/2024**

Safset Agencies Private Ltd vs. Riddhi Rahul Kumar Gosalia; Nyuti Rahul Kumar Gosalia; Dhvani Rahul Kumar Gosalia

STAY ON EVICTION DECREE

Code of Civil Procedure, 1908 Or. 41 R. 5 - Maharashtra Rent Control Act, 1999 Sec. 24 - Stay on Eviction Decree - Petitioner challenged the appellate court's order directing deposit of fair market rent as a pre-condition for stay of an eviction decree- Appellate Bench stayed execution subject to deposit of Rs. 6,00,000/- per month as arrears from termination of license till the decree and Rs. 17,95,000/- per month as compensation after the decree-Petitioner argued market rent should not apply as license agreement provided for contractual damages-Court held that in eviction cases, the tenant's obligation to pay fair market rent during stay of execution is justified to compensate the landlord-Petition dismissed

Law Point: In eviction cases, courts can direct tenants to deposit fair market rent as a condition for stay, even if contractual damages are stipulated in the license agreement.

दिवाणी प्रक्रिया संहिता १९०८ आ. ४१ नि. ५- महाराष्ट्र भाडे नियंत्रण अधिनियम १९९९ कलम २४- हकालपट्टीच्या हुकूमनाम्यावर स्थगिती- हकालपट्टीच्या हुकूमनाम्यावर स्थगितीसाठी उचित

बाजारभावाचे भाडे जमा करण्याच्या पूर्व अट घालणाऱ्या अपिलीय न्यायालयाच्या आदेशाला याचिकाकर्त्यांनी आव्हान दिले-परवाना समाप्ती पासून हुकूमनाम्यापर्यंत सहा लाख प्रति महिना थकीत म्हणून जमा करण्याच्या व हुकूमनाम्यानंतर भरपाई म्हणून प्रतिमाह १७,९५,००० रु. भरण्याच्या अटीवर अपिलीय न्यायालयाने स्थगिती दिली- संविदाजन्य भरपाईसाठी परवाना करार असल्याने बाजारभावाचे भाडे लागू करू नये असा युक्तिवाद याचिकाकर्त्याने केला- हकालपट्टीच्या प्रकरणात अंमलबजावणीच्या स्थगिती काळात उचित बाजारभाडे भरण्याचे भाडेकरूचे दायित्व मालकाला नुकसान भरपाई देण्यासाठी उचित आहे - याचिका फेटाळली.

कायद्याचा मुद्दा- परवाना करारात संविदाजन्यभरपाईची अट असेल तर हकालपट्टीच्या प्रकरणात न्यायालय स्थगितीसाठी उचित बाजार भाडे जमा करण्याचे निर्देश देऊ शकते.

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2024(10)MDBHC(Dig)4

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Avinash G Gharote; M S Jawalkar]

Writ Petition No. 2155 of 2024 **dated 24/09/2024**

Rashmi W/o Shyamkumar Barve vs. Deputy Commissioner & Member, District Caste Certificate Scrutiny Committee; Deputy Secretary, Govt of Maharashtra; State of Maharashtra; Election Commission of India; Returning Officer and Additional

CASTE VALIDITY CANCELLATION

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 Sec. 18, Sec. 7 - Maharashtra Scheduled Castes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification Of) Caste Certificate Rules, 2012 Rule 16, Rule 17 - Caste Validity Cancellation - Appellant challenged the decision of Caste Scrutiny Committee canceling her caste validity certificate issued in 2020, based on a complaint alleging fraud - Appellant contended that the Committee lacked review powers under Sec. 7(2) of the Caste Certificate Act, 2000 - Committee had earlier rejected a similar complaint, and the appellant argued that the second complaint should not have been entertained - Court examined the procedure followed, finding the inquiry rushed, with insufficient time given for a fair hearing - Interim relief granted, staying Committee's order - Interim Relief Granted

Law Point: Caste Scrutiny Committee does not have the power to review or cancel a caste validity certificate without following due process and allowing sufficient opportunity for defense, even in cases involving alleged fraud.

महाराष्ट्र अनुसूचित जाती, अनुसूचित जमाती, विमुक्त जमाती भटक्या जमाती इतर मागासवर्ग आणि विशेष मागास प्रवर्ग (जाती प्रमाणपत्र जारी करणे आणि पडताळणीचे नियमन) जाती प्रमाणपत्र अधिनियम २००० कलम १८, ७ - महाराष्ट्र अनुसूचित जाती अनुसूचित जमाती विमुक्त जमाती भटक्या जमाती इतर मागासवर्ग आणि विशेष मागास प्रवर्ग (जाती प्रमाणपत्र जारी करणे आणि पडताळणीचे नियमन) जाती प्रमाणपत्र नियमावली २०१२ नियम १६, १७ - जात पडताळणी रद्द फसवणुकीचा आरोप करणाऱ्या तक्रारीवर आधारित २०२० साली जारी केलेले जाती पडताळणी प्रमाणपत्र रद्द करण्याच्या जिल्हा पडताळणी समितीच्या निर्णयाला अपीलकर्त्याने आव्हान दिले- जात प्रमाणपत्र अधिनियम २००० च्या कलम ७(२) अंतर्गत समितीकडे पुनरीक्षणाचे अधिकार नाहीत असा दावा अपीलकर्त्यांनी केला - समितीने यापूर्वी अशीच तक्रार फेटाळली होती आणि दुसऱ्यांदा तक्रार हाताळण्याची आवश्यकता नाही असा युक्तिवाद अपीलकर्त्यांनी केला- न्यायालयाने प्रक्रियेचे परीक्षण केले आणि उचित सुनावणीसाठी अपुरा वेळ देत गडबडीत चौकशी केली असा निष्कर्ष काढला- तात्पुरता दिलासा मंजूर - समितीच्या आदेशाला स्थगिती- तात्पुरता दिलासा मंजूर.

कायद्याचा मुद्दा- फसवणुकीचा आरोप जरी असला तरीही जातपडताळणी समितीला यथोचित प्रक्रियेचे पालन न करता व युक्तिवादाची पुरेशी संधी न देता जात पडताळणी प्रमाणपत्र पुनरीक्षण किंवा रद्द करण्याचे अधिकार नाहीत.

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2024(10)MDBHC(Dig)5

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Ravindra V Ghuge]

Writ Petition No. 10428 of 2022 **dated 23/09/2024**

Sambhaji Shankar Vanave vs. Divisional Women and Child Welfare Division; District Woman & Child Development; Superintendent, Government Kushtadham

ULP COMPLAINT RESTORATION

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 - ULP Complaint Restoration - Appellant sought restoration of Complaint (ULP) challenging his dismissal, which was dismissed due to non-appearance after 19

years - Despite filing a restoration application, Labour Court rejected it, citing the appellant's lack of diligence - Industrial Court upheld the rejection - High Court found that dismissal in default would permanently close litigation, denying appellant the chance to contest his dismissal - Complaint restored without back wages for the interim period, and a time-bound hearing ordered - Petition Partly Allowed

Law Point: Restoration of a long-pending ULP complaint is justified to prevent permanent denial of relief, but back wages can be denied for the period of default.

महाराष्ट्र कामगार संघटना मान्यता देणे आणि अनुसूचित कामगार प्रथांना प्रतिबंध १९७१- अनुसूचित कामगार प्रथा तक्रार पुनःस्थापना - १९ वर्षांनंतर अनुपस्थितीमुळे बडतर्फ केल्याने बडतर्फीला आव्हान देत तक्रारीची पुन:स्थापना अपीलकर्त्यांनी मिळवली- अपीलकर्त्याच्या मेहनतीचा अभावाचा दाखला देऊन पुन:स्थापना अर्ज कामगार न्यायालयाने फेटाळला- औद्योगिक न्यायालयाने फेटाळणे कायम केले- बडतर्फीला आव्हान द्यायची संधी अपिलकर्त्याला नाकारणे यामुळे कायमस्वरूपी खटला बंद होईल असे न्यायालयास आढळले- अंतरिम काळासाठी थकित वेतनाशिवाय तक्रार पुन्हा दाखल केली आणि कालबद्ध सुनावणीचे आदेश याची केला- अंशतः अनुमती.

कायद्याचा मुद्दा- अनुतोषाची कायमस्वरूपी नाकबुली प्रतिबंधित करण्यासाठी प्रदीर्घ काळ प्रलंबित अनुसूचित कामगार प्रथा तक्रारीची पुन:स्थापना उचित आहे मात्र कसूर केलेल्या कालावधीसाठी थकबाकी नाकारली जाऊ शकते.

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2024(10)MDBHC(Dig)6

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Revati Mohite Dere; Sharmila U Deshmukh]

Criminal Appeal No 491 of 2024 **dated 20/09/2024**

Munib Iqbal Memon vs. State of Maharashtra

BAIL APPLICATION DELAY

Constitution of India Art. 21 - Indian Penal Code, 1860 Sec. 302, Sec. 307, Sec. 427, Sec. 435, Sec. 120B - Arms Act, 1959 Sec. 25, Sec. 3 - Explosive Substances Act, 1908 Sec. 5, Sec. 4, Sec. 3 - Unlawful Activities (Prevention) Act, 1967 Sec. 39, Sec. 20, Sec. 23, Sec. 16, Sec. 38, Sec. 18, Sec. 43D - Maharashtra Control of Organised Crime Act, 1999 Sec. 3, Sec. 21, Sec. 18 - National Investigation Agency Act, 2008 Sec. 21 - Bail Application Delay - Appellant sought bail citing prolonged pre-trial

detention of over 11 years under charges including UAPA and MCOCA - Trial delayed despite expediting orders, with only 8 out of 107 witnesses examined - Court noted appellant's long incarceration without trial conclusion and violation of right to speedy trial under Article 21 - Held that statutory restrictions cannot override constitutional rights - Bail granted with stringent conditions - Appeal Allowed

Law Point: Prolonged pre-trial detention without trial conclusion, especially under UAPA, violates the right to a speedy trial under Article 21, justifying bail despite statutory restrictions when delays persist.

भारतीय राज्यघटना कलम २१ - भारतीय दंड संहिता १८६० कलम ३०२ ३०७, ४२७, ४३५, १२०ख - शस्त्र अधिनियम १९५९ कलम २५ कलम ३- विस्फोटक पदार्थ अधिनियम १९०८ कलम ५ कलम ,४ कलम ३-बेकायदेशीर कारवाया प्रतिबंधक अधिनियम १९६७ कलम ३९, २०, २३,१६,३८,१८,४३ घ- महाराष्ट्र संघटित गुन्हेगारी नियंत्रण अधिनियम १९९९ कलम ३ कलम २ कलम २१, १८- राष्ट्रीय अन्वेषण संस्था अधिनियम २००८ कलम २१- जामीन अर्ज विलंब - यु ए पी ए व मोक्का अंतर्गत दोषारोपासाठी खटला चालू होण्यापूर्वीच्या प्रदीर्घ अकरा वर्षांच्या प्रतिबंधक स्थानबद्धतेपासून जामीन याचिकाकर्त्याने मागितला - जलद आदेश असूनही १०७ पैकी फक्त आठ साक्षीदार तपासून झाल्याने संपरीक्षेस विलंब - न्यायालयाने संपरीक्षेच्या निष्कर्षाअभावी अपीलकर्त्याचा दीर्घ तुरुंगवासाची व कलम २१ अंतर्गत वेगवान संपरीक्षा हक्काचा भंग झाल्याची नोंद घेतली - वैधानिक निर्बंध घटनादत्त हक्कांची पायमल्ली करू शकत नाही असा निर्णय दिला-अपिलाला अनुमती.

कायद्याचा मुद्दा- विशेषतः यु ए पी ए अंतर्गत संपरीक्षेच्या निष्कर्षाशिवाय संपरीक्षा पूर्व प्रदीर्घ स्थान बद्धता कलम २१ अंतर्गत जलद संपरीक्षेच्या हक्काचा भंग करते, विलंब लांबल्यावर वैधानिक निर्बंध असतानाही जामीन देणे उचित आहे.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC2492634461**

2024(10)MDBHC(Dig)7

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Mangesh S Patil; Shailesh P Brahme]

Writ Petition No. 1676 of 2017 **dated 19/09/2024**

Amol S/o Ashokrao Zalte vs. State of Maharashtra; Joint Director of Higher Education; Dr Babasaheb Ambedkar Marathwada University; Shri Saraswati Bhuwan Education Society, Aurangabads College of Science; Yogesh S/o Diliprao Raje

LECTURER'S QUALIFICATIONS

University Grants Commission Act, 1956 - Sec. 26; Maharashtra Public Universities Act, 2016 - Sec. 79 - Lecturer's Qualifications - Petitioner, a lecturer, sought permanent approval of his appointment from 2003 despite not meeting the UGC's qualifications at the time - Appointed based on MCA degree, petitioner later acquired M. Phil in 2009 - Approval granted temporarily for each year but never permanently - University argued petitioner lacked required qualifications at the time of appointment under UGC Regulations of 2002, which mandated NET or M. Phil prior to 1993 - Petitioner claimed exemption from NET due to acquiring M. Phil before 2009 cutoff - Court held qualifications at the time of appointment were decisive, and M. Phil acquired later could not retroactively exempt petitioner - Appointment found irregular, no salary disbursement relief granted. - Petition Dismissed

Law Point: Qualification at the time of appointment is critical for permanent approval; subsequent acquisition of qualifications does not grant retroactive exemptions.

विद्यापीठ अनुदान आयोग अधिनियम १९५६ कलम २६ - महाराष्ट्र सार्वजनिक विद्यापीठ अधिनियम २०१६ कलम ७९ - अधिव्याख्यात्याची पात्रता- याचिकाकर्ता जो अधिव्याख्याता आहे त्याने युजीसी चे पात्रता निकष पूर्ण करत नसतानाही २००३ पासूनच्या नियुक्तीला कायमस्वरूपी मान्यता मागितली - एमसीए पदवीवर नियुक्ती- २००९ मध्ये याचिकाकर्त्याने एमफील पदवी प्राप्त केली - मान्यता प्रत्येक वर्षी तात्पुरत्या स्वरूपात मंजूर करण्यात आली मात्र कायमस्वरूपी मंजुरी कधीही नव्हती- विद्यापीठाने असा युक्तिवाद केला की नियुक्तीच्या वेळी यूजीसी नियमावली २००२ अंतर्गत नेट किंवा १९९३ पूर्वीचे एमफिल बंधनकारक असताना याचिकाकर्त्याकडे आवश्यक पात्रता नव्हती- २००९ च्या गुणवत्ता यादीच्या आधी एमफील पूर्ण केल्यामुळे याचिकाकर्त्यांनी नेट मधून सूट मागितली- न्यायालयाने नियुक्तीच्या वेळची पात्रता निर्णायक मानून कालांतराने संपादित केलेली एमफील याचिकाकर्त्याला पूर्वलक्ष्यीप्रभावाने सूट देऊ शकत नाही असा निर्णय दिला- नियुक्ती अनियमित आढळल्याने वेतन वितरण अनुतोष मंजूर करण्यात आला नाही - याचिका फेटाळली.

कायद्याचा मुद्दा- कायमस्वरूपी मान्यतेसाठी नियुक्तीच्या वेळेची पात्रता महत्त्वपूर्ण असते. पात्रतेचे कालांतराने केलेले संपादन पूर्वलक्ष्यी सूट मंजूर करू शकत नाही.

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2024(10)MDBHC(Dig)8

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before M S Sonak; Kamal Khata]

Writ Petition; Interim Application No 1463 of 2013; 440 of 2019 **dated 19/09/2024**

Manjit Singh Virdi; Harpreet Kaur Harinder Singh Virdi; Vikramjit Singh Harjit Singh Virdi vs. Municipal Corporation of Greater Mumbai; Municipal Commissioner, Municipal Corporation of Greater Mumbai; Assistant Commissioner G/north Ward; State of Maharashtra

TOWN PLANNING SCHEME RIGHTS

Maharashtra Regional and Town Planning Act, 1966 Sec. 90, Sec. 89, Sec. 88 - Town Planning Scheme Rights - Petitioners sought possession of Final Plot No. 838 under the Town Planning Scheme III (Mahim Division), claiming rights to the entire 695 sq yds plot, which included the original Plot No. 88B of 280 sq yds - Petitioners contended that after reconstitution under TPS III, they were entitled to the entire area, while the respondent contended that the petitioners had rights only to 280 sq yds based on lease and assignment documents - Court observed that the petitioners could not substantiate claims to any area beyond 280 sq yds, as no clear documents or rights were shown for the additional land - Petitioners failed to establish ownership or rights over the entire plot, and encroachers were not impleaded as necessary parties. - Petition Dismissed

Law Point: Rights under a Town Planning Scheme must be substantiated by clear legal documents-claims to additional land cannot be based on reconstitution alone without proof of entitlement.

