

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**PUBLIC INTEREST LITIGATION (L) NO. 3961 OF 2022**

Nitesh Singh son of Rajhans Singh & Anr. ... Petitioners  
Versus  
The Municipal Corporation of Gr. Mumbai & Ors. ... Respondents

Mr. Vivek Shukla a/w Mr. Narbert D'Souza, Mr. Arman Prave,  
Mr. Yash Mishra i/b M/s V. Shukla & Associates for the Petitioners.  
Mr. A.Y. Sakhare, Senior Advocate a/w Ms. K.H. Mastakar for  
Respondent No.1 - Municipal Corporation of Greater Mumbai.  
Mr. S. B. Shetye for Respondent No. 2 - State Election Commission.  
Mr. A. L. Patki, Addl. GP for Respondent No.4 - State.

**CORAM : A. A. SAYED &  
ABHAY AHUJA, JJ**

**DATED : 21 February 2022**

**JUDGMENT: (per A.A. SAYED, J)**

1. Arguments in the above PIL Petition were heard on 15 February 2022. It is placed for orders today.

2. The PIL Petition is filed by the Petitioners seeking the following relief:

(a) That this Hon'ble Court exercising power under Article 226 of the Constitution of India, 1950 be pleased to issue writ mandamus, and or any other appropriate writ, order, quashing and setting aside Notification No. SEC/MMC-2021/Pr.Kr.22/Ka-5 dated 27.01.2022 as published in the Official Gazette on 01.02.2022 (Exhibit A) by holding the same as illegal, null, void, preposterous, bad-in-law

3. The Petitioner No. 1 is a businessman and a member of Bhartiya Janta Party. The Petitioner No. 2 is a practicing Advocate and a member of Maharashtra Navnirman Sena. It is the case of the Petitioners that they learnt about the draft Notification dated 27.01.2022 after reading the advertisement published by the Municipal Corporation of Greater Mumbai (hereinafter referred to as "Corporation") in the daily newspaper on 01.02.2022. By this advertisement the Municipal Commissioner of the Corporation invited objections or suggestions on or before 14.02.2022 on the draft Notification under sections 5 and 18A of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as "the MMC Act") to fix the number and the extent of the wards into which the municipal area of the Corporation shall be divided as shown in the Schedule thereto.

4. The Advertisement published containing the draft Notification reads as follows:

**"BRIHANMUMBAI MUNICIPAL CORPORATION  
NOTIFICATION**

No. राननआ/मनपा-२०२१/प्र.क्र. २२/का-५ dated 27th January 2022.—  
The State Election Commissioner, Maharashtra proposes to make the following Draft Notification under section 5 and Section 18A of the Mumbai Municipal Corporation Act. (Bom.III of 1889) (hereinafter referred to as the "said Act") to fix for the Brihanmumbai Municipal Corporation, the number and the extent of the wards into which the said municipal area shall be divided, as shown in the Schedule to this Draft order.

2. And whereas the said Draft Order is hereby published as required by the section 19 (1) (a) of the said Act for information of all the residents within the jurisdiction of the Brihan Mumbai Municipal Corporation. And Whereas, vide order No.SEC/MNC-2014/CR-26/D-5, dated 06.02.2015 the State Election Commission, Maharashtra, has conferred its rights to Municipal Commissioner, Brihanmumbai Municipal Corporation to publish the draft in the Official Gazette. Accordingly this Draft Notification is being published and the said draft will be taken into consideration by the State Election Commissioner, Maharashtra or the officer authorized by him for this purpose after dated 1st February 2022.

3. And whereas, all persons who desire to raise any objections or suggestions to this draft should submit the same to the Municipal Commissioner, Brihanmumbai Municipal Corporation, in writing with reasons on or before dated 14th February 2022. Objections or suggestions received thereafter will not be considered.

### **Draft Notification**

WHEREAS, The State Election Commissioner, Maharashtra has specified for Brihanmumbai Municipal Corporation, under Section 5 of the Mumbai Municipal Corporations Act, the number of Councilors to be elected is 236.

2. Now, therefore, in exercise of section 5 and Section 18A of the Mumbai Municipal Corporation Act, The State Election Commissioner, Maharashtra State hereby fix the number and extent of the wards into which the said Municipal Corporation area shall be divided as shown in the schedule to this Notification.

3. This Notification shall take effect for the purpose of the next general election held immediately following the date of this Notification.

### **SCHEDULE**

Ward No. & Population	Name of the ward, if any	Extent of the Ward
(1)	(2)	(3)
Ward No. - 1 Population Total - 53479 SC- 1106 ST - 390		North Boundry of Mumbai Municipal Corporation and west side of western railway line to New Link Road (Dahisar Link Road). Thence westwards along the northside of

	<p>New Link Road to Holy Cross Road. Thence westwards along the west side of Holy Cross Road to the junction of Lal Bahadur Shastri Road. Thence southwards along the west side of Holy Cross Road to the junction of St. Thomas Church Road. Thence eastwards along the northside of St. Thomas Church Road to Laxman Mhatre Road. Thence westwards along the westside of Laxman Mhatre Road upto its junction with BD Ambedkar Marg. Thence southwards along the westside of BD Ambedkar Marg to IC Colony Road. Thence westwards along the west side of IC Colony Road upto its junction with New Link Road. Thence southwards along the westside of New Link Road to Nala. From there, on the east side of the Nala, on the north side, through the open space in front of the Nala, on the east side, on the north side, and on the Dahisar river, on the south side, on the east side, till the northern Boundry of Mumbai Municipal Corporation. Thence eastwards along the aforesaid Boundry to the north and further southwards eastwards to the west railway line at the point of departure. This ward includes major places / settlements / towns like Kanderpada, IC Colony, Dahisar river.</p> <p>North - Northern Boundry of Mumbai Municipal Corporation  (--)  East - Ward No. 2  (Western Railway Line)</p> <p>South - Ward 8 and Ward 9  (Holy Cross Road, IC Colony Road)</p>
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		West - Sea Boundry of Mumbai Municipal Corporation. (--)
.....	...	...
...	...	...
...	...	...
Ward No. 236 Population Total – 60695 SC – 2656 ST – 228	...	...

