

W.A.Nos.23/2015, 24/2015, 25/2015, 26/2015, 27/2015,
28/2015, 29/2015, 30/2015, 31/2015, 32/2015, 33/2015,
34/2015, 35/2015, 36/2015, 37/2015, 38/2015,
W.P.Nos.3764/2016, 4246/2016, 5682/2016, 7714/2016,
7753/2016 & 7757/2016

02.05.2016

Shri Anshuman Singh, learned counsel for the appellants in W.A. Nos.23/2015, 24/2015, 25/2015, 26/2015, 27/2015, 28/2015, 29/2015, 30/2015, 31/2015, 32/2015, 33/2015, 34/2015, 35/2015, 36/2015, 37/2015, 38/2015 and respondents in W.P. Nos.3764/2016, 4246/2016 & 5682/2016.

Shri Siddharth Gupta, learned counsel for the petitioner in W.P.Nos.3764/2016, 4246/2016, 5682/2016, 7714/2016 and respondents in W.A.Nos.23/2015, 24/2015, 25/2015, 26/2015, 27/2015, 28/2015, 29/2015, 30/2015, 31/2015, 32/2015, 33/2015, 34/2015, 35/2015, 36/2015, 37/2015, 38/2015.

Shri Sanjay Agrawal, Advocate for the petitioners in W.P. No.7753/2016 & 7757/2016.

Shri Amit Seth, Govt. Advocate for the respondents/State.

When these matters were called out today, as first matter, notified under caption “**Top of the List**” in terms of the previous order, Shri Gupta, Advocate for the writ petitioners tendered unnumbered applications (yet to be filed) and urged to defer the hearing of these cases on the ground that today at 10:30 AM the petitioners have moved the Supreme Court against our order dated 21.04.2016

passed in these matters.

We reject the prayer for adjournment. At the same time, we place on record, the manner in which the matter has been handled by the writ petitioners and their Advocate. This we are compelled to place on record as we are now convinced that the attempt of the writ petitioners is to protract the proceedings for reasons best known to them. The petitioners are not interested in early disposal of the matters in issues. We say so because, petitions were filed regarding action being taken by the Corporation to effectuate the development plan and to accomplish the idea of enhancing the efficiency of traffic movement of Bhopal city by implementing the Comprehensive Mobility Plan regarding B.R.T.S. The group of petitions were disposed of by common order by the learned Single Judge on 22.10.2014. That decision has been assailed in the intra-Court writ appeals filed by the Corporation. By a common decision dated 20.10.2014, the learned Single Judge of this Court disposed of the said writ petitions whilst holding that the Corporation was not competent to proceed with the proposed action without initiating proceedings for acquisition of lands and houses in question. That decision has been made subject matter of writ appeals filed by the Corporation. Those writ

appeals came up for consideration on 16.2.2016. By a speaking order, the Court noted the submission of the Corporation that the learned Single Judge has glossed over the direct decision on the point, of the Supreme Court in the case of **Municipal Corporation Indore vs. Shri K.N. Palshikar, AIR 1969 SC 579**. The counsel for the respondents in appeals prayed for time to examine that aspect. When the appeals were listed for further hearing on 10.3.2016, by that date, two writ petitions (W.P.Nos. 3764/2016 and 4246/2016) were filed taking clue from the oral observations made by the Court during the hearing of the writ appeals on the previous date, to challenge the validity of section 305 of the M.P. Municipal Corporation Act. By a speaking order, the Court issued notice to the Advocate General as the validity of provisions of State Act was put in issue. The matters were listed on 30.3.2016 under caption "Top of the List" as Item No.1. Since the Advocate on record for the Corporation was not present, as he was held up in some other Court, hearing was deferred till 31.3.2016 to proceed under caption "Top of the List".

As aforesaid, two writ petitions challenging the validity of the relevant provisions of the Act were filed on 27.2.2016 and were heard analogously along with the

appeals filed by the Corporation challenging the decision of the learned Single Judge setting aside the proposed action of the Corporation.

When the matters were taken up for hearing on 18.04.2016, after hearing the counsel for quite some time, in the context of arguments of the counsel for the writ petitioners, the Court pointed out that the argument cannot be taken forward in absence of challenge to validity of Section 306 of the Municipal Corporation Act. Taking clue from that observation, the petitioners prayed for amendment of the writ petitions. The writ petitioners were required to amend the petitions in the context of the stand taken by the Corporation that the issue regarding sweep of Section 305 of the Municipal Corporation Act has already been decided by the Supreme Court in the case of **The Municipal Corporation, Indore vs. Shri K.N. Palsikar** reported in **AIR 1969 SC 579** which has been followed in the case of **Suresh Singh Kushwaha vs. Municipal Corporation, Gwalior and another** reported in **2006 (3) MPLJ 412**.

Presumably, realising this difficulty, the request to allow amendment of writ petition was made. The Court gave liberty to the petitioners by way of indulgence, though the matter was argued extensively on 20.04.2016 and thereafter

on 21.04.2016. That amendment was permitted with clear understanding that being question of law, the matter can proceed on the basis of denial by the respondents. The matter was ordered to be listed on 27.04.2016.