महाराष्ट्र प्रादेशिक नियोजन व नगररचना अधिनियम १९६६ कलम ९० कलम ८९ कलम ८८- शहर नियोजन योजना हक्क - माहिम विभाग शहर नियोजन योजना ३ अंतर्गत अंतिम जमीन क्रमांक ८३८ चा कब्जा याचिकाकर्त्यांनी मिळवला, पूर्ण ६९५ वर्ग यार्ड जमिनीच्या हक्कांचा दावा केला ज्यात मूळ जमीन क्रमांक ८८ (ख) २८० वर्ग यार्डस् समाविष्ट होती- शहर नियोजन योजनेअंतर्गत पुनर्रचना झाल्यावर त्यांना पूर्ण जागेचा हक्क मिळाला असा दावा याचिकाकर्त्यांनी केला तर भाडेपट्टी व अभिहस्तांकन दस्तऐवजावर आधारित केवळ २८० वर्ग यार्ड पुरताच याचिकाकर्त्यांचा हक्क आहे असा दावा प्रतिवादीने केला - अतिरिक्त जमिनीचे हक्क दाखवणारे कोणतेही स्पष्ट दस्तऐवज नसताना २८० वर्ग यार्ड पेक्षा जास्त कोणत्याही जागेवर याचिकाकर्ता दावा करू शकत नाही असे निरीक्षण न्यायालयाने केले -पूर्ण जमिनीवर मालकी हक्क प्रस्थापित करण्यास याचिकाकर्ता अपयशी ठरले आणि अतिक्रमण करणाऱ्यांना आवश्यक पक्षकार म्हणून दाखल करून घेतले नाहीत- याचिका फेटाळली.

कायद्याचा मुद्दा- स्पष्ट कायदेशीर दस्तऐवजांनी शहर रचना योजनेतील हक्क सिद्ध केले पाहिजेत- हक्काचा पुरावा असल्याशिवाय केवळ पुनर्रचनेवर आधारित अतिरिक्त जमिनीचा दावा करता येत नाही.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC2492335226**

2024(10)MDBHC(Dig)9

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Madhav J Jamdar]

Bail Application No 2023 of 2023 **dated 19/09/2024**

Suryaji Pandurang Jadhav vs. Directorate of Enforcement, Worli & Anr

BAIL FOR LONG INCARCERATION

Constitution of India Art. 21 - Indian Penal Code, 1860 Sec. 34, Sec. 408, Sec. 420, Sec. 409, Sec. 468, Sec. 471, Sec. 467, Sec. 406 - Code of Criminal Procedure, 1973 Sec. 436A, Sec. 439 - Prevention of Money Laundering Act, 2002 Sec. 70, Sec. 45, Sec. 3, Sec. 2 - Maharashtra Protection of Interest of Depositors Act, 2002 Sec. 5, Sec. 4, Sec. 3 - Bail for Long Incarceration - Appellant sought bail after more than 4 years of custody under PMLA charges - Argued for release under Sec. 436A of CrPC, having served half of the maximum punishment - ED opposed citing serious offenses involving misappropriation of Rs. 71.78 crore - Court noted prolonged pre-trial detention and appellant's age, illness, and recovery of substantial amounts from attached properties - Bail granted with strict conditions - Bail Granted

Law Point: Pre-trial detention exceeding half of the maximum sentence allows bail under Sec. 436A of CrPC, even for PMLA offenses, when trial delays and health concerns outweigh statutory restrictions.

भारतीय राज्यघटना कलम २१- भा.दं सं. कलम ३४, ४०८,४२०, ४८८,४७१,४६७,४०६- फौजदारी प्रक्रिया संहिता १९७३ कलम ४३६ क कलम ४३९- सावकारी प्रतिबंधक अधिनियम २००२ कलम ७०,४५,३,२-महाराष्ट्र ठेवीदारांच्या हितसंबंधाचे संरक्षण अधिनियम २००२ कलम ५,४,३- प्रदीर्घ तुरुंगवासानंतर जामीन - पी एम एल ए च्या दोषारोपाखाली ४ वर्षापेक्षा जास्त कोठडीनंतर अपीलकर्त्याला जामीन मिळाला - सर्वाधिक शिक्षेच्या निम्म्या तुरुंगवासानंतर फौप्रसं ४३६(क) अंतर्गत सुटकेसाठी युक्तिवाद- ७१. ७८ कोटी रुपयांचा घोटाळा असलेला गंभीर गुन्ह्याचा दाखला देत ईडीने विरोध केला -प्रदीर्घकाळ संपरीक्षापूर्व स्थानबद्धता ,अपीलकर्त्याचे वय,

आजारपण आणि जप्त संपत्ती पासून भरीव रकमेची पुनर्प्राप्ती याची न्यायालयाने नोंद घेतली- कडक अटींवर जामीन मंजूर - जामीन मंजूर.

कायद्याचा मुद्दा- पीएमएलए प्रकरणात सुद्धा जेव्हा संपरीक्षा लांबते आणि आरोग्य विषयक चिंता असतील तेव्हा वैधानिक प्रतिबंधांना दूर करत फौजदारी प्रक्रिया संहिता ४३६(क) अंतर्गत सर्वाधिक शिक्षेच्या निम्म्यापेक्षा जास्त काळ संपरीक्षा पूर्व स्थानबद्धता असेल तर जामीन देता येतो.

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2024(10)MDBHC(Dig)10

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Bharati Dangre; Manjusha Deshpande]

Writ Petition (L) No 23881 of 2024 **dated 18/09/2024**

Hdfc Bank Limited & Ors vs. State of Maharashtra & Ors

MINORITY COMMISSION JURISDICTION

Bombay High Court (Original Side) Rules, 1980 Rule 1035 - Maharashtra State Minorities Commission Act, 2004 Sec. 10A, Sec. 10, Sec. 2, Sec. 3 - Minority Commission Jurisdiction - Appellant challenged Minority Commission's notice regarding a complaint alleging harassment by HDFC Bank's recovery actions - Complaint cited mental and physical harassment by bank leading to death of complainant's father - Court held Commission lacked jurisdiction to entertain complaints about recovery proceedings or resolve individual disputes - Complaint viewed as an attempt to evade legal debt obligations - Notice quashed, Commission restrained from further proceedings. - Petition Allowed

Law Point: Minority Commission cannot adjudicate recovery disputes or personal grievances unrelated to minority rights - Jurisdiction is limited to safeguarding constitutional rights of minority communities.

मुंबई उच्च न्यायालय मूळ न्याय क्षेत्र नियमावली १९८० नियम १०३५- महाराष्ट्र राज्य अल्पसंख्यांक आयोग अधिनियम २००४ कलम १०, कलम १० कलम २, कलम ३ - अल्पसंख्यांक आयोगाची अधिकारीता- एचडीएफसी बँकेच्या वसुली कारवाई मुळे छळाचा आरोप करणाऱ्या तक्रारी संदर्भात अल्पसंख्यांक आयोगाच्या नोटिशीला अपीलकर्त्यांनी आव्हान दिले- बँकेच्या मानसिक व शारीरिक छळामुळे तक्रारदाराच्या वडिलांचा मृत्यू झाला असे तक्रारीत नमूद केले होते - वसुलीच्या कार्यवाही संदर्भात किंवा वैयक्तिक वादाचे निराकरण करण्याची अधिकारीता अल्पसंख्यांक आयोगाला नाही असा निर्णय न्यायालयाने दिला- कायदेशीर कर्जाचे

दायित्व टाळण्याचा प्रयत्न अशा दृष्टीने न्यायालयाने तक्रारीस बघितले - नोटीस रद्द केली- पुढील कार्यवाहीपासून आयोगास प्रतिबंध केला- याचिकेला अनुमती.

कायद्याचा मुद्दा- अल्पसंख्यांकांच्या हक्काविषयी असंबंधित अशा वसुली विवाद किंवा वैयक्तिक तक्रारींचा न्याय निवाडा अल्पसंख्यांक आयोग करू शकत नाहीत. अल्पसंख्यांक समुदायाचे घटनात्मक हक्कांचे संरक्षण करण्यापुरती अधिकारीता मर्यादित आहे.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC2410539469**

2024(10)MDBHC(Dig)11

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Sandeep V Marne]

Civil Revision Application No. 516 of 2019 **dated 13/09/2024**

Anil Joginder Sachdev; Rajeev Joginder Sachdev vs. Balasaheb Hiralal Zad; Chandrakala Balasaheb Zad

EVICTION ON RENT DEFAULT

Code of Civil Procedure, 1908 - Sec. 115; Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Sec. 12, Sec. 13; Transfer of Property Act, 1882 - Sec. 108; Maharashtra Rent Control Act, 1999 - Sec. 15 - Eviction on Rent Default - Tenants filed revision challenging judgments confirming eviction decree based on arrears of rent, property damage, and erection of permanent structures - Landlords alleged tenants defaulted on rent since 1991 and erected unauthorized structures like platforms, signboards, and showcases without consent - Tenants contended that demand notice for arrears lacked details and argued constructions were necessary for business and did not damage property - Court rejected tenant's claim that notice was invalid - Held that tenants failed to deposit rent arrears in time and the constructions caused permanent alterations in violation of tenancy terms - Eviction upheld on all grounds. - Petition Dismissed

Law Point: Failure to pay rent arrears within the prescribed time and making unauthorized permanent constructions on leased premises are valid grounds for eviction.

दिवाणी प्रक्रिया संहिता १९०८ कलम ११५ - मुंबई भाडे उपहारगृह आणि निवास गृह दर नियंत्रण अधिनियम १९४७ कलम १२,१३ - मालमत्ता हस्तांतरण अधिनियम ८८२ कलम १०५ - महाराष्ट्र भाडे नियंत्रण अधिनियम १९९९ कलम १५ - भाडे न भरल्यामुळे हकालपट्टी, कायमस्वरूपी बांधकाम, मालमत्तेचे नुकसान थकीत भाड्यावर आधारित हकालपट्टी करणारा

हुकूमनामा, सुनिश्चित करणाऱ्या न्यायनिर्णयाचे पुन निरीक्षण व्हावे यासाठी भाडेकरू ने अर्ज केला- १९९१ पासून भाडेकरूने भाडे भरले नाहीत व स्थानके, चिन्हफलक, प्रदर्शन पेटिका इत्यादी आणि अनधिकृत बांधकामे संमतीशिवाय केली असा आरोप जमीन मालकांनी केला - भाडे थकीत - भाडे मागणी करणाऱ्या नोटीस मध्ये विवरणाचा अभाव आहे व मालमत्तेचे नुकसान झाले नसून व्यवसायासाठी आवश्यक बांधकाम होते, असा दावा भाडेकरूने केला- न्यायालयाने नोटीस अवैध आहे होती हा भाडेकरूचा दावा फेटाळला- वेळेत भाडे जमा करण्यास भाडेकरू अयशस्वी ठरला आणि बांधकामामुळे कायमस्वरूपी बदल होऊन भाडेतत्त्वाच्या अटींचा भंग झाला- हकालपट्टी सर्व कारणांवर कायम केली गेली - याचिका फेटाळली.

कायद्याचा मुद्दा- प्रस्तावित वेळेत थकीत भाडे भरण्यात आलेले अपयश आणि भाडेकरारावरील आवारात अनधिकृत कायमस्वरूपी बांधकाम करणे ही हकालपट्टीची वैध कारणे आहेत.

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2024(10)MDBHC(Dig)12

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Anil L Pansare]

Writ Petition No 7814 of 2019 **dated 13/09/2024**

Rakesh Deoraoji Mathure vs. Ashok Laxman Talekar and Ors

POLICE DISQUALIFICATION

Maharashtra Village Police Act, 1967 Sec. 5 - Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 Rule 3 - Police Disqualification - Petitioner challenged the order of the Divisional Commissioner, Nagpur, which dismissed his appeal against the Sub Divisional Officer's decision regarding Police behavior and violation of small family norms - Petitioner relied on Rule 3 of the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 - Rule 3 mandates that a government servant shall not have more than two children after the commencement of the Rules, or risk disqualification - Respondent was appointed in 1999, before the Rules of 2005 came into effect - Authorities dismissed the petition stating the Rules were not applicable - Court observed that disqualification would apply if the number of children increased after the rules came into effect - Matter remanded to Sub Divisional Officer for fresh consideration under the rules - Previous orders set aside - Partly Allowed

Law Point: Maharashtra Civil Services Rules, 2005 disqualify individuals with more than two children after their commencement - Applies to Police Patils

महाराष्ट्र ग्राम पोलीस अधिनियम १९६७ कलम ५-महाराष्ट्र नागरी सेवा लहान कुटुंबाचे प्रतिज्ञापत्र नियमावली २००५ नियम ३ - पोलीस अपात्रता- लहान कुटुंबाच्या निकषांचा भंग आणि पोलीस वर्तन यासंदर्भात उपविभागीय अधिकाऱ्याच्या निर्णया विरोधात अपील विभागीय आयुक्त नागपूर यांनी फेटाळले त्या आदेशाला याचिकाकर्त्यांनी आव्हान दिले- याचिकाकर्त्यांनी नियम ३ चा दाखला दिला- नियम ३ बंधन करते की नियमांच्या प्रारंभानंतर शासकीय कर्मचाऱ्यांना दोन अधिक अपत्य नसावीत अन्यथा अपात्रतेचा धोका आहे- २००५ चा नियम अस्तित्वात येणे आधी १९९९ मध्ये प्रतिवादीची नियुक्ती झाली होती - याचिकेला नियम लागू होत नाही असे कथन करत अधिकाऱ्यांनी याचिका फेटाळली- नियम अस्तित्वात आल्यानंतर अपत्यसंख्या वाढली तर अपात्रता लागू होईल असे निरीक्षण न्यायालयाने केले- नियमांतर्गत नवीन सुनावणीसाठी प्रकरण उपविभागीय अधिकाऱ्यांकडे परत पाठवण्यात आले - पूर्वीचे आदेश रद्द केले- अंशतः अनुमती.

कायद्याचा मुद्दा- महाराष्ट्र नागरी सेवा नियमावली २००५ त्यांच्या प्रारंभानंतर कुठल्या व्यक्तीला दोन पेक्षा अधिक अपत्य असतील तर अपात्र ठरवते - पोलीस पाटलांना लागू.

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2024(10)MDBHC(Dig)13

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Sharmila U Deshmukh]

Writ Petition No 7079 of 2023, 1750 of 2023, 1752 of 2023, 1762 of 2023, 1751 of 2023, 1759 of 2023, 1827 of 2023, 7102 of 2023, 7081 of 2023, 7084 of 2023, 7082 of 2023, 7100 of 2023, 7096 of 2023, 7091 of 2023, 7099 of 2023, 7097 of 2023, 7098 of 2023, 7093 of 2023, 7101 of 2023, 7094 of 2023, 7085 of 2023, 1761 of 2023, 1753 of 2023, 1763 of 2023, 7087 of 2023, 7092 of 2023, 1749 of 2023, 7086 of 2023, 7095 of 2023, 1760 of 2023, 1757 of 2023, 1755 of 2023, 1756 of 2023, 1758 of 2023, 1754 of 2023, 7090 of 2023, 7089 of 2023, 7083 of 2023, 7088 of 2023 **dated 12/09/2024**

Karansingh Shivsingh Gill; Mayuresh Shantaram Karad; Prashant Shrikant Tayade; Fakir Mohammad Akbar Patel; Ramlal Babulal Sakhare; Arun Pandurang Shelke; Ravindra Abhimanyu Marathe; Shaikh Fattu Shaik vs. Nashik Municipal Corporation; Deputy Commissioner, Encroachment Department, Nashik Municipal Corporation; State of Maharashtra

EVICTION NOTICE

Code of Civil Procedure, 1908 Or. 7 R. 11 - Public Premises (Eviction of Unauthorised Occupants) Act, 1971 Sec. 5 - Maharashtra Municipal Corporations Act, 1949 Sec. 81G,

Sec. 230, Sec. 232, Sec. 81B, Sec. 81F, Sec. 81A, Sec. 229, Sec. 81, Sec. 92, Sec. 81C, Sec. 231, Sec. 478, Sec. 81D, Sec. 81E, Sec. 81I - Eviction Notice - Petitioners, long-term lessees of Nashik Municipal Corporation, challenged their eviction after receiving notices under Section 81-B of the Maharashtra Municipal Corporations Act - Notices cited public interest for road widening and traffic decongestion - Petitioners argued that their shops were not located on the main highway and there was no need for road widening - Respondent Corporation failed to provide documentary evidence justifying eviction - Court found that eviction orders lacked proper reasoning and held that even administrative orders require demonstration of reasons - Quashed eviction orders, finding them legally unsustainable due to absence of valid reasoning. - Petitions Allowed

Law Point: Eviction orders under Section 81-B require clear reasoning and justification, even in administrative decisions, especially when they affect long-term occupants' rights.

efoJeeCee Òee¬eÀ³ee meefnlee, 1908, DeeoMe 7; eve³ece 11-meeJe&peefvekeÀ peeieeleu³ee Deveeef×ekeÀ Yeeie&Jeìeoej eme peeiee efjkeÀecee keÀjC³eemeyeOee DeefOeefve³ece, 1971, keÀuece 5-cenejeä$ ceneveiej HeeefuekeÀe DeefOeefve³ece, 1949, keÀuece 81pee, 230, 232, 81ye, 81HeÀ, 81De, 229, 81, 92, 81keÀ, 231, 478, 81[, 81F DeeefCe 81-peeiee efjkeÀecee keÀjC³eemeyeOee®ee veeìeme-³eeef®ekeÀekeÀlee n veeefMekeÀ ceneveiej Heeefuekeb®e ueeye ceeolee®e Yee[Heæeo efjkeÀ Deenle p³eevee peeiee efjkeÀecee keÀjC³ee®³ee veeìemeeuee DeeJneve efoueeue Deen peeJne l³eevee cenejeä$ ceneveiej HeeefuekeÀe DeefOeefve³ecee®³ee keÀuece 81ye Keeueeue veeìeme ÒeeHle Peeuee nelee-veeìemeeceO³e jml³ee®³ee meeJe&peefvekeÀ efnleeLe jmlee ©o keÀjC³eemeyeOee veceto keÀjC³eele Deeue nele leme®e jnoejeeoe oeìe keÀcee keÀjC³eemeyeOee ©oekeÀjCeemeyeOee veceto keÀjC³eele Deeue nele-³eeef®ekeÀekeÀl³eevee Demee Òeeflejeeo keÀuee keÀe okeÀeve ceK³e ncejml³eeJej efmLele veJnlee DeeefCe jmlee ©oekeÀjCee®ee keÀeCelee®e iejpe veene-ÒeeflejeeO ceneveiej HeeefuekeÀe peeiee efjkeÀecee keÀjC³eeyeeyelee le®ee keÀeCelene meceLeve³e omleeJepe³e Hejejee meeoj keÀ© MekeÀue veene-Jeej<þ v³ee³eeue³eeuee peeiee efjkeÀecee keÀjC³eeyeeyelee le®³ee DeeoMeele keÀeCel³eene ³eei³e efkeÀJee jemle keÀejCee®ee DeYeeJe nelee DeeefCe v³ee³eeue³eeve efveJee[e keÀjleevee Deme G®eueve Oejue keÀe ÒeMeemekeÀe³e DeeoMeeuee me×e keÀejCe ÒeoeMelle keÀjC³ee®ee DeeJeM³ekeÀlee Demele-³eemleJe v³ee³eeue³eeve peeiee efjkeÀecee keÀjC³ee®ee DeeoMe jÎ þjeJele HeÀìeUve ueeJeuee DeeefCe l³eevee DeeoMe ne keÀe³eeÐee®³ee ¢äeve eìkeÀeJe Oe©ve ve þJeCeeje Dee{Uuee-keÀejCe DeeoMeele JeOe keÀejCe veceto veJnlee efkeÀJee DeveHeefmLele nelee-³eeef®ekeÀe ûee¿e Oejle oeKeue keÀ©ve leC³eeme HejJeeveiee³eei³e mecepeC³eele Deeuee.

keÀe³eÐee®ee cei$e- cenejeä$ ceneveiej HeeefuekeÀe DeefOeefve³ecee®³ee keÀuece 81ye Keeuee mHeä keÀejCee®ee DeeJeM³ekeÀlee Demele. leme®e l³eemeeþe meceLeve³e keÀejCe nJeele. leme®e YeeieeJeìeOeejkeÀe®³ee oeleekeÀeueeve DeefOekeÀejemeeþe eJeMe<ele: ÒeMeemeveekeÀ eveCe³eelene DeMee mHeälee iejpe®ee Deen keÀejCe Deme eveCe³e YeeieeJeìeOeejkeÀe®³ee oeleekeÀeueeve DeefOekeÀejeuee ÒeYeeeJele keÀjele Demelee.

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2024(10)MDBHC(Dig)14

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Sandeep V Marne]

Civil Revision Application No 576 of 2019 **dated 12/09/2024**

Kashinath Ramchandra Kolwankar; Hemant Kashinath Kolwankar; Girish Kashinath Kolwankar; Mrunalini Umesh Khatu vs. Sunanda Wd/o Ramakant Desai; Gajanan Ramakant Desai; Shashikala Rajendra Pai; Surekha Rajendra Keni; Rajendra Anand Keni; Radhika Rajendra Keni; Devika Rajendra Keni; Purnima Ashok Prabhu

LANDLORD-TENANT RELATIONSHIP

Evidence Act, 1872 Sec. 116 - Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 Sec. 13, Sec. 4A, Sec. 5, Sec. 4, Sec. 12 - Maharashtra Co-Operative Societies Act, 1960 Sec. 23, Sec. 91 - Landlord-Tenant Relationship - Appellants, original defendants, challenged their eviction from premises owned by respondents, heirs of the original landlord - Respondents sought possession based on arrears of rent, reasonable requirement, and denial of title - Appellants argued they were members of the housing society, which owned the building, and not tenants under respondents - Small Causes Court dismissed the suit, but Appellate Bench reversed the decision, holding the landlord-tenant relationship was established through rent payment and Section 116 of the Evidence Act - Appellate Bench decreed eviction, rejecting appellants' ownership claims - Affirming eviction. - Revision Application Dismissed

Law Point: Tenant cannot dispute landlord's title during tenancy and must first surrender possession if claiming ownership; landlord-tenant relationship can be established through rent payment, even without proving title.

mee#e DeeOeeve³ece, 1872, keÀuece 116-ceÌyeF Yee[:, ne¿ìue DeeefCe eÌveJeemee neT meme oj eÌve³e$eCe DeeOeeve³ece, 1947, keÀuece 13, 4De, 5, 4 DeeefCe 12-cenejeä^ menkeÀeje meemLee DeeOeeve³ece, 1960, keÀuece 23 DeeefCe 91-Iejceeueke (peeiee ceeueke) DeeefCe Yee[keÀje n³ee®e meyeOeeyeeyeIeeIe®e ÒekeÀjCe-DeHeeuekeÀIe n ceU ye®eeJekeÀIe Deen Ie- I³eevee peeiee ejkeÀecee keÀjC³ee®³ee ÒeeIeJeeoe peeieeceeuekeÀe®³ee keÀejJeeF me DeeJneve eoueue Deen-pe ÒeeIeJeeoe peeieeceeuekeÀ n ceU peeieeceeuekeÀe®e Jeejme Deen Ie-ÒeeIeJeeoeve peeiee ejkeÀecee keÀjC³ee®ee ceeieCee Ieme®e peeie®ee Ieeyee oC³eemeeþe®ee ceeieCee Yee[LekeÀyeekeÀeIe jeenu³ee®³ee DeeOeejeJej keÀueuee Deen Ieme®e peeie®³ee jemIe DeeJeM³ekeÀIe®³ee DeeefCe ceeuekeÀenkekeÀ veekeÀejC³ee®³ee DeeOeejeJej keÀueuee Deen-DeHeeuekeÀI³eevee Demee ÒeeIeJeeo keÀuee keÀe Ie ienevecee Ce meemee³eìe®e meom³e Deen Ie p³ee ienevecee Ce meemee³eìe®³ee Fceejlee®ee ceeuekeÀe meemee³eìekeÀ[Deen DeeefCe veene keÀe ÒeeIeJeeoe®³ee DeeOeHeI³eeKeeueeue Yee[keÀje-ueIeJeeo v³ee³eeue³eeve Keìuee Keejepe keÀuee HejIe DeHeeueì Heeþeve ueIeJeeo v³ee³eeue³ee®ee eÌveCe³e eHeÀjeJeuee Demee eÌveJee[e keÀ©ve keÀe Yee[Deoe keÀu³ee®³ee Òee¬eÀ³eeIeve peeieeceeuekeÀ DeeefCe Yee[keÀje Deme veeIemeyeOe ÒemLeeeHeIe Peeueue Deen Ie-DeeefCe mee#e DeeOeeve³ecee®³ee keÀuece 116 DevJe³e meç×e n veeIe ÒemLeeeHeIe Peeueue Deen-DeHeeueì Heeþeve peeiee ejkeÀecee keÀjC³eemeeþe®ee nkeÀceveecee HeeejIe

keÀuee DeeeCe DeHeeuekeÀl³ee®ee ceeuekeÀenkekeÀemeyeOee®ee oeJee HeÀìeUve veekeÀejuee DeeeCe peeiee ejkeÀecee keÀjC³eeJej eMekekeÀecee leye keÀue-Heve je#eCe Depe Keejepe keÀjC³eele Deeuee.

keÀe³eÐee®ee ceÎe- Yee[keÀ© peeieeceeuekeÀe®ee ceeuekeÀnkekeÀemeyeOee Jeeo GHeemLeele keÀ© MekeÀle veene pee Jeeo Yee[oeje keÀeueeJeOee ojc³eeve GHeemLeele keÀuee peeJe MekeÀle veene DeeeCe Yee[keÀ©ve keÀeCeleene keÀejJeeF keÀjC³eeDeeOee meJeÒeLece peeiee ejkeÀecee keÀ©ve leeyee lejceeuekeÀeuee meHeo keÀuee Heeenpe-pej l³eevee ceeuekeÀenkekeÀe®ee oeJee keÀuee Demeue-Yee[Deoe keÀjC³ee®³ee keÀlee®³ee ceeO³eceeleve peeiee ceeuekeÀ-Yee[keÀ© veelemeyeOe ÒemLeeeHele nele Demeleele pe veelemeyeOe ceeuekeÀenkekeÀ®³ee oeJ³eeeMeJee³e me×e ÒemLeeeHele keÀue peeJe MekeÀleele.

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2024(10)MDBHC(Dig)15

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Devendra Kumar Upadhyaya; Amit Borkar]

Writ Petition No 3098 of 2021 **dated 12/09/2024**

Santosh Madhukar Bhondve & Ors vs. State of Maharashtra & Ors

LAND ALLOTMENT CHALLENGE

Maharashtra Regional and Town Planning Act, 1966 Sec. 34, Sec. 52, Sec. 35, Sec. 31 - Maharashtra Land Revenue Code, 1966 Sec. 22A, Sec. 40 - Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 Rule 5 - Maharashtra Municipal Corporations Act, 1949 Sec. 3 - Land Allotment Challenge - Petitioners challenged the allotment of Gairan land for a housing project under PMAY - Petitioners contended that the land was reserved for grazing, and diversion was impermissible under Section 22A of the Maharashtra Land Revenue Code - Respondents argued that the land was included in the municipal limits and reserved for housing in the Development Plan - Court held that Section 40 of the Land Revenue Code allows government discretion to dispose of land, and municipal planning laws prevail over grazing reservations - Petition dismissed as allotment served public interest of affordable housing. - Petition Dismissed

Law Point: Government can dispose of Gairan land for public purposes, such as affordable housing, and the Development Plan under the MRTP Act overrides prior reservations for grazing.

cenejeä heeoeMekeÀ DeeeCe Menj eve³eepeve DeeOeeve³ece, 1966, keÀuece 34, 52, 35, 31-cenejeä peceeve cenmeue meeenlee, 1966, keÀuece 22De DeeeCe 40-cenejeä peceeve cenmeue (MeemekeÀe³e peceevee®ee eJeunJee ì) eve³ece, 1971, eve³ece 5-cenejeä ceneveieejheeeuekeÀe DeeOeeve³ece, 1949, keÀuece 3-peceeve JeeìHeeme DeeJneve-³eeee®ekeÀekeÀl³eevee n³ee ÒekeÀjCeele iee³ejeve peecevee®³ee HeÀleÒeOeeve DeeJeeme ³eespeveKeeuee ienÒekeÀuHe yeeOeCee®³ee

GÎMeemeeþe®³ee Jee ì Heeme DeeJneve eoueue Deen-³eee®ekeÀekeÀl³eevee DeMee yeepe cee [uee keÀe Jeeoeleele meoj peeiee ne iej e®³ee ®ej C³eemeeþe Deej e#ele þJeC³eele Deeuee nelee DeeeCe DeM³ee peeieJej eue nj eHeÀj e ne cenej eä peceeve cenmeue meenlee®³ee keÀuece 22De Hej Jeeveiee³eei³e veene-Òeeleeo n³eeJej Demee ÒeeleJeeo keÀuee keÀe meoj peeiee ne ceneveiej HeeeuekeÀe nÎele meceeeJe ä nelee DeeeCe lee eJekeÀeme³eepeveKeeuee ienÒekeÀuHeemeeþe Deej e#ele þJeC³eele Deeuee nelee-Jeej ÿ v³ee³eeue³eeve eveJee [e keÀj leevee Deme G®eueve Oej ue keÀe peceeve cenmeue meenle®³ee keÀuece 40 Keeuee Meemeveeuee ne eJeJekeÀeeOekeÀej ÒeeHle Deen keÀe le peceevee®ee eJeunJee ì ueeJe MekeÀle DeeeCe ceneveiej HeeeuekeÀ®e ³eepevemeyeOee®e keÀe³eo n iej ®ej C³ee®³ee Deej#eCeeJej Jej®e{ þj leele-³eee®ekeÀe ³eemleJe Keej epe keÀj C³eele Deeuee-peceevee®e Jee ì He n jemle ien ekeÀcelee®³ee ien yeeOeCee®³ee GÎMee®ee Heej Hele keÀj le-³eee®ekeÀe ³eemleJe Keej epe keÀj C³eele Deeuee.

keÀe³eo³ee®ee ceÎe- Meemeve meeJepeeveekeÀ GeÎÿemeeþe iee³ejeve peeie®ee eJeunJee ì ueeJe MekeÀle peme keÀe jemle ekeÀcelee®e ienÒekeÀuHe DeeeCe Sce.Deej.ì e.Hee. DeeOeeve³eceeKeeueeue eJekeÀeme ³eepevee n³ee iee³ejeve peceevee®³ee iej ®ej C³ee®³ee Deej#eCeeJej Jej®e{ þjlele.

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2024(10)MDBHC(Dig)16

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Anil L Pansare]

Writ Petition No. 2000 of 2023, 1783 of 2023, 1784 of 2023, 2064 of 2023

dated 12/09/2024

Amitkumar S/o Bhimrao Bankar vs. Additional Divisional Commissioner; Bharti Ravindra Panse; Gram Panchayat; Divisional Commissioner; Sunanda; Uttara; Nareshchandra Pandurang Raut

DELEGATION OF POWERS

Bombay Village Panchayats Act, 1958 - Sec. 16, Sec. 182, Sec. 14; Maharashtra Land Revenue Code, 1966 - Sec. 13 - Delegation of Powers - Petitioners challenged the order passed by Additional Commissioner setting aside their disqualification - Collector initially disqualified Respondent No. 2 under Section 14(1)(h) of Bombay Village Panchayats Act for failure to pay taxes - Appeal was heard by Additional Commissioner based on delegation of powers under the Maharashtra Land Revenue Code - Petitioners contended that post-amendment in 2018, only Commissioner could hear the appeal under Section 16(2) of Village Panchayats Act - Court ruled that delegation of powers to Additional Commissioner through government notification still applied post-amendment - Additional Commissioner's reliance on affidavit of Peon without providing opportunity to cross-examine and ignoring evidence led to

setting aside of both the Collector and Additional Commissioner's orders - Matter remanded to Collector for fresh consideration. - Petitions Partly Allowed

Law Point: Delegation of powers to Additional Commissioner under Section 16(2) of Bombay Village Panchayats Act remains valid post-amendment, but failure to consider evidence fairly can lead to remand of case for reconsideration.

महाराष्ट्र ग्रामपंचायत अधिनियम १९५८ कलम १६,कलम१८२,कलम१४; महाराष्ट्र जमीन महसूल संहिता १९६६ कलम१३- अधिकारांची सुपूर्तता- अपात्रतेचा आदेश रद्द करणारा अतिरिक्त आयुक्तांच्या आदेशाला याचिकाकर्त्यांनी आव्हान दिले- कर न भरल्या प्रकरणी कलम १४(१)(ज) महाराष्ट्र ग्रामपंचायत अधिनियम अंतर्गत प्रतिवादी क्रमांक. २ याला जिल्हाधिकाऱ्यांनी सुरुवातीला अपात्र ठरवले- महाराष्ट्र जमीन महसूल संहिता अंतर्गत अधिकाराची सुपूर्तता यावर आधारित अतिरिक्त आयुक्तांनी अपिलाची सुनावणी घेतली-याचिकाकर्त्यांनी असा दावा केला की २०१८ च्या दुरुस्तीनंतर ग्रामपंचायत अधिनियम कलम१६(२) अंतर्गत फक्त आयुक्त सुनावणी घेऊ शकतात- अतिरिक्त आयुक्तांना अधिकारांची सुपूर्तता ही दुरूस्ती पश्चात सुद्धा शासकीय सूचनेद्वारे लागू आहे असा निर्णय न्यायालयाने दिला-फेरतपासणीची संधी न देता शिपायाच्या शपथपत्रावर अतिरिक्त आयुक्तांनी ठेवलेला विश्वास आणि पुराव्यांकडे दुर्लक्ष यामुळे जिल्हाधिकारी व अतिरिक्त आयुक्तांचे आदेश रद्द झाले- पुनर्निर्णयासाठी प्रकरण जिल्हाधिकाऱ्यांकडे पाठवण्यात आले-याचिका अंशतः स्वीकारली.

कायद्याचा मुद्दा- महाराष्ट्र ग्रामपंचायत अधिनियम कलम १६(२) अंतर्गत अतिरिक्त आयुक्तांना सुपूर्त केलेले अधिकार दुरुस्तीनंतर सुद्धा वैध आहेत मात्र साक्षी पुरावे ग्राह्य धरण्यास आलेले अपयश पुन्हा निर्णयासाठी प्रकरण परत पाठवू शकते.