On 27.04.2016 the matters could not proceed because of some urgent matter regarding admission to Postgraduate Medical Courses was required to be heard because of the cut off date for submitting application forms; and also another batch of urgent matter pertaining to selection process of Assistant Professors. Present matters were on Board and deferred to 30.04.2016 to be listed under caption “**Top of the List**”. Counsel for the petitioner wanted to file application for further amendment of the writ petition. We had told him that he will be permitted to do so when the matter would actually proceed for further argument as the Court was in the midst of argument of other urgent cases.

Today, when the matter is listed, counsel for the petitioner has tendered this application for deferring the hearing of matters on the ground that the petitioners have now approached the Supreme Court against the interlocutory order dated 21.04.2016. When this disclosure was made, we made it clear to the counsel for the petitioners that the fact that the petitioners have challenged the interlocutory order

dated 21.04.2016, need not detain the hearing of the present proceedings. The present matters can still proceed for arguments as larger public interest required early decision on the issues raised by the writ petitioners.

Notably, counsel for the respondent-Corporation on all the earlier dates when the matter was listed, was insisting for early decision because the entire project is being delayed on account of pendency of these matters and observations made in the order dated 21.04.2016 - because of which the Corporation was advisedly not moving further in the matter. The counsel for the Corporation has been insisting for early decision because of the impending Monsoon season and the work to be undertaken is required to be completed well before that happens.

Counsel for the petitioners, however, even now after this order is dictated, insisted for adjournment of these matters in spite of being counseled and assured that his second application which he intends to tender for further amendment, can also be considered appropriately. The proposed amendment even if accepted as it is, would be a matter of interpretation and dealing with the question of law arising for consideration.

Counsel for the petitioners, however, insisted that the

Court should not hear these matters today.

In spite of being counseled, the learned Advocate for the writ petitioners was firm about his request and said he is inviting an order on this application. It is for this reason, we had no other option but to pass an elaborate order, lest, any other grievance can be made by the counsel later on.

In this context, we have observed in the earlier part of this order that the petitioners and the Advocate for the petitioners are only attempting to protract the hearing of these matters on some pretext. This application for adjournment is, therefore, **rejected**.

The unnumbered amendment applications tendered by the counsel for the writ petitioners are taken on record and the parties are called upon to proceed with the matter further.

At this stage, Shri Gupta, Advocate for the writ petitioners submits that the copy of this order be made available to the petitioners so that the petitioners can move urgent hearing application before the Supreme Court.

We once again place on record that the request for adjournment is rejected because of urgency pointed out by the Corporation; and that the matter cannot brook any further delay, as the project has to be completed within the time

prescribed therefor and more so the order dated 21.04.2016, only being an interlocutory order, cannot be the basis to answer the main controversy in the present petitions regarding the validity of Section 305 and 306 of the Act.

Counsel for the petitioners now submits that this is nothing but preempting the proceedings before the Supreme Court. We reiterate that the question to be answered in the present proceedings is about the validity of Sections 305 and 306, which the petitioners have now chosen to challenge taking clue from the arguments advanced by both sides on the previous dates. Hence, prayer for deferring the matter is rejected as we have already invested extensive time for these matters on successive dates until 21.04.2016, leaving all other miscellaneous matters because of the urgency. Hence, prayer for adjournment is **rejected**.

Registry is directed to forthwith assign numbers to both the applications tendered today by the counsel for the petitioners and take it on record.

When Shri Gupta, Advocate was permitted to argue the amendment application, he wanted to raise issues which may be relevant for individual cases. We pointed out to him that the Court is presently concerned only about the grounds urged in the writ petitions and the amendment application

about the validity of Sections 305 and 306 of the Act; and if that contention is accepted in favour of the writ petitioners, nothing further would survive for consideration. For, as a concomitant of that opinion it will have to be held that the concerned Authority of the Corporation is incompetent to resort to the proposed action on the basis of the same provisions for implementation of the BRTS project, unless proper and permissible procedure is followed. In other words, individual issues could be considered if the Corporation has power to proceed on the basis of Sections 305 and 306 of the Act. That can be left to the Competent Authority by giving opportunity to the petitioners to make representation in that behalf and with further protection to the concerned writ petitioners to question the decision of the Competent Authority, if the opinion of the Competent Authority was adverse to them. Hence, we once again impressed upon the counsel for the petitioners to focus on the argument about the validity and/or sweep of Sections 305 and 306 of the Act.

Indeed, the counsel for the petitioners submitted that it is the duty of the Court to decide all issues raised in the writ petition. We are afraid, the understanding of the counsel for the petitioners is fallacious. For, it is open to the Court to

mould the reliefs and issue appropriate directions, which would be an equitable arrangement. In that, opportunity to be given to the petitioners to approach the Competent Authority, would certainly meet the ends of justice. Hence, even this contention deserves to be stated to be rejected.

After the prayer for adjournment was rejected, the arguments proceeded further.

I.A. No.5337/2016 for adjournment is **rejected**.

I.A. No.5338/2016 for amendment, is **allowed** without prejudice to the contentions available to the respondents in the writ petitions and to proceed on denial.

Counsel for the respective parties were heard extensively and arguments concluded.

Judgment reserved.

(A. M. Khanwilkar)
Chief Justice

(J.P.Gupta)
Judge