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2024(10)MDBHC(Dig)17

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Anil L Pansare]

Writ Petition No. 5989 of 2023 **dated 12/09/2024**

Divisional Controller, Maharashtra State Road Transport vs. Devendra Baburao Khobragade

NEGLIGENT DRIVING

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 Sec. 28 - Negligent Driving - Petitioner challenged orders by Industrial Court regarding the conduct of departmental inquiry against the respondent, a driver charged with negligence leading to an accident - Respondent faced charges for an accident causing a fatality and serious injury - Departmental inquiry held him guilty of negligence, and punishment of permanent reduction of basic pay was imposed - Respondent retired and filed a complaint under the MRTU & PULP Act alleging unfair labour practice - Complaint filed after two years without condoning delay - Industrial Court initially upheld the fairness of the inquiry but later overturned the findings, citing perversity - Petitioner argued that once fairness was undisputed, findings of misconduct could not be challenged - Citing Supreme Court judgment, it was held that findings of misconduct cannot be reopened if correctness or validity of inquiry is not disputed - Writ petition allowed, setting aside the Industrial Court's orders. - Petition Allowed

Law Point: Once fairness of inquiry is undisputed, findings regarding misconduct cannot be reopened unless the delinquent challenges the inquiry's correctness, legality, or validity.

महाराष्ट्र कामगार संघांना मान्यता देण्याबाबत व अनुचित कामगार प्रथांना प्रतिबंध करण्याबाबत अधिनियम १९७१ कलम २८ - निष्काळजीपणे वाहन चालवणे - निष्काळजीपणे वाहन चालवण्याने अपघात झाल्याच्या दोषारोप असणाऱ्या प्रतिवादी वाहन चालकाने त्याच्याविषयी विभागीय चौकशीच्या संदर्भातील औद्योगिक न्यायालयाने दिलेल्या आदेशाला आव्हान दिले- प्रतिवाद्यावर अपघातामुळे प्राणघातक व गंभीर इजा झाल्याचा दोषारोप - विभागीय चौकशीने त्याला निष्काळजीपणासाठी दोषी ठरवले आणि मूळ वेतनाला कायमस्वरूपी कपातीची शिक्षा लादली- प्रतिवादी निवृत्त झाला- आणि एमआरटीयू आणि पियू एल पी अधिनियम अंतर्गत अनुसूचित कामगार प्रथांचा आरोप करणारी तक्रार दाखल केली - विलंब माफ न करता दोन वर्षांनी तक्रार दाखल करण्यात आली- औद्योगिक न्यायालयाने सुरुवातीस चौकशीची निष्पक्षता कायम केली मात्र नंतर विपर्यास झाल्याचे सांगून निष्कर्ष उलटवले- एकदा का निष्पक्षता निर्विवाद असल्याचे सिद्ध झाले की गैरवर्तनाच्या निष्कर्षाला आवाहन देता येत नाही असा युक्तिवाद याचिकाकर्त्याने केला- सर्वोच्च न्यायालयाच्या न्यायनिर्णयाचा दाखला देत योग्यता किंवा वैधता वादग्रस्त नसेल तर गैरवर्तनाच्या निष्कर्षाची पुन्हा अवघड तपासणी होऊ शकत नाही असा निर्णय न्यायालयाने दिला - औद्योगिक न्यायालयाचा आदेश रद्द करत रिट याची केला परवानगी दिली- याचिकेला परवानगी.

कायद्याचा मुद्दा- जोपर्यंत अपराधी चौकशीची योग्यता, वैधता, कायदेशीरपणा आव्हानित करत नसेल तर गैरवर्तनाच्या निष्कर्षाची पुन्हा उघड तपासणी करता येणार नाही.

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2024(10)MDBHC(Dig)18

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before M S Sonak; Kamal Khata]

Writ Petition No 3893 of 2024 **dated 11/09/2024**

Kher Nagar Sukhsadan Co-operative Housing Soc Ltd vs. State of Maharashtra; Maharashtra Housing & Area Development Board; Resident Executive Engineer, Mhada, Mumbai Board; Executive Engineer, Building Proposal Department; Chief Executive Officer, Maharas

REDEVELOPMENT OBSTRUCTION

Maharashtra Co-Operative Societies Act, 1960, Sec. 79A - Mumbai Municipal Corporation Act, 1888, Sec. 354A, Sec. 354, Sec. 353B - Redevelopment Obstruction - Petitioner society faced delays in redevelopment due to non-cooperation by AA Estates - Redevelopment agreement was terminated after 14 years of inaction - Petitioner appointed new developer but faced obstruction from AA Estates' resolution professional, who claimed redevelopment rights - Court held that development rights were not part of AA Estates' assets under insolvency proceedings - Ordered authorities to grant permissions for redevelopment - Respondents instructed to recognize new developer and dismiss objections raised by AA Estates - Rule made absolute in favor of Petitioner - Petition Allowed

Law Point: Redevelopment rights of a cooperative society do not fall under the assets of a developer undergoing corporate insolvency proceedings unless explicitly claimed and proven to be part of such assets.

cenejeä menkeÀeje memLee DeeOeeve³ece, 1960, keÀuece 79De-ceyeF ceneveiejHeeueekeÀe DeeOeeve³ece, 1888, keÀuece 354De, 354 DeeeCe 353ye-HeveeJekeÀemeeme De[LeUe-³eee®ekeÀekeÀl³ee meemee³eìeuee HeveeJekeÀemee®³ee Òeef¬eÀ³eele eJeueyeeme meeceeej peeJe ueeieue nele-pee eJeueye De De Fmìì®³ee DemenkeÀe³eeceU DeveYeJee³euee eceUle nelee-HeveeJekeÀemee®ee keÀjej ne 14 Je<ee®³ee evee<¬eA³elecU meHeeJeC³eele Deeuee nelee-³eee®ekeÀekeÀl³eeve veJeeve eJekeÀemekeÀ eve³ekele keÀuee nelee-Hejle l³eeme De De Fmìì®³ee þjeJ³ee®³ee ceeO³eceelev De[LeÈ³eeme meeceeej peeJe ueeieue nele pee þjeJe ne J³eeJemeee³ekeÀ mJe©Hee®ee nelee-Jeejÿ v³ee³eeue³eeve eveJee[e keÀjleevee Deme G®eueve Oejue keÀe eJekeÀemee®e DeeOekeÀej n De De Fmìì®ee ceeueceÊee veJnlee pee veeoeje Òeef¬eA³ele ceeueceÊee ieCelee keÀuee peeJe MekeÀle veene-Jeejÿ v³ee³eeue³eeve meemee³eìe®³ee ÒeeeOekeÀeN³eevee eJekeÀemee®ee HejJeeveiee eouee-DeeeCe ÒeelèJeeoevee veJeeve

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2024(10)MDBHC(Dig)19

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before M S Sonak; Kamal Khata]

Writ Petition No 3616 of 2018 **dated 11/09/2024**

Rafique Rahemtullah Kabani vs. Assistant Engineer & Designated Officer; Municipal Corporation of Greater Mumbai; M/s A G Developers; M/s Rao & Associates; Shivajanli Co-operative Hsg Soc Ltd Limited

ILLEGAL CONSTRUCTION

Maharashtra Regional and Town Planning Act, 1966 Sec. 53 - Mumbai Municipal Corporation Act, 1888 Sec. 354A - Illegal Construction - Appellant challenged demolition notices issued by BMC under Section 53 of MRTP Act for unauthorised construction from 2nd to 8th floor of a building - Appellant argued notice violated natural justice, as it was not served to each occupant - BMC contended construction exceeded approved plans and regularisation pleas were rejected - Court found construction blatantly illegal and unauthorised without occupancy certificate or fire safety clearance - Rejected plea for regularisation and held that BMC must proceed with demolition - Petition dismissed with Rs. 50,000 costs. - Petition Dismissed

Law Point: Unauthorized constructions exceeding approved plans, without requisite permissions or regularisation, must be demolished despite procedural objections, especially in the absence of an occupancy certificate.

cenejeä heeoeMekeÀ DeeeCe Menj eve³eepeve DeeOeeve³ece, 1966, keÀuece 53-ceyeF ceneveieJheeeueekeÀe DeeOeeve³ece, 1888, keÀuece 354De-yekeÀe³eoe (DeJeOe) yeeOekeÀecee®e hekeÀjCe-³ee hekeÀjCeele DeheeueekeÀl³eeve ceyeF ceneveieJheeeueekeÀve peeje keÀueu³ee yeeOekeÀece Hee[C³ee®³ee veeìemeeuee DeeJneve eoueue Deen-pee yeeOekeÀece hee[C³ee®ee veeìeme ceyeF ceneveieJheeeueekeÀve MRTP DeeOeeve³ecee®³ee keÀuece 53 Keeuee peeje keÀuee nelee-pee Hee[keÀecee®ee veeìeme ne Fceejlee®³ee omeN³ee le DeepJ³ee cepeu³ee®³ee DeveeeOekeÀle yeeOekeÀeceemeyeOee yeeyeleele®ee nelee-

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2024(10)MDBHC(Dig)20

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Devendra Kumar Upadhyaya; Amit Borkar]

Writ Petition No 864 of 2024 **dated 10/09/2024**

Trishul Construction Co vs. City Industrial and Development Corporation of Maharashtra Ltd & Anr

LEASE PREMIUM PAYMENT

Maharashtra Regional and Town Planning Act, 1966 Sec. 154 - New Bombay Disposal Land Regulations, 1975 Reg 15, Reg 5 - Lease Premium Payment - Appellant sought direction to CIDCO to accept delayed payment of second lease premium installment for plots in Navi Mumbai due to financial recession - CIDCO cancelled allotment, forfeited earnest money, and 25% of premium for non-payment - Appellant cited a 2018 State directive approving extension and condoning delays to benefit CIDCO financially - CIDCO argued the decision was discretionary - Court found the 2018 directive binding under Section 154 of MRTP Act - Referred the matter to State for final clarification, staying cancellation until the decision. - Petition Partly Allowed

Law Point: State directives under Section 154 of the MRTP Act are binding on planning authorities, and CIDCO must comply unless explicitly allowed discretion.

cenejeä heeoeMekeÀ DeeeCe Menj eve³eepeve DeeOeeve³ece 1966, keÀuece 154-veJee ceyeFl peceeve eJeunJeeì eve³eceve, 1975, eve³eceve 15 DeeeCe 5-Yee[heÆ³ee®ee eÒecee³ece YejCee-DeHeeuekeÀl³eeve n³ee ÒekeÀjCeele eme[keÀeuee

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2024(10)MDBHC(Dig)21

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Nitin W Sambre; Abhay J Mantri]

Writ Petition No 2871 of 2024 **dated 09/09/2024**

Sakshi D/o Govindrao Narnaware vs. Schedule Tribe Caste Certificate Scrutiny Committee

TRIBE VERIFICATION

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 Sec. 8 - Tribe Verification - Petitioner challenged the Caste Scrutiny Committee's decision invalidating her claim of belonging to the "Mana" Scheduled Tribe - Vigilance Cell's investigation revealed adverse entries in pre-constitutional documents identifying her ancestors as "Mani, Bhormani, Mane, and Mani Kunbi" - Petitioner contended these entries should be read as "Mana", but did not dispute the actual entries - Court held that pre-constitutional documents have more probative value and petitioner failed to prove her caste as

"Mana" under Section 8 of the 2000 Act - Committee's rejection of tribe claim upheld - Petition Dismissed

Law Point: Pre-constitutional era documents carry significant probative value in caste verification cases, and the burden lies on the petitioner to conclusively prove their caste claim under the 2000 Act.

महाराष्ट्र अनुसूचित जाती अनुसूचित जमाती विमुक्त जाती भटक्या जमाती इतर मागास प्रवर्ग आणि विशेष मागास प्रवर्ग (पडताळणी आणि जारी करण्याचे नियमन) जात प्रमाणपत्र अधिनियम २००० कलम ८- जमात पडताळणी - अनुसूचित जमाती माणाशी संलग्न असण्याचा तिचा दावा अवैध ठरवणाऱ्या जिल्हा पडताळणी समितीच्या निर्णयाला याचिकाकर्तीने आव्हान दिले- दक्षता विभागाच्या अन्वेषणात राज्यघटनेच्या पूर्वीच्या दस्तऐवजातल्या प्रतिकूल नोंदणी नुसार तिच्या पूर्वजांच्या माणी, भोरमाणी, माने, माणी कुणबी अशा नोंदी उघडकीस आल्या - प्रत्यक्ष नोंदीवर आक्षेप न घेता त्या सर्व नोंदींना 'माणा' असे वाचण्यात यावे असा दावा याचिकाकर्त्यांनी केला- राज्यघटनेच्या पूर्वीच्या दस्तऐवजांना अधिक पुरावा मूल्य असते आणि २००० च्या अधिनियमाच्या कलम ८ अंतर्गत तिची जात 'माणा' सिद्ध करण्यास याचिकाकर्ती अयशस्वी ठरली - समितीने अनुसूचित जमातीचा दावा फेटाळणे कायम केले - याचिका फेटाळली.

कायद्याचा मुद्दा- राज्यघटनेच्या पूर्वीच्या काळात दस्तऐवजांना लक्षणीय पुरावामूल्य जाती प्रमाणपत्राच्या प्रकरणात असते, २००० च्या अधिनियमा अंतर्गत जातीचा दावा निर्णायकपणे सिद्ध करण्याचे दायित्व याचिका कर्त्यावर आहे.

For Full Judgement visit currentpublications.com or download 'Current Publications' Mobile App. Use Code: **BHC2492336904**

2024(10)MDBHC(Dig)22

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before A S Chandurkar; Rajesh S Patil]

Writ Petition No 10200 of 2022 **dated 06/09/2024**

Deputy Commissioner of Police vs. Sanjay Govind Parab

ENTITLEMENT TO PAY

Bombay Police Act, 1951 Sec. 22N, Sec. 22J - Maharashtra Civil Services (General Conditions of Service) Rules, 1981 Rule 29 - Entitlement to Pay - Respondent challenged transfer order from Mumbai to Dhule - Tribunal set aside transfer - Respondent did not join transferred post despite refusal of interim relief - Remained absent from duty for 271 days - Tribunal granted pay and allowances for absence - Transfer order set aside due to non-compliance with Section 22J-3 of Bombay Police

Act - Appellant argued absence was unauthorized, citing Rule 29 of Maharashtra Civil Services Rules - Court held Tribunal erred in granting pay for period of non-compliance - Original Application dismissed. - Petition Allowed

Law Point: Employee's absence from duty, despite refusal of interim relief against transfer order, cannot entitle him to pay and allowances for the period of such absence under Rule 29 of Maharashtra Civil Services Rules.

ceyeFl Heeeueme DeeOeeve³ece, 1951, keÀuece 22Sve DeeeCe 22pe-cenejeä veeiejer meJee (meeOeejCe meJeeMeleea) eve³ece, 1981, eve³ece 29-Jeleve ÒeeHle keÀjC³eemeyeOee®eer Hee$elee-Òeeleeiekeoeve n³ee ÒekeÀjCeele l³ee®eer ceyeFnive OeÈ³eeuee Peeueu³ee yeoueeme ³eeeeÒekeÀÜej DeeJneve eoueue Deen-v³ee³eeeOekeÀjCeeve yeouee DeeoMe HeÀìeUve ueeJele yeepeuee meejuee-ÒeeleJeeoeve yeouee Peeueu³ee epkeÀeCee Delee jce eoueemee veekeÀeju³eevelejne keÀleJ³eHeoeJej meJee jpe keÀuee veene cnCepe®e meJeJej jpe Peeuee veene DeeeCe lee meJee keÀleJ³eeJej 271 eoJemeeHe³ele DeveHeemLele jeenuee-v³ee³eeeOekeÀjCeeve DeveHeemLelee keÀeUemeeþe®e Jeleve DeeeCe YeÊe cepej keÀue-yeouee DeeoMe ne keÀJeU ceyeFl Heeeueme DeeOeeve³ecee®³ee keÀuece 22pe, 3 ®e DeveHeeueve ve keÀu³ee®³ee keÀejCeemleJe HeÀìeUve ueeJele yeepeuee meejC³eele Deeuee-DeHeeuekeÀl³eeve Demee ÒeeleJeeo keÀuee keÀe DeveHeemLelee ne DeveeeOekeÀle nelee pee ÒeeleJeeo cenejeä veeiejer meJee eve³ece ®ee eve³ece 29 ®e GoenjCe ole DeveeeOekeÀle þjeJeC³eele Deeuee-Jeejÿ v³ee³eeue³eeve eveJee[e keÀjleevee Deme G®eueve Oejue keÀe DeveHeeueve ve keÀueu³ee keÀeueeJeOee®e Jeleve cepej keÀjleevee v³ee³eeeOekeÀjCee®ee ®ekeÀ Peeueuee Deen-ceU Depe Keejepe keÀjC³eele Deeuee DeeeCe ³eeeÒekeÀe ûee¿e Oejle oeKeue keÀ©ve leC³eemeeþe HejJeeveiee³eeì³e mecepeC³eele Deeuee.

keÀe³eÐee®ee ceÎe- keÀce®eeN³ee®ee meJee keÀleJ³eeJej®ee DeveHeemLelee l³eeme yeouee DeeoMee eJe©× Delee jce eoueemee veekeÀeju³eevelejne l³ee®³ee DeveHeemLelee®³ee keÀeueeJeOeemeeþe Jeleve DeeeCe YeÊe ÒeeHle keÀjC³eemeeþe Hee$e keÀ© MekeÀle veene. pee DeHee$elee ne cenejeä veeiejer meJee eve³ecee®³ee eve³ece 29 Keeuee keÀjC³eele Deeueuee Deen.

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2024(10)MDBHC(Dig)23

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Ravindra V Ghuge; Y G Khobragade]

Writ Petition No 2185 of 2022 **dated 05/09/2024**

Parasram S/o Ranganath Gaikwad vs. State of Maharashtra, Through Its Secretary, Animal Husbandry Department; Commissioner, Animal Husbandry; Zilla Parishad, Ahmednagar

PART-TIME SWEEPER COMPENSATION

Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 Rule 5 - Part-Time Sweeper Compensation - Appellant, a part-time sweeper since 1983, sought regularization, retiral benefits, and pension after retirement - Zilla Parishad denied

benefits, citing lack of provisions for regularization - Court found no legal ground for absorption but acknowledged appellant's long service and financial hardship - Court awarded Rs.7,50,000 as lumpsum compensation in lieu of pension and benefits, payable within 60 days. - Petition Partly Allowed

Law Point: Long-serving part-time workers not eligible for regularization may be awarded compensation for lack of retiral benefits based on their length of service and financial circumstances.

महाराष्ट्र जिल्हा परिषदा जिल्हास्तरीय सेवा भरती नियमावली १९६७ नियम ५- अंशकालीन सफाई कामगार भरपाई- १९८३ पासून अंशकालीन सफाई कामगार असलेला अपीलकर्ता याने नियमितीकरण, निवृत्ती चे फायदे आणि निवृत्तीवेतन मागितले- नियमित करण्यासाठी उपबंधाच्या अभावामुळे जिल्हा परिषदेने फायदे नाकारले - समावेशनाला कायदेशीर आधार न्यायालयाला आढळले नाहीत मात्र अपीलकर्त्याची प्रदीर्घ सेवा व आर्थिक अडचण न्यायालयाने मान्य केली - निवृत्तीवेतन व फायद्याच्या बदला ७,५०,००० रुपये एकर कमी भरपाई ६० दिवसांच्या आत देण्याचा न्यायालयाचा आदेश- याचिकेला अंशतः अनुमती

कायद्याचा मुद्दा- दीर्घकाळ अंशतः सेवा देणारे कामगार नियमित होण्यास पात्र नसले तरी सेवेचा कालावधी व आर्थिक परिस्थितीवर आधारित भरपाई त्यांना निवृत्ती फायद्यांच्या अभावी देता येऊ शकते.

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2024(10)MDBHC(Dig)24

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before M S Sonak; Kamal Khata]

Appeal (L); Interim Application; Suit; Interim Application (L) No 29687 of 2023; 42 of 2022; 29692 of 2023 **dated 04/09/2024**

Municipal Corporation of Greater Mumbai vs. Samarath Development Corporation; Pankaj Unit No 1 Housing Development Co Private Limited; Pankaj Unit No 2 Housing Development Co Private Limited; Nsj Engineers India Private Limited; Michigan Engine

LAND OWNERSHIP INJUNCTION

Registration Act, 1908 Sec. 17 - Maharashtra Land Revenue Code, 1966 Sec. 20 - Land Ownership Injunction - Appeal filed by Municipal Corporation of Greater Mumbai against order preventing it from entering No Development Zone land to construct Storm Water Pumping Station (SWPS) - Respondents claim ownership of

land - Corporation contests ownership, asserting State's ownership of land - Municipal Corporation obtained clearance from authorities for construction in No Development Zone - Trial court ruled in favor of Respondents, granting injunction - Appeal court analyzed balance of convenience and irreparable injury - Public interest project and potential damage to public highlighted - Court held Respondents failed to establish balance of convenience and irreparable injury - Directed Municipal Corporation to deposit compensation while allowing public project to proceed - Injunction vacated subject to conditions.

Law Point: Temporary injunction cannot be granted solely on prima facie ownership claim-Balance of convenience and irreparable injury must be established-Public interest outweighs private claims when substantial public projects are involved.

veeoCee DeeOeeve³ece, 1908, keÀuece 17-cenejeä peceeve cenmeue meenlee, 1966, keÀuece 20-peceevee®³ee ceeuekeÀenkekeÀeme mLeeielee-n³ee hekeÀjCeele yenvceyeF ceneveiejHeeeuekeÀve heJeMeeme heeleyeOe keÀjC³ee®³ee DeeoMeeeJe©× Deheeue oeKeue keÀueue Deen-p³ee DeeoMeevJe³e ceneveiejheeeuekeÀuee DeeJekeÀeme (veeJekeÀeme) Heej#e$eeleu³ee peeiele JeeoU heeC³ee®e heheeie mìMeve®e yeeOekeÀece keÀjC³eemeeþe heJeMe keÀjC³eeheemeve heeleyeeOele keÀjC³eele Deeueue Deen-heeleJeeoeve meoj Deeie®³ee ceeuekeÀenkekeÀe®ee oeJee keÀueuee Deen-ceneveiejHeeeuekeÀve n³ee ceeuekeÀenkekeÀe®³ee oeJ³eeme DeeJneve eoueue Deen-ceneveiejHeeeuekeÀve yeeOekeÀeceemeyeOee®ee DeeJeM³ekeÀ HejJeeveiee heeeOekeÀjCeekeÀ [ve heehle keÀueuee Deen-pee HejJeeveiee veeeJekeÀeme #e$eele yeeOekeÀece keÀjC³eemeyeOee®ee nelee-meveeJeCee keÀjCeeN³ee ÒeLece v³ee³eeue³eeve ÒeeleJeeoe®³ee yeepeve mLeeielee DeeoMe keÀe{uee cnCepe®e mLeeieleeme cepeje eouee-DeHeeue v³ee³eeue³eeve meeF®³ee lejepe®e eJeÞue<eCe keÀue- leme®e Deheejecele nevee yeeyeleele®³ee peKece®e ceu³eceeHeve keÀue-Jeejÿ v³ee³eeue³eeleeue meveeJeCee ojc³eeve meeJepeevekeÀ enlee®³ee ÒekeÀuHeeyeeyelele DeeeCe peveleuee Heen®eCeeN³ee meYeeJ³e nevee®e eJeÞue<eCe keÀjC³eele Deeue DeeeCe l³eeme þUkeÀHeCe oMeeJeC³eele Deeue-Jeejÿ v³ee³eeue³eeve eveJee[e keÀjleevee Deme G®eueve Oejue keÀe ÒeeleJeeoe meeF®³ee lejepe yeeyelele DeeeCe DeHeejecele nevee meyeOee®ee yeepe HeìJeve oC³eele eve<HeÀU þjue Deenle DeeeCe Jeejÿ v³ee³eeue³eeve ceneveiejHeeeuekeÀuee vekeÀmeeveYejHeeF v³ee³eeue³eele pecee keÀjC³ee®e eveoMe eouee DeeeCe meeJepeevekeÀ enlee®e hekeÀuhe he{ veC³eeme hejJeeveiee eouee-mLeeieleeme keÀene Deì e®³ee DeOeeve jenve meì oC³eele Deeuee.

keÀe³eÐee®ee ceÎe- DemLee³ee mLeeeieleeme keÀJeU mekeÀle oMevee ceeuekeÀenkekeÀe®³ee oeJ³ee®³ee DeeOeejeJej cepeje olee ³eJe MekeÀle veene. meeF®ee lejepe DeeeCe DeHeejecele nevee ne ÒemLeeeHele keÀuee ieuee Heeenpe. meeJepeevekeÀ enle n vencee Keepeiee oeJ³eeJej Jej®e{ þjle Demele peJne ÒekeÀuHeele yenJeOe meeJepeevekeÀ enle ieleueue Demele.

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2024(10)MDBHC(Dig)25

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Vibha Kankanwadi; S G Chapalgaonkar]

Criminal Application No 3763 of 2022 **dated 04/09/2024**

Sandip S/o Uttam Shinde; Arti W/o Sandip Shinde vs. State of Maharashtra; Devidas S/o Bansi Shinde

MONEY LENDING ALLEGATION

Indian Penal Code, 1860 Sec. 504, Sec. 506 - Code of Criminal Procedure, 1973 Sec. 482 - Negotiable Instruments Act, 1881 Sec. 138 - Maharashtra Money-Lending (Regulation) Act, 2014 Sec. 39 - Money Lending Allegation - Appellants sought quashing of FIR under Sec. 39 of the Money Lending Act and Sec. 504, 506 IPC alleging they engaged in money lending without a license - Respondents claimed appellants lent Rs.1,00,000 with high interest and pressured for land transfer - Court held a singular loan transaction does not constitute money lending business under Sec. 39 of the Act - FIR and criminal proceedings quashed - Application Allowed

Law Point: A singular loan transaction does not qualify as "business of money lending" under Sec. 39 of the Maharashtra Money-Lending Act - Continuous and systematic activity is required for such an offence.

भारतीय दंड संहिता १८६० कलम ५०४ कलम ५०६- फौजदारी प्रक्रिया संहिता १९७३ कलम ४८२ - परक्राम्य संलेख अधिनियम १८८१ कलम १३८- महाराष्ट्र सावकारी (नियंत्रण) अधिनियम २०१४कलम ३९- सावकारीचे आरोप- परवान्याशिवाय सावकारी करण्याचे आरोप करणारा भा. दं. सं कलम ५०४,५०६ आणि सावकारी अधिनियम कलम ३९ अंतर्गत प्राथमिक माहिती अहवाल रद्द करण्याची अपीलकर्त्याची मागणी- एक लाख रुपये अति व्याजदराने अपीलकर्त्यांनी दिले आणि जमीन हस्तांतरणासाठी दबाव आणला असा दावा प्रतिवादीने केला- एका कर्जाचा संव्यवहार अधिनियमाच्या कलम ३९ अंतर्गत सावकारी व्यवसाय घडवत नाही-प्रा.मा.अ.आणि फौजदारी कार्यवाही रद्द केली- अर्जाला अनुमती.

कायद्याचा मुद्दा- महाराष्ट्र सावकारी अधिनियम कलम ३९ अंतर्गत सावकारी व्यवसाय म्हणून एका कर्जाचा संव्यवहार पात्र होत नाही. सातत्यपूर्ण व योजनाबद्ध क्रिया कलाप अशा अपराधासाठी आवश्यक असते.

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2024(10)MDBHC(Dig)26

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Vibha Kankanwadi; Vrushali V Joshi]

Writ Petition No 2175 of 2021 **dated 03/09/2024**

Darshika Chandrakant Rakhunde; Pankaj Arun Uikey; Sunil Pandurang Atram; Sanjay Devaram Nandanwar; Sunita Vikas Sarode; Amar Krishnarao Sonurkar; Sunil Dattu Gore; Ipattikar Vithoba Kore; Rekha Satish vs. State of Maharashtra; Forest Development Corporation of Maharashtra; Principal Secretary (Forests) Revenue & Forests Department; Principal Chief Conservator of Forest (Head of Forest Force); Managing

SENIORITY DISPUTE

Constitution of India Art. 309 - Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 Rule 4 - Divisional Forest Officer (Maharashtra Forest Service Class I) Recruitment Rules, 1984 Rule 2 - Seniority Dispute - Appellants, promoted as Range Forest Officers (RFOs), challenged the seniority of direct recruits - Direct recruits, appointed under 2011 Recruitment Rules, underwent three years of training before confirmation - Appellants contended that training period should not be counted towards seniority, while direct recruits argued otherwise - Forest Development Corporation initially considered training period as service but later revised its stance following a court ruling - Court held that 2015 Rules, which counted training as service, were applicable prospectively and could not affect earlier appointments - Petitions dismissed as training period could be counted towards seniority for direct recruits. - Petition Dismissed

Law Point: Training period for direct recruits can be counted towards seniority if prescribed by applicable rules, and such rules can apply prospectively without affecting past appointments.

Yeejlee³e meeJeOeeve, keÀuece 309-cenejeä veeieje meJee (Jeejÿlele®e eve³eceve) eve³ece, 1982, eve³ece 4-eJeYeeie³e Jeve DeeOekeÀeje (cenejeä Jeve meJee Jeie 1) eve³ekeÌlee eve³ece, 1984, eve³ece 2-Jeejÿlemeye Oee®ee JeeoöDeHeeueekeÀl³eeme jpe Jeve DeeOekeÀeje (DeejSHeÀDee) cnCeve ye{lee oC³eele Deeuee nelee-l³eeve mejU Yejlee keÀueu³ee DeeOekeÀeN³ee®³ee Jeejÿleme DeeJneve eoueue Deen-pe mejU Yejlee keÀueue DeeOekeÀeje n 2011 ®³ee Yejlee eve³eceevemeej cnCepe 2011 meeue®³ee eve³eceeKeeuee eve³ekelee keÀjC³eele Deeue nele-p³ee DeeOekeÀeN³eevee meJele keÀe³ece neC³eeHeJee leeve Je<ee®e ÒeeMe#eCe HeCe keÀue nele-DeHeeueekeÀl³eevee DeMee yeepe cee[uee keÀe Jeejÿlee þjeJeC³eemeeþe ÒeeMe#eCe keÀeUe®ee ieCelee keÀjC³eele ³eJe ve³e-l³ee®eJeUe Òel³e#e meJele Yejlee keÀueu³ee DeeOekeÀeN³ee®³ee Jeleeve ³eeGue ì yeepe cee[C³eele Deeuee cnCepe®e ÒeeleJeeo keÀjC³eele Deeuee-Jeve eJekeÀeme cenece[Uevee DeeOee ÒeeMe#eCe keÀeueeJeOee meJee Demeu³ee®ee eJe®eej keÀjC³eemeeþe ÒeieCeele keÀuee Hejle leovelej l³eevee l³ee®ee yeepe

v³ee³eeue³ee®³ee efveCe³eeveleJ yeoueuee ekeÀJee ÒeeleJeeoemeyeOee®ee ¢ä ekeÀeve yeoueuee-Jeejÿ v³ee³eeue³eeve meyeeJeCeeveleJ efveJee[e keÀjleevee Deme G®eueve OejueskeÀe 2015 meeuee®ee efve³ece p³eeveee ÒeeMe#eCee®ee keÀeueeJeOee meJele meceeeJeä keÀjC³eele ³eeJee Deme þjeJeue lee efve³ece YeeJe<³eue#ee ÒeYeeJeeve ueeie nelee DeeeCe n³eeceU n³eeDeeOee Peeueu³ee efve³eekeleeJej keÀeCeleene HeejCeece neJe MekeÀle veene-³eeee®ekeÀe n³ee DeeOeejeJej Keejepe keÀjC³eele Deeuee keÀe ÒeeMe#eCee®ee keÀeueeJeOee ne meJee Jeejÿlee þjeJeC³eemeeþe keÀJeU Òel³e#e Yejlee keÀueu³ee DeeOekeÀeN³eemeeþe®e HeejieCeele keÀjC³eele ³eeJee n³ee meyeOee®ee efve³ece ne 2015 meeuee®³ee Yejlee efve³eceele keÀjC³eele Deeueuee Deen-³eeee®ekeÀe ³eemleJe Keejepe keÀjC³eele Deeuee.

keÀe³eÐee®ee ceÎe- Òel³e#e Yejlee keÀueu³ee DeeOekeÀeN³eemeeþe Jeejÿlee þjeJeC³eemeeþe ÒeeMe#eCe keÀeueeJeOee HeejieCeele keÀjC³eele ³eeJee pej ueeie Demeueu³ee efve³eceeÜej leme eJenele keÀjC³eele Deeue Demeue lej Deme efve³ece n ³ee DeeOee®³ee keÀeCel³ee efve³eekeleeJej HeejCeece ve keÀjlee YeeJe<³eue#ee ÒeYeeJeeve ueeie keÀue peeleeue.

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2024(10)MDBHC(Dig)27

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Ravindra V Ghuge; Y G Khobragade]

Writ Petition No 12028 of 2022 **dated 03/09/2024**

Gadekar Ginning and Pressing Pvt Ltd; Jayashree Vishnu Gadekar vs. Canara Bank; M/s Adarsh Ginning and Pressing

CONDONATION OF DELAY

Maharashtra Co-Operative Societies Act, 1960 Sec. 154, Sec. 18 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Sec. 17 - Condonation of Delay - Appellant challenged DRAT order requiring deposit of 50% of dues in a case involving condonation of delay in filing before DRT - Court ruled that deposit requirements under Sec. 18 of SARFAESI Act apply to substantive appeals, not delay condonation applications - Condonation must be decided first before substantive proceedings begin - DRAT's order quashed, Rs. 50,00,000 deposit retained pending final outcome - Writ Petition Allowed

Law Point: Statutory pre-deposit conditions for appeals do not apply when only condonation of delay is being considered - Condonation must be decided first before merits are heard.

महाराष्ट्र सहकारी संस्था अधिनियम १९६० कलम १५४ कलम १८ - आर्थिक मालमत्तेचे तारणीकरण पुनर्गठण व तारणांवरील हक्कांची अंमलबजावणी कायदा २००२ कलम १७- विलंबमाफी-

कर्जवसुली अपिलीय न्यायाधीकरणाच्या आदेशाला अपीलकर्त्याने आव्हान दिले ज्यात कर्जवसुली न्यायाधिकरणासमोरील प्रकरण दाखल करण्यास झालेल्या विलंबाच्या माफी प्रकरणात थकिताच्या ५०% रक्कम जमा करण्याचे होते - कलम १८ अंतर्गत रक्कम जमा करण्याचा आदेश फक्त वस्तुनिष्ठ अपिलांना आवश्यक आहे विलंब अर्जांना नाही- वस्तुनिष्ठ कार्यवाही सुरू होण्याअगोदर विलंबाची निश्चिती झाली पाहिजे - अंतिम निकाल प्रलंबित असेपर्यंत ५० लाख जमा करणे राखून ठेवले- कर्जवसुली न्यायाधीकारणाच्या आदेश रद्द केला - रिट याचिकेला अनुमती.

कायद्याचा मुद्दा- केवळ विलंब माफीचा निर्णय होत असताना वैधानिक पूर्व ठेवीच्या अटी अपिलाला लागू होत नाहीत - गुणवत्तेवर सुनावणी होण्यापूर्वी माफीचा निर्णय झाला पाहिजे.

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2024(10)MDBHC(Dig)28

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before S G Mehare]

Criminal Application No 2368 of 2022, 2383 of 2022 **dated 02/09/2024**

Atul Ashok Mundada vs. State of Maharashtra; Kailas Pandurang Bagul; Nitin Balmukund Laddha

REJECTION OF INVESTIGATION REQUEST

Indian Penal Code, 1860 Sec. 166, Sec. 201, Sec. 204, Sec. 34, Sec. 21, Sec. 218, Sec. 120B, Sec. 202, Sec. 167, Sec. 177; Code of Criminal Procedure, 1973 Sec. 156, Sec. 482, Sec. 200, Sec. 2, Sec. 197; Land Acquisition Act, 1894 Sec. 18; Maharashtra Regional and Town Planning Act, 1966 Sec. 127; Maharashtra Public Records Act, 2005 Sec. 9, Sec. 8; Maharashtra Municipal Corporations Act, 1949 Sec. 48, Sec. 482, Sec. 486 - Rejection of Investigation Request - Applicant sought police investigation under Sec. 156(3) CrPC against respondents, alleging forgery and document destruction related to compensation payment-Trial and Sessions Courts denied the request-High Court upheld the rejection, holding that there was no evidence of cognizable offences and that the issue was administrative, not criminal-Claim dismissed with costs - Applications Dismissed

Law Point: Investigation under Sec. 156(3) CrPC requires a clear prima facie case of cognizable offence-Sanction under Sec. 197 CrPC is essential when public servants act in official capacity

Yeejleeṡe ob[meeenlee, 1860, keÀuece 166, 201, 204, 34, 21, 218, 120ye, 202, 167 DeeeCe 177-HeÀepeoeje hee¬eÀ³ee meeenlee, 1973, keÀuece 156, 482, 200, 2 DeeeCe 197-Yeemeheeove DeeOeeve³ece, 1894, keÀuece 18-ceneje ä ÒeeoeMekeÀ DeeeCe Menj eve³eepeve DeeOeeve³ece, 1966, keÀuece 127-ceneje ä meeJepeeevekeÀ DeeYeueKe DeeOeeve³ece, 2005, keÀuece 9 DeeeCe 8-ceneje ä ceneveiej heeeueekeÀe DeeOeeve³ece, 1949, keÀuece 48, 482 DeeeCe 486-DevJe<eCe DenJeeue veekeÀej C³eemeyeOee®ee eJeveleer-Depeoeje eve l³ee®³ee DepeeÜej Heeeueme ®eekeÀMeer DenJeeue pee HeÀepeoeje Òee¬eÀ³ee meeenle®³ee keÀuece 156(3) Keeuee eouee peelee lee ÒeelleJeeoe eJe©×®ee DenJeeue veekeÀej C³ee®ee eJevelee keÀueuee Deen-pee ®eekeÀMeer DenJeeue Dee#eHeele HeÀmeJeCekeÀ DeeeCe vekeÀmeeveYej HeeFl Deoe keÀj C³eemeyeOee omleeJepe veeMe keÀj C³eeMee meyeOeele Deen-meveeJeCee keÀj CeeN³ee keÀeveÿ DeeeCe me$e v³ee³eeue³eeve keÀueuee eJevelee veekeÀejuee-G®®e v³ee³eeue³eeve keÀeveÿ v³ee³eeue³ee®ee lemee®e me$e v³ee³eeue³ee®ee eJevelee veekeÀej Ceeje eveCe³e ³eei³e þjeJele G®eueve Oejuee n³ee DeeOeejeJej keÀe oKeueHee$e ievn³ee®ee keÀeCeleene Hejeee eomeve ³ele veene DeeeCe keÀe³eJeene meyeOee®ee JeeoceÎe ne HeÀepeoeje mJe©Hee®ee vemeve ÒeMeemeveekeÀ mJe©Hee®ee Deen-Depeeleeue oeJee Ke®eemeenle Keejepe keÀj C³eele Deeuee-Depe Keejepe keÀj C³eele Deeuee.

keÀe³eÐee®ee ceÎe- HeÀepeoeje Òee¬eÀ³ee meeenle®³ee keÀuece 156(3) Keeueeue DevJe<eCe ekeÀJee ®eekeÀMeer DenJeeue oC³eemeeþe oKeueHee$e ievne le[u³ee®ee mHeä mekeÀleoMevee yeepe cee[Ce DeeJeM³ekeÀ keÀjle. meeJepeeevekeÀ meJekeÀ peJne l³ee®³ee keÀe³eeue³eeve keÀ#eele keÀe³e keÀjele Demeleele leJne HeÀepeoeje Òee¬eÀ³ee meeenle®³ee keÀuece 197 Keeuee l³ee®³ee (ueekeÀmeJekeÀe) eJe©× keÀe³eJeene keÀj C³eemeeþe Meemeve cepeje DeeJeM³ekeÀ Deen.

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2024(10)MDBHC(Dig)29

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before R M Joshi]

Writ Petition No 5646 of 2022 **dated 02/09/2024**

Shri Vasantrao Chougule Nagari Sahakari Pat Sanstha Ltd; Special Recovery Officer, Shri Vasantrao Chougule Nagari Sahakari Pat Sanstha Ltd vs. State of Maharashtra; Divisional Joint Registrar, Co-operative Societies; District Deputy Registrar, Co-operative Societies; Pramila Malgonda Bedkihale; Jagannath Malgonda Bedkihale; Chandrakant Malgo

AUCTION SALE CHALLENGE

Maharashtra Co-Operative Societies Act, 1960 Sec. 156 , Sec. 101 , Sec. 107 , Sec. 154 - Maharashtra Co-Operative Societies Rules, 1961 Rule 107 - Auction Sale Challenge - Petitioner, a Co-operative Credit Society, conducted an auction sale of a borrower's property due to loan default - Borrower's heirs challenged Sale Certificate - Revisional Authority set aside confirmation of sale, citing failure to give opportunity to heirs - Petitioners contended heirs were not entitled to challenge the Sale Certificate

without objecting to the auction itself - No evidence of fraud or substantial injury - Auction sale was valid, and property possession was transferred to auction purchaser - Impugned order set aside - Petition Allowed

Law Point: Auction sale under Sec. 156 of Maharashtra Co-operative Societies Act is valid unless fraud or substantial injury is proven - Challenge to Sale Certificate requires objection to auction sale itself within the statutory time limit

cenejeä menkeÀeje memLee DeefOeeve³ece, 1960, keÀuece 156, 101, 107 DeeefCe 154-cenejeä menkeÀeje memLee efve³ece, 1961, efve³ece 107-efueueeJee®³ee eÀJe¬eÀeme DeeJneve-³eeee®ekeÀekeÀl³eeb-menkeÀeje Hele memLeeves Gmeves lelleueu³ee oCekeÀje®³ee ceeueceÊe®e Heme YejC³eele keÀmej Peeu³ee®³ee keÀejCeemleJe efueueeJe keÀuee-Heme GmeveJeejeves lelleueu³ee oCekeÀje®³ee Jeejmeoejevee eÀJe¬eÀe ÒeceeCeHe$eeme DeeJneve efoue Deen-Heveje#eCe ÒeeeOekeÀejeve eÀJe¬eÀemeyeOee®e eMekekeÀeceeeleye jÎ þjeJele yeepeuee meejue Deme keÀejCe ole keÀe Jeejmeoejeme meOee oC³eeme le eve<HeÀU þjue-³eeee®ekeÀekeÀl³eevee DeMee yeepe cee[uee keÀe Jeejmeoej n eÀJe¬eÀe ÒeceeCeHe$eeme efueueeJeeme njkeÀle lelleu³eeeMeJee³e DeeJneve oC³eeme Hee$e veenele-HeÀmeJeCekeÀ ekeÀJee YejeJe nevee©Hee peKece®ee keÀeCelee®e HejeJee eomeve Deeuee veene-efueueeJeeÜej keÀueuee eÀJe¬eÀe ne JeOe nelee DeeeCe efueueeJeeleeue ceeueceÊe®ee leeyee ne efueueeJeeleeue Kejoeoejeme nmleeleejle keÀjC³eele Deeuee-Dee#eHeele DeeoMe jÎ þjeJele yeepeuee meejC³eele Deeuee-³eeee®ekeÀe ûee¿e Oejle oeKeue keÀ©ve leC³eemeeþe ceev³elee oC³eele Deeuee.

keÀe³eÐee®ee ceÎe- cenejeä menkeÀeje memLee DeefOeeve³ecee®³ee keÀuece 156 Keeuee ceeueceÊe®ee efueueeJe eÀJe¬eÀe ne leeJej JeOe Demele peeJej HeÀmeJeCekeÀ ekeÀJee YejeJe nevee Peeuee n eme× nele veene. eÀJe¬eÀe ÒeceeCeHe$eeme eoueue DeeJneve n³eemeeþe efueueeJe eÀJe¬eÀeme eJeOeeiele JeU ce³eeole njkeÀle leCe DeeJeM³ekeÀ Deen.

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2024(10)MDBHC(Dig)30

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before R N Laddha]

Anticipatory Bail Application No 2432 of 2024 **dated 02/09/2024**

Mahesh Motiram Kumbhar vs. State of Maharashtra

BUILDING COLLAPSE

Maharashtra Regional and Town Planning Act, 1966 Sec. 54 - Bharatiya Nyaya Sanhita, 2023 Sec. 125, Sec. 3, Sec. 105, Sec. 324 - Building Collapse - Appellant sought anticipatory bail after being charged with constructing an unauthorised four-storey building that collapsed, causing three fatalities - Appellant financed the building but denied responsibility, blaming a co-constructor - Investigation revealed substandard materials and disregard for structural integrity, leading to collapse - Prosecution argued appellant's inaction despite demolition notices - Court found

sufficient material suggesting appellant's involvement in construction and ownership - Held that gravity of offence and ongoing investigation necessitated denial of anticipatory bail - Application Rejected

Law Point: Anticipatory bail is not granted in cases involving severe negligence resulting in loss of life, especially when the investigation is at an early stage and the accused's involvement in illegal construction is evident.

cenejeä heeoeMekeÀ DeeeCe Menj eve³eepeve DeeOeeve³ece, 1966, keÀuece 54-Yeejleer³e v³ee³e meeinlee, 2023, keÀuece 125, 3, 105 DeeeCe 324-Fceejleer®ee he[Pe[-DeHeeueekeÀl³eevee n³ee hekeÀjCee DeìkeÀheJepeeceevee®ee ceeieCee keÀueuee Deen-peJne l³ee®³eeJej ®eej cepeuee DeveeeOekeÀle Fceejlee®e yeeOekeÀece keÀu³ee®ee Deejehe keÀjC³eele Deeuee pee Fceejle Keeuee keÀemeUuee p³eemleJe leeve J³eekelevee l³ee®e heeCe ieceJeeJe ueeieue-DeHeeueekeÀl³eevee Fceejlee®³ee yeeOekeÀeceemeeþe eJeÊe HejJeþe keÀu³ee®e ceev³e keÀue Hejle Fceejlee®³ee evelkeÀÿ yeeOekeÀecee®ee peyeeyeoeje PeìkeÀuee DeeeCe men yeeOekeÀecekeÀl³eeJej peyeeyeoeje ìekeÀve l³eeme oe<ee þjeJeue-®eekeÀMee DevJe<eCeele evecve op³ee®³ee meeenl³ee®ee JeeHej Peeu³ee®e Gle[Peeue-DeeeCe yeeOekeÀecee®³ee oee³elJeemeeþe keÀeCeleene DeeoMe ve oeKeJeu³ee®e Gle[Peeue p³eeceU keÀueu³ee Fceejlee®³ee yeeOekeÀecee®ee He[Pe[Peeuee-eHeÀ³eeoevee Demee Òee lJeeo keÀuee keÀe DeHeeueekeÀl³eeme JeejJeej Fceejle Hee[C³ee®³ee veeìemee eou³eevelej me×e Fceejle Hee[C³eele keÀeCeleene mee¬eÀ³elee oeKeeJeuee veene cnCepe®e lee eve<¬eÀe³e jeenuee-Jeejÿ v³ee³eeue³eeuee Deme Dee{Uve Deeue keÀe evelkeÀÿ yeeOekeÀecelee DeheeuekeÀl³ee®ee me¬eÀe³e menYeeie nelee leme®e yeeOekeÀecele DeeeCe ceeuekeÀenkekeÀemeyeOee me×e l³ee®ee me¬eÀe³e ieleee nelee-Jeejÿ v³ee³eeue³eeve ievn³ee®e ieeYee³e DeeUKeve leme®e ®eeueueu³ee DevJe<eCee®ee ieYeejlee DeeUKeve DeìkeÀHeJe peeceeve veekeÀejCe DeeJeM³ekeÀ Demeu³ee®e DeeoMeele veceo keÀue-DeìkeÀHeJe peeceevee®ee Depe veekeÀejC³eele Deeuee.

keÀe³eÐee®ee ceÎe- ieYeej eve<keÀeUpeeheCee®³ee hekeÀjCeele DeìkeÀheJe peeceeveeme cepeje heoeve keÀuee peeJe MekeÀle veene p³eeceU ceeveJeee peeeJele nevee Peeuee Demeue eJeMe<ele: DeM³ee heejemLeleele peJne ®eekeÀMee ne heeLeeecekeÀ ìHH³eeJej Demeue DeeeCe yekeÀe³eoMeej yeeOekeÀecele Deejehee®ee ieleee ne eomeve ³eele Demeue ekeÀJee Gle[nele Demeue.

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2024(10)MDBHC(Dig)31

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Sandeep V Marne]

Writ Petition No 1512 of 2024 **dated 02/09/2024**

Morarji Hariram (Since Deceased); Nirmalaben Morarji Thakkar and Ors vs. Ramnik Dairy Farm and Ors

AMENDMENT OF WRITTEN STATEMENT

Maharashtra Rent Control Act, 1999 Sec. 15 - Amendment of Written Statement - Petitioners challenged the order allowing amendment of written statement by respondent tenant to introduce a letter allegedly signed by the deceased original plaintiff, 16 years after suit for recovery of possession was filed - Petitioners argued the amendment prejudiced them as the plaintiff had died and could not address the letter's authenticity - Court found the amendment was aimed at defeating the eviction suit for rent arrears and was not bona fide - Rejected the amendment, reinstating trial court's decision to deny it. - Petition Allowed

Law Point: Amendments to written statements should not be allowed if they cause significant prejudice, are not bona fide, or are introduced after an undue delay, especially following the death of a key party.

cenejeä Yee[: eve³e$eCe DeeOeeve³ece, 1999, keÀuece 15-ueKee eveJeoveeleeue o©mlee ekeÀJee meOeejCee-n³ee hekeÀjCeele ³eee®ekeÀekeÀl³eeveer ÒeeleJeeoer Yee[keÀjer n³eeme l³ee®³ee ueKeer eveJeoveele meOeejCee keÀjC³eeme HejJeeveiee ©Hee DeeoMeeme DeeJneve eoueue Deen-p³ee meOeejCeÜej: ÒeeleJeeoeve l³ee®³ee ueKeer eveJeoveemeeyele ceU celekeÀ eHeÀ³eeoeve leeyeemeyeOee KeÌuee oeKeue keÀu³ee®³ee leejKevelej 16 Je<eevelej l³ee®e mene keÀueue He$e pee[ue-³eee®ekeÀekeÀl³eeveer Demee ÒeeleJeeo keÀuee keÀe meOeejCelleve l³ee®³ee nkekeÀeme yeeOe DeeCeC³eele Deeuee keÀejCe eHeÀ³eeoe ne DeeOee®e cejCe HeeJeuee nelee-DeeeCe lee JeemleeJekeÀleve He$eeJej mene keÀ© MekeÀle veJnlee ekeÀJee He$ee®ee mel³elee oMeJe MekeÀle veJnlee-Jeejÿ v³ee³eeue³eeuee Deme Dee{Uve Deeue keÀe o©mlee ekeÀJee meOeejCe®ee GÎMe ne Yee[: LekeÀyeekeÀemeeþe peeiee ejkeÀecee keÀjC³ee®ee oeJee Hejeepele keÀjC³ee®ee nelee DeeeCe lee mel³eeme Oe©ve veJnlee ³eemleJe l³eeveer ueKee eveJeoveele keÀueuee meOeejCee veekeÀejuee DeeeCe meveeJeCee keÀjCeeN³ee ÒeLece keÀeveÿ v³ee³eeue³ee®³ee eveCe³e HeÀj HeveemLeeeHele keÀuee-p³eeÜej: meOeejCee keÀjC³eeme vekeÀej oC³eele Deeuee nelee-³eee®ekeÀe ûee¿e Oejle oeKeue keÀ©ve leC³eeme ceev³elee oC³eele Deeuee.

keÀe³eÐee®ee ceÎe- ueKee eveJeoveele meOeejCee ekeÀJee o©mlee keÀjC³eeme cepeje olee keÀecee ve³e pej DeMee meOeejCee ekeÀJee o©mlee eJejeOee He#eeme ue#eCee³e ¢<Ì³ee yeeOemJe©He þjle Demeue ekeÀJee yeeOekeÀ eme× nele Demeue ekeÀJee keÀueu³ee meOeejCee n³ee mel³eoMekeÀ eme× nele vemeleeue ekeÀJee l³ee meOeejCee ceeþ³ee eJeueyeeve oeKeue keÀu³ee ieu³ee Demeleeue eJeMe<eleë: DeM³ee HeejemLeleele peJne ÒeceKe He#ekeÀej ne cejCe HeeJeuee ekeÀJee cele HeeJeuee Demeue.

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2024(10)MDBHC(Dig)32

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before A S Chandurkar; Jitendra Jain]

Writ Petition; Civil Application No 3712 of 2017, 4943 of 2017, 13990 of 2023; 957 of 2017, 958 of 2017, 959 of 2017 **dated 30/08/2024**

Kalaskarwadi Vividh Karyakari Seva Sahakari Sanstha Maryadit; Shrasgaon Kata Vividh Karyakari Sahakari Sanstha Maryadit; Proposed Kalbhairavnath Vividh Karyakari Seva Sahakari Sanstha Maryadeet; Propo vs. State of Maharashtra; Commissioner For Cooperation & Registrar For Cooperative Societies; District Deputy Registrar, Cooperative Societies; Assistant Registrar, Cooperative Societies; Minister For Coo

GOVERNMENT CORRIGENDUM VALIDITY

Constitution of India Art. 166 - Maharashtra Government Rules of Business, 1975 Rule 9, Rule 4 - Government Corrigendum Validity - Writ petitions challenge government corrigendum that replaces clause in government resolution limiting registration to only one PACCS in revenue village-Petitioners argue corrigendum arbitrary-Respondents claim corrigendum clarifies inconsistencies-Respondent society argues for multiple PACCS in one village-Court finds corrigendum introduced new eligibility criteria-Procedure under Constitution not followed-Impugned corrigendum declared unconstitutional-PACCS registered during interim period will remain unaffected-No further registrations based on corrigendum allowed. - Petitions Allowed

Law Point: A corrigendum can only rectify errors or omissions in an existing resolution-Introducing new conditions or criteria must follow proper constitutional procedure and cannot be done through a corrigendum.

Yeejlee³e meeJeOeeve, keÀuece 166-cenejeä Meemevee®ee J³eJemee³eemeyeOee®ee eve³ece, 1975, eve³ece 9 DeeeCe 4- Meemevee®³ee Me×eHe$ee®ee JeOelee-³ee ÒekeÀjCeele je ì ³eee®ekeÀÜej Meemevee®³ee Me×eHe$eeme DeeJneve oC³eele Deeueue Deen-p³ee Me×eHe$eele Meemevee®³ee þjeJeeleeue yeoueC³eele Deeueu³ee Ke[eme DeeJneve oC³eele Deeueue Deen-p³ee Meemeve þjeJeeleeue Ke[eceO³e keÀJeU SkeÀe cenmeuee ieeJeele keÀJeU SkeÀe®e PACCS ®ee veeoCee ne ce³eeoele keÀjC³eele Deeuee nelee-³eee®ekeÀekeÀl³eeavee Demee Òeeleeo keÀuee keÀe Meemeveeve eveiecele keÀueue Me×eHe$ekeÀ n peuecee Deen-ÒeeleJeeoeve Demee oeJee keÀuee keÀe Me×eHe$eele eJemeieleemeyeOee mHeälee keÀjC³eele Deeueuee Deen-ÒeeleJeeoe meemee³eìeve Demee ÒeeleJeeo keÀuee keÀe SkeÀe cenmeuee ieeJeele yeneJeOe PACCS ®ee veeoCee keÀjC³eele Deeuee Heeenpe-Jeejÿ v³ee³eeue³eeuee Deme Dee{Uve Deeue keÀe Me×eHe$eele veJeeve Hee$elee evekeÀ<e oeKeue keÀjC³eele Deeuee leme®e meeJeOeeveeKeeueeue Òee¬eÀ³e®ee Heeueve keÀjC³eele Deeueue veene-Dee#eeHeele Me×eHe$ekeÀ n DemeJeOeeeevekeÀ peeneej keÀjC³eele Deeue-Delee jce keÀeueeJeOeeleeue PACCS ®ee veeoCee ne DeHeejCeecekeÀ jeneue-Me×eHe$ekeÀe®³ee DeeOeejeJej keÀjeJe³ee®ee ³ee He{eue veeoCeeme ceev³elee oleee ³eCeej veene-³eee®ekeÀe ûee¿e Oejle oeKeue keÀ©ve leC³eeme HejJeeveiee³eei³e mecepeC³eele ³ele Deen.

keÀe³eÐee®ee ce¦Îe- Me¦×eHe$ekeÀ keÀJeU ®e¦keÀe®ee o¦©mlee keÀ© MekeÀle eÌkeÀJee DeeÌmleJeeleeue þjeJeeleeue JeieUCekeÀ oeKeJe MekeÀle. veJeeve Deìe eÌkeÀJee eÌvekeÀ<e oeKeue keÀjleevee ³eei³e meJeOeeevekeÀ Òeeè¬eÀ³e®e Heeueve keÀjC³eele Deeue Heeenpe DeeeCe Me¦×eHe$ekeÀeÜej DeM³ee Deìe eÌkeÀJee eÌvekeÀ<e oeKeue keÀ©ve leleue peeJe MekeÀle veene.

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2024(10)MDBHC(Dig)33

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Devendra Kumar Upadhyaya; Kishore C Sant]

Writ Petition No 8613 of 2023 **dated 30/08/2024**

Arun Nanasaheb Kadam & Ors vs. State of Maharashtra & Ors

DISSOLUTION OF COUNCIL

Maharashtra Nurses Act, 1966 Sec. 7, Sec. 15, Sec. 40, Sec. 3 - National Nursing and Midwifery Commission Act, 2023 Sec. 1, Sec. 23 - Maharashtra Nursing Council Rules, 1971 Rule 103 - Dissolution of Council - Petitioners, elected President and Vice President of Maharashtra Nursing Council, challenge Government Notification dissolving Council and appointing an Administrator - State dissolved Council citing alleged irregularities in functioning - Petitioners argue lack of opportunity to rectify issues and violation of natural justice - Court observed Section 40 of Maharashtra Nurses Act requires State to notify particulars of failure and grant time to remedy before dissolution - State failed to provide such opportunity - Held, impugned Notification dissolving Council is illegal - Council restored - Writ Petition Allowed

Law Point: Dissolution of an elected council requires State Government to notify failures and provide time for remedy under Section 40 of Maharashtra Nurses Act, 1966 - Failure to follow this procedure renders dissolution invalid.

ceneje䠟heej®eeejkeÀe DeeOeeve³ece, 1966, keÀuece 7, 15, 40 DeeeCe 3-jeäe³e heej®eeejkeÀe DeeeCe meÞe<ee Dee³eeie DeeOeeve³ece, 2023, keÀuece 1 DeeeCe 23-ceneje䠟heej®eeejkeÀe ce[U eve³ece, 1971, eve³ece 103-ce[Ue®e eJemepeve-³eee®ekeÀekeÀle n ceneje䠟Heej®eeejkeÀe ce[Ue®e eveJe[ve Deeueue DeO³e#e DeeeCe GHeeO³e#e Deenle p³eevee ³eee®ekeÀ®³ee ceeO³eceeleve mejkeÀeje DeeOeme®eveme DeeJneve eoueue Deen-p³ee DeeOeme®eveÜej Meemeveeve ce[Ueme eJemeepele keÀ©ve ÒeMeemekeÀe®ee eve³eÌkelee keÀueuee nelee-Meemeveeve ce[Ue®e eJemepeve keÀene Deeve³eceelelee Peeu³ee®³ee DeejeHee®³ee keÀejCeemleJe keÀjele Demeu³ee®e DeeOeme®evele veceo keÀue nele-³eee®ekeÀekeÀl³eevee ³eee®ekeÀleve Demee ÒeeleJeeo keÀuee keÀe l³eevee Deeve³eecelelee®eue ®ekeÀ meOeejC³ee®ee meOee veekeÀejC³eele Deeuee leme®e l³eevee DeMee ne yeepe cee[uee keÀe eveCe³eelve vemeeiekeÀ v³ee³ee®³ee lelJee®e me×e Guueleve Peeueue Deen-Jeejÿ v³ee³eeue³eeve meveeJeCee ojc³eeve Deme eveje#eCe veeoeJeue keÀe ceneje䠟Heej®eeejkeÀe DeeOeeve³ecee®e keÀuece 40 n Meemeveeme

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keÀe³eÐee®ee ceÎe– efveJe[Ive Deeueu³ee ce[Ue®e eJemepeve keÀjIeevee cenejeä Heej®eeejkeÀe DeeOeeve³ecee®e keÀuece 40 jep³e Meemeveeme efve<HeÀUIe®ee IeHeMeeue DeeOeme®eveIe vecelo keÀjCe DeeJeM³ekeÀ keÀjIe Ieme®e DeeOeeve³ecee®³ee keÀuece 40 vemeej Deeve³eeceIeIeeue ®ekeÀe meOeejC³eemeeþe keÀeueeJeOee cepej keÀjCe ne DeeJeM³ekeÀ keÀjIe. ³eemeyeOeeIeeue keÀe³eÒee¬eÀ³ee jeyeJeC³eeIeeue efve<HeÀUIee eJemepevee®³ee keÀejJeeFme DeJeOe þjeJeIe.

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2024(10)MDBHC(Dig)34

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Sandeep V Marne]

Civil Revision Application No 394 of 2022 **dated 30/08/2024**

Joseph Anthony; Maizaben Anis Khan and Anr vs. Rukmini Krishna Turbhekar

ARREARS OF RENT

Code of Civil Procedure, 1908 Sec. 115 - Bombay General Clauses Act, 1904 Sec. 11 - Maharashtra Rent Control Act, 1999 Sec. 15 - Arrears of Rent - Revisionary jurisdiction invoked challenging judgments passed by Small Causes Court and its Appellate Bench - Eviction suit decreed on ground of arrears of rent while rejecting other grounds - Defendants argued they deposited entire arrears within 90 days under Section 15(3) of Maharashtra Rent Control Act - Dispute arose regarding date of filing application for rent deposit - Court found application was filed within permissible time and delay in decision was due to judicial process - Court accepted deposit made a day late due to a holiday as valid under Bombay General Clauses Act - Decree for eviction set aside as defendants complied with statutory provisions. - Application Allowed

Law Point: Tenant depositing arrears of rent within statutory period, even if delayed by court proceedings or a public holiday, fulfills the requirement under Section 15(3) of Maharashtra Rent Control Act, preventing eviction.

eoJeeCee Òee¬eÀ³ee meeenIee, 1908, keÀuece 115-ceyeF meeOeejCe HeejYee<ee DeeOeeve³ece, 1911, keÀuece 11-cenejeä Yee[eve³e$eCe DeeOeeve³ece, 1999, keÀuece 15-Yee[³ee®ee LekeÀyeekeÀe yeeyeIeeIe®e ÒekeÀjCe-ueIeJeeo v³ee³eeue³eeve Heeejle keÀueu³ee efveCe³eeJejeue Ieme®e I³ee®³ee DeHeeueì Heeþeve Heeejle keÀueu³ee efveCe³eeme DeeJneve oCeeN³ee ³eee®ekeÀJejeue meveeJeCee meyeOee Jeejÿ v³ee³eeue³ee®e Heveje#eCee³e DeeOekeÀej#e$e-n³ee Keìu³ee®³ee

ÒekeÀjCeeles keÀJeU Yee[³ee®ee LekeÀyeekeÀe Demeu³ee®³ee keÀejCeemleJe DeeeCe Flej keÀeCel³eene keÀejCeemleJe vemeu³ee®³ee DeeOeejeJej peeiee ejkeÀecee keÀjC³eemeyeOee®ee eveCe³e Heeejle keÀjC³eele Deeuee nelee-ye®eeJekeÀl³eevee meveeJeCee ojc³eeve Demee Òeele Jeeo keÀuee keÀe l³eevee cenejeä Yee[eve³e$eCe DeeOeeve³ecee®³ee keÀuece 15(3) Keeuee veJJeo eoJemee®³ee Deele meHeCe LekeÀyeekeÀe®ee jkekeÀce v³ee³eeue³eele pecee keÀueuee Deen-³ee ÒekeÀjCeele Jeeo n³ee DeeOeejeJej GHeÀeUve Deeuee keÀe Yee[pecee keÀu³ee®ee HeeJelee yeeyelee le®ee Depe keÀeCel³ee leejKeuee oeKeue keÀjC³eele Deeuee-Jeejÿ v³ee³eeue³eeuee Deme Dee{Uve Deeue keÀe Depe HejJeeveiee³eei³e ceolee®³ee Deele oeKeue keÀjC³eele Deeuee DeeeCe eveCe³eemeyeOee®ee eJeueye ne v³eee³ekeÀ Òee¬eÀ³eceU Peeuee-v³ee³eeue³eeve n mJeekeÀejue keÀe Yee[³ee®ee LekeÀyeekeÀe®ee jkekeÀce keÀJeU SkeÀe eoJemee®³ee eJeueyeeve pecee keÀjC³eele Deeuee-n³ee keÀejCeemleJe keÀe l³eeeoJeMee v³ee³eeue³eeme jpee nelee pe keÀejCe ceyeF meeOeejCe HeejYee<ee DeeOeeve³eceeKeeuee JeOe þjeJeC³eele Deeueue Deen-peeiee ejkeÀecee keÀjC³eemeyeOee®ee nkeÀceveecee ³eemleJe jÎ keÀjele yeepeuee meejC³eele Deeuee keÀejCe keÀe ye®eeJekeÀl³eeve keÀe³eokeÀe³e lejleoe®ee HeejHelee keÀueuee Deen-³eemleJe Depe ûee¿e Oejle HejJeeveiee³eei³e mecepeC³eele Deeuee.

keÀe³eÐee®ee ceÎe- Yee[keÀjeve pej keÀe³eÐee®³ee ekeÀJee eJeOeeiele ceolee®³ee Deele Yee[³ee®³ee LekeÀyeekeÀe®ee jkekeÀce v³ee³eeue³eele v³eee³ekeÀ Òee¬eÀ³ee®³ee ekeÀJee peenej meÆe®³ee keÀejCeemleJe SkeÀe eoJemee®³ee eJeueyeeve pecee keÀuee Demeuee lejle keÀueuee DeMee jkekeÀce YejC³ee®ee HeejHelee ne cenejeä Yee[eve³e$eCe DeeOeeve³eceeKeeuee lejleoe®ee HeejHelee keÀjlee ekeÀJee DeeJeM³ekeÀlee HeejHelee keÀjle Deme ceeveue peeFue. pee HeejHelee peeiee ejkeÀecee keÀjC³eeme ÒeelejeOekeÀ þ© MekeÀue.

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2024(10)MDBHC(Dig)35

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before R M Joshi]

Writ Petition No 8814 of 2022 **dated 30/08/2024**

Rajiv S Somani vs. State of Maharashtra; Addl Commissioner; Additional Collector; Sub-divisional Officer; Naib Tahsildar; Vinod Shenoy; Sara Farhan Lukmani; Yasmeen Mamoon Lukmani; Sharmila Iqbal Lukmani

VALIDITY OF GIFT

Maharashtra Land Revenue Code, 1966 Sec. 149, Sec. 257 - Mental Health Act, 1987 Sec. 53 - Validity of Gift - Petitioner claimed mutation based on a gift deed of properties from Mrs. Lukmani under Mohammedan law - Respondents contested this, alleging improper possession transfer and faith dispute - Tahsildar certified mutation, but higher authorities set it aside - Petitioner contested that possession was handed over, while respondents disputed both possession and the gift's validity - Petitioner filed late mutation application after twelve years - Tahsildar's decision overturned by SDO and Revenue Minister, citing jurisdictional overreach on faith determination -

Court found the gift invalid without possession transfer and upheld Revenue Minister's order - Petition dismissed

Law Point: A valid gift under Mohammedan law requires a declaration, acceptance, and delivery of possession - Revenue authorities lack jurisdiction to determine personal faith or title

cenejeä peceeve cenmeue meenlee, 1966, keÀuece 149 DeeCe 257-ceeveemekeÀ Deejei³e DeeOeeve³ece, 1987, keÀuece 53-ye#eemee®ee JeOelee-³eeee®ekeÀekeÀl³eeeve n³ee hekeÀjCeele ceenece[ve keÀe³eÐeeKeeuee Þeecelee uekeÀceevee n³ee®³eekeÀ[ve ye#eemeHe$ee®³ee ceeO³eceeleeve ele®³ee ceeueceÊeyeeyeleele®³ee veeoyeoueee®ee oeJee keÀueuee Deen–ÒeeleJeeoeve n³eeme DeeJneve eoueue Deen DeeeCe ³eeee®ekeÀekeÀl³eeJej De³eei³eHeCe leeyee oJeve nmleelejCe keÀu³ee®ee DeeeCe eJeéeemeyeeyelelele®ee Jeeo leeueC³ee®ee DeejeHe keÀueuee Deen–lenmeeueoejeve veeoHeÀjHeÀejemen ÒeceeeCele keÀue Hejle Jeejÿ ÒeeeOekeÀeN³eevee le jÎ þjeJele yeepeuee meejue-³eeee®ekeÀekeÀl³eevee ÒeeleJeeoeve keÀueu³ee ÒeeleJeeoeme DeeJneve oele veceo keÀue keÀe ceeueceÊe®ee leeyee ne peJne ÒeeleJeeoe ley³eeeJe<e³ee Jeeo GHeemLele keÀjele nelee DeeeCe ye#eemee®³ee JeOeleme DeeJneve oele nelee leJne oC³eele Deeuee-³eeee®ekeÀekeÀl³eevee veeoHeÀjHeÀejemeyeOee®ee Depe ne yeeje Je<ee®³ee eJeueyeeJeOeeve oeKeue keÀuee nelee-lenmeeueoeje®ee eveCe³e ne Sme[eDee DeeeCe cenmeue ce$³eeÜej DeeOekeÀej#e$e Þe×eoMekeÀ Deeuee[C³ee®e keÀejCe oele eHeÀjeJeC³eele Deeuee pee eJeéeemeoMekeÀ eveOeejCeeleve leC³eele Deeuee-Jeejÿ v³ee³eeue³eeuee ley³eeeMeJee³e®e ye#eemee ceeueceÊe®e nmleelejCe DeJeOe Dee{Uve Deeue DeeeCe v³ee³eeue³eeve cenmeue ce$³ee®ee DeeoMe ³eei³e þjeJele Gue®eve Oejuee-³eeee®ekeÀe ³eemleJe Keejepe keÀjC³eele Deeuee.

keÀe³eÐee®ee ceÎe- ceenece[ve keÀe³eÐeeKeeuee JeOe ye#eemee þjeJeC³eemeeþe peenejveec³ee®ee, mJeekeÀlee®ee DeeeCe ceeueceÊe®ee leeyee oC³ee®ee DeeJeM³ekeÀlee Demele. cenmeuee ÒeeeOekeÀjCeeuee J³eeke¹eieÀle Þe×e ekeÀJee ceeuekeÀe nkekeÀ eveOeeejle keÀjC³ee®e DeeOekeÀej#e$e ÒeeHle veene.

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2024(10)MDBHC(Dig)36

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Anil L Pansare]

Writ Petition No 5023 of 2023, 5017 of 2023, 5014 of 2023, 5005 of 2023, 5001 of 2023, 5008 of 2023, 5002 of 2023, 5007 of 2023, 5009 of 2023, 5012 of 2023, 5011 of 2023, 5004 of 2023, 5013 of 2023, 5006 of 2023, 5018 of 2023, 5016 of 2023, 5019 of 2023, 5024 of 2023, 5022 of 2023, 5020 of 2023, 5015 of 2023, 5021 of 2023, 5003 of 2023, 5010 of 2023 **dated 30/08/2024**

Vijay Krushnarao Pawar; Moreshwar Jangluji Ghaiwat; Manohar Manilal Gour; Vyasmuni Raghubar Prajapati; Kashiram Ranjit Rajput; Jiwant Kumar Sharan;

Deepak Shankarrao Labde; Deepak Govind Rangari; Rame vs. Lokmat Media Private Limited

EMPLOYMENT TERMINATION

Industrial Disputes Act, 1947 Sec. 33A, Sec. 33 - Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 Sec. 48 - Employment Termination - Petitioners, including journalists and non-journalists, were dismissed without enquiry or charge-sheet while industrial disputes were pending - Respondent sought approval for dismissals under Sec. 33(2)(b) of Industrial Disputes Act, 1947 - After withdrawal and subsequent revival of the approval application, petitioners opposed it and sought reinstatement - Industrial Court rejected their complaints and granted approval for the dismissals - Petitioners failed to resume duties and did not provide evidence supporting attempts to rejoin - Held that no prejudice was caused by the revival of the application - Petitioners directed to pursue remedies under Sec. 33A - Petitions Dismissed

Law Point: An employee must challenge dismissal approvals under Sec. 33A after approval is granted - If the application is revived after being withdrawn, reinstatement claims depend on proving contravention of Sec. 33 by the employer.

DeeÐeeeiekeÀ JeeoleÌe (eJeJeeo) DeeOeeve³ece, 1947, keÀuece 33De DeeeCe 33-cenejeä keÀeceieej meIeìveme ceev³eIee DeeCe Deveg®eIe keÀeceieej ÒeLeme ÒeeIeyeOe DeeOeeve³ece, 1971, keÀuece 48-jespeieejeJe©ve ie®íIee (ye[IeHeÀe)-³eee®ekeÀekeÀIe p³eeceO³e He$ekeÀej e®ee me×e meceeJeMe Deen Ieme®e eyeveeHe$ekeÀej e®ee me×e meceeJeMe Deen-n³ee meJeevee keÀeCeI³eene ®eekeÀMee eMeJee³e ekeÀJee Dee#eHeHe$eeMeeJee³e keÀeceeJe©ve keÀe{ve ìekeÀC³eeIe Deeue DeM³ee HeejemLeleeIe keÀe peJne DeeÐeeeiekeÀ eJeJeeo ne Òeueeyele neIee-ÒeeIeJeeoeve n³ee ÒekeÀCeeIe DeeÐeeeiekeÀ eJeJeeo DeeOeeve³ecee®³ee 1947 ®³ee keÀuece 33(2)ye Keeuee keÀeceeJe©ve keÀcee keÀjC³ee®³ee keÀIeeme cepeje Òeoeve keÀjC³ee®ee ceeieCee keÀuee-keÀejJeeF HejIe IeIeu³eeveIej DeeeCe I³eeveIej Depeeme cepeje Òeoeve keÀjC³ee®³ee eveCe³ee®e HevemLeeHeve keÀu³eeveIej ³eee®ekeÀekeÀI³eevee I³eeme eJejeOe oMeeJeuee DeeeCe I³eevee keÀeceeJej Hevne jpe keÀ©ve IeC³ee®ee ceeieCee keÀuee-DeeÐeeeiekeÀ v³ee³eeue³eeve I³ee®ee Ie¬eÀej veekeÀe©ve HeÀìeUuee DeeeCe I³ee®³ee ye[IeHeÀeme cepeje Òeoeve keÀuee-³eee®ekeÀekeÀIe keÀeceeJej jpe neC³eeme eve<HeÀU þjue DeeeCe I³eevee jpe neC³eemeyeOee®³ee I³ee®³ee Òe³eIvee®³ee HeäeLe keÀeCeIeene HejeJee meeoj keÀuee veene-Jeejÿ v³ee³eeue³eeve eveJee[e keÀjIeevee Deme G®eueve OejuekeÀe Depe HevepeeeJeIe keÀjC³eeyeeyeIeeIe keÀeCeIeene yeeOe eveceeCe Peeuee veene-³eee®ekeÀekeÀI³eevee DeeÐeeeiekeÀ eJeJeeo DeeOeeve³ecee®³ee keÀuece 33De Keeuee FIej GHee³ee®ee HeeþHejeJee keÀjC³ee®e eveoMe oC³eeIe Deeue-³eee®ekeÀe ³eemIeJe Keejepe keÀjC³eeIe Deeuee.

keÀe³eÐee®ee cesÎe- keÀce®eeN³eeve I³ee®³ee keÀeceeJe©ve ie®íIee keÀueu³ee keÀIeeeJe©× DeeÐeeeiekeÀ eJeJeeo DeeOeeve³ecee®³ee keÀuece 33De Keeuee I³eeme cepeje ÒeeHIe Peeu³eeveIej DeeJneve eoue Heeenpe ekeÀJee I³ee³euee nJe. pej n³eemeyeOee®ee HeÀjDepe ne ceeie IeIeu³eeveIej HevepeeeJeIe keÀjC³eeIe Deeuee Demeu³eeme HeoeJej HeÀjmLeeeHeIe keÀjC³ee®ee oeJee keÀje³euee nJee pee keÀce®eeN³ee®³ee keÀuece 33 ®e GuueIeve keÀue ieue n eme× keÀjC³eeJej DeJeueyeve jeneue.

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2024(10)MDBHC(Dig)37

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before N J Jamadar]

Interim Application (L); Testamentary Petition No 7709 of 2024; 3788 of 2022

dated 29/08/2024

Jagjivandas Shamji Suchak; Induben Jethalal Nagrecha vs. Jagjivandas Samji Suchak

IMPLEADMENT OF HEIR

Indian Succession Act, 1925 Sec. 283 - Hindu Succession Act, 1956 Sec. 8 - Bombay High Court (Original Side) Rules, 1980 Rule 397 - Maharashtra Rent Control Act, 1999 Sec. 7 - Impleadment of Heir - Application by legal heir to be impleaded as party respondent in a petition for Letters of Administration - Petitioner sought grant of Letters of Administration for the estate of the deceased, who died intestate - Applicant claimed to be a legal heir and accused Petitioner of suppressing facts - Petitioner contended that the applicant had no caveatable interest as he was a descendant of a predeceased sibling's child, not entitled under the Hindu Succession Act - Court held that the applicant, being a Class II heir, does not possess a caveatable interest in the estate - Application dismissed.

Law Point: Descendants of predeceased siblings' children do not have caveatable interest under Hindu Succession Act in the presence of other Class II heirs.

Yeejlee³e Jeejmeenkeke DeeOeeve³ece, 1925, keÀuece 283-eno Jeejmeenkeke DeeOeeve³ece, 1956, keÀuece 8-ceyeFl G®®e v³ee³eeue³e (ceU yeepe) eve³ece, 1980, eve³ece 397-cenejeä Yee[eve³e$eCe DeeOeeve³ece, 1999, keÀuece 7-Jeejmeoejeme He#ekeÀej yeveeJeC³eeyeeyeleele®e ÒekeÀjCe-n³ee ÒekeÀjCeele keÀe³eoMeej Jeejmeoejeve l³eeme ÒeeleJeeoe He#ekeÀej keÀjC³eeyeeyele ÒeMeemekeÀe³e He$e oC³eeyeeyeleele He#ekeÀej keÀjC³eeyeyele Depe keÀueuee Deen-³eee®ekeÀekeÀl³eeve celekeÀe®³ee ceeueceÊemeyeOee ÒeMeemekeÀe³e He$e oC³eeyeeyeleele®ee cepeje oC³eeyeeyeleele ceeieCee keÀueuee Deen-pee celekeÀ eJeveecel³eHe$e cejCe HeeJeuee-Depeoejeve n³ee ÒekeÀjCeele keÀe³eoMeej Jeejmeoej Demeu³ee®ee oeJee keÀueuee Deen DeeeCe l³eeve Deejeee ³eee®ekeÀekeÀl³eeJej leL³e oeyeve ekeÀJee ueHeJeve þJeu³ee®ee DeejeHe keÀueuee Deen-³eee®ekeÀekeÀl³eeve DeMee yeepe cee[ueuee Deen keÀe Depeoejeme celekeÀe®³ee ceeueceÊemeyeOee leekeÀeo oC³ee³eei³e jme jen MekeÀle veene keÀejCe lee DeeOee®e cele HeeJeueu³ee m$ee®ee Glee j-eÀceeve ceueiee Deen pee eno Jeejmeenkeke DeeOeeve³eceeKeeuee JeMepe neC³eeme Hee$e veene-v³ee³eeue³eeve Depeoeje®ee yeepe ³eei³e þjeJele Demee eveJee[e keÀuee keÀe Depeoej ne Jeie 2 ®ee Jeejmeoej Demeu³eekeÀejCeeve l³eeme celekeÀe®³ee ceeueceÊemeyeOee leekeÀeo oC³ee³eei³e jme jen MekeÀle veene-Depeoeje®ee Depe ³eemleJe Keejepe keÀjC³eele ³ele Deen.

keÀe³eÐee®ee cee|Îe- DeeOee®e ceeIe HeeJeueu³ee m$ee®³ee GIejI³ee-¬eÀcee®³ee ce|ueeeuee e|no Jeejmeenkeke DeeOeeve³eceeKeeuee Jeie 2 ®³ee FIej JeMepee®³ee GHeemLeIeeIe IeekeÀeo oC³ee³eei³e jme jen MekeÀIe veene.

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2024(10)MDBHC(Dig)38

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before M S Sonak; Kamal Khata]

Writ Petition No 7018 of 2023 **dated 27/08/2024**

Sakharam Mahadev Jadhav vs. State of Maharashtra; Urban Development Department; Metropolitan Commissioner M M R D A; Kulgaon- Bandlapur Municipal Council; Chief Officer, Kulgaon- Badlapur Municipal Council

LAPSE OF RESERVATION

Maharashtra Regional and Town Planning Act, 1966 Sec. 127, Sec. 40, Sec. 126 - Lapse of Reservation - Petitioner sought issuance of notification declaring Reservation No. 51 as lapsed under Section 127 of MRTP Act - Land reserved as "Garden" for 15 years with no acquisition steps - Authorities failed to issue notification despite settled law - Court directed respondents to issue notification within six months - Petition allowed

Law Point: Under Sec. 127 of MRTP Act, reservation lapses if no acquisition steps are taken within stipulated time, and land must be released for development use

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2024(10)MDBHC(Dig)39

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

[Before Mangesh S Patil; Shailesh P Brahme]

Writ Petition No 2093 of 2024 **dated 26/08/2024**

Nisargdeep Shikshan Prasarak Mandal vs. State of Maharashtra; Dr Babasaheb Ambedkar Marathwada University; Shri Dyaneshwar Bahuuddeshiya Sevabhavi Sanstha; Pandit Dindayal Uppadhay Shikshan Sanstha; Maharashtra State Commission For Higher E

LEGALITY OF COLLEGE APPROVALS

Maharashtra Public Universities Act, 2016 Sec. 109, Sec. 77, Sec. 107, Sec. 2, Sec. 37, Sec. 31, Sec. 33 - Legality of College Approvals - Petitioner challenged approvals granted to new colleges at Chitte-Pimpalgaon - LOIs issued despite location not included in perspective plan - Court held that additions to annual plan without inclusion in perspective plan violate statutory provisions - Condoned delay and quashed approvals - Petition Allowed

Law Point: LOIs and college approvals issued for locations not part of the approved perspective plan are illegal, as annual plans must align with the perspective plan for transparency and uniformity in educational institutions

महाराष्ट्र सार्वजनिक विद्यापीठ अधिनियम २०१६ कलम १०९, ७७, १०७,२, ३७, ३१, ३३- महाविद्यालयीन मान्यतेची वैधता- चिट्टे पिंपळगाव येथील नवीन महाविद्यालयांच्या मान्यता मंजुरीला याचिकाकर्त्याने आव्हान दिले- यथार्थलक्षी योजनेत स्थळाचा समावेश नसतानाही आशय पत्र जारी केले- यथार्थ लक्षी योजनेत समावेश न करता वार्षिक योजनेत नवीन गोष्ट जोडणे हा सांविधिक उपबंधाचा भंग आहे- विलंब माफ व मान्यता रद्द - याचिकेला अनुमती.

विधीबिंदू- शैक्षणिक संस्थांमध्ये पारदर्शकपणा आणि एकरूपता राहावी यासाठी वार्षिक योजना या यथार्थदर्शी योजनेची संरेखित झाल्याच पाहिजेत, मान्यता प्राप्त यथार्थदर्शी योजनेचा हिस्सा नसलेला स्थळासाठी आशयपत्र आणि महाविद्यालयीन मान्यता बेकायदेशीर आहेत.

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2024(10)MDBHC(Dig)40

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Milind N Jadhav]

Writ Petition (St) No 24127 of 2024 **dated 26/08/2024**

Surel Milk & Food Processor Pvt Ltd & Ors vs. Bhagwan Krishna Pawar & Ors

COURT COMMISSIONER APPOINTMENT

Maharashtra Land Revenue Code, 1966 - Court Commissioner Appointment - Plaintiffs sought Court Commissioner appointment to survey and map the property in a suit for injunction and removal of encroachment-Trial Court allowed the application-Defendants objected, arguing it amounted to collecting evidence prematurely-High Court held appointment of Court Commissioner should only be considered after witness action, not at the initial stage-Order allowing the appointment set aside - Writ Petition Allowed

Law Point: A Court Commissioner should not be appointed before witness action in cases requiring property identification or encroachment verification unless justified by trial evidence

महाराष्ट्र जमीन महसूल संहिता १९६८-न्यायालयीन आयुक्त नेमणूक- अतिक्रमण हटाव आणि मनाई हुकूमाच्या दाव्यातला मालमत्तेचा नकाशा आणि सर्वेक्षण करण्यासाठी न्यायालयीन आयुक्त नियुक्ती वादीने मागितली- न्याय चौकशी न्यायालयाने अर्ज स्वीकारणे हे मुदतपूर्व साक्षीपुरावा जमा करण्यासारखे होईल असा युक्तिवाद प्रतिवादीने केला - प्रारंभिक पातळीवर विचारात न घेता साक्षीदार क्रियाकलपानंतरच न्यायालयीन आयुक्तांची नियुक्ती विचारात घेता येईल असे न्यायालयाने कायम केले- नियुक्तीचा आदेश रद्द केला - रीट याची केला अनुमती.

विधी बिंदू- संपरीक्षेच्या साक्षीपुराव्याने उचित ठरवल्याशिवाय मालमत्ता ओळख किंवा अतिक्रमण पडताळणी आवश्यक असलेल्या प्रकरणात साक्षीदारांच्या क्रियाकलापाआधी न्यायालयीन आयुक्ताची नेमणूक करू नये.

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