## NOTE :-

1. In case of any discrepancy in description of word in the Marathi and English Notification, the description as per boundaries shown in the map shall be treated as valid.
2. A Map of the Brihanmumbai Municipal Corporation showing the limits of the wards is available during office hours for inspection in the office of the Municipal Corporation.

(I S Chahal)

Municipal Commissioner,  
Municipal Corporation of Greater Mumbai

Place – Mumbai

Date – 31<sup>st</sup> January 2022”.

5. Learned Counsel for the Petitioners has made two submissions -

(i) That no power can be delegated by the State Election Commissioner upon the Municipal Commissioner to publish the draft Notification. It is

contended that the Municipal Commissioner is not an independent person and works under the directions of the Urban Development Department of the State of Maharashtra. Learned Counsel for the Petitioners has placed reliance on the judgment of the Supreme Court in **State of Goa & Anr. Vs. Fouziya Imtiaz Shaikh & Anr., (2021) 8 SCC 401** in support of his contention of independence of the office of the State Election Commissioner.

(ii) That there is an express bar of the State Election Commission from carrying out the exercise of alteration in the Ward boundaries prior to six months of the Corporation Election. It is pointed out that the tenure of the Corporation is to end on 8 March 2022 and such alteration of boundaries is impermissible at this stage. Reliance is placed upon the order dated 27<sup>th</sup> January, 2005 of the State Election Commissioner.

It is contended that there is extreme urgency in the matter since the bar to interference by Courts under Article 243ZG of the Constitution would apply once the election programme is declared.

6. We have heard learned Counsel for the Petitioners, learned Senior Counsel for the Respondent No. 1 - Municipal Corporation of Greater Mumbai, learned Counsel for the Respondent No. 2 - State Election

Commission and learned Add'l Government Pleader for the Respondent State.

7. It would, at the outset, be apposite to extract the relevant provisions of the Constitution of India and Mumbai Municipal Corporation Act 1888.

**Constitution of India:**

**Article 243U - Duration of Municipalities, etc**

(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:

...

(3) An election to constitute a Municipality shall be completed -  
(a) before the expiry of its duration specified in clause ( 1 )

...

**Article 243ZA - Elections to the Municipalities**

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K.

(2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

**Mumbai Municipal Corporation Act, 1888**

**Section 5 - Composition of Corporation**

(1) The Corporation shall consist of, -

(a) two hundred and thirty six councillors directly elected at ward elections; and

...

**Section 18A - State Election Commission**

18A. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to the Corporation shall vest in the State Election Commission.

(2) The State Election Commissioner may, by order, delegate any of his powers and functions to any officer of the State Election Commission or any officer of the State Government not below the rank of Deputy Collector or any officer of the Corporation not below the rank of the Ward Officer.

(3) All the officers and members of the staff appointed or deployed for preparation of electoral rolls and conduct of election of the Corporation under this Act or the rules shall function under the superintendence, direction and control of the State Election Commissioner.

(4) Notwithstanding anything contained in this Act and the rules, the State Election Commissioner may issue such special or general orders or directions which may not be inconsistent with the provisions of this Act for fair and free elections.

(emphasis supplied)

8. Article 243ZA of the Constitution and section 18A(1) of the MMC Act lay down that the superintendence, direction and control of the preparation of electoral rolls and the conduct of election to the Municipalities is vested with the State Election Commission. Article 243ZA(2) postulates that State Legislature may make provision with respect to all matters relating to or in connection with elections to the Municipalities. Section 18A(2) of the MMC Act provides that State Election Commissioner may by order delegate any of his powers and functions inter alia to any officer of the Corporation not below the rank of the Ward Officer. In the teeth of the aforesaid the provision of Section 18A(2) of the MMC Act unequivocally conferring powers upon the State Election Commissioner to delegate any of his powers and functions to any officer of the Corporation not below the rank of



Ward Officer, we fail to see how it is open for the Petitioners to contend that no power can be delegated by the State Election Commissioner upon the Municipal Commissioner to publish the impugned draft Notification. By order dated 06.02.2015 (Ex C page 240 of the Petition), the State Election Commissioner has delegated the function of publishing the draft Notification to the Municipal Commissioner. The said order dated 06-02-2015 has been referred to in the draft Notification. Nothing has been placed before us to show that the said order dated 06-02-2015 is not in existence or has been revoked. Neither the validity of Section 18A(2) nor the validity of the order dated 06.02.2015 of the State Election Commissioner has been called in question by the Petitioners in the PIL Petition.

9. Reliance by learned Counsel for the Petitioners on the judgment of the Supreme Court in **State of Goa & Anr. Vs. Fouziya Intiaz Shaikh & Anr** (supra) is wholly misplaced. In the said case, the Law Secretary to the State of Goa was given additional charge as State Election Commissioner. It is in these circumstances that the Supreme Court observed that the State Election Commissioner, who occupies a high Constitutional office, has to be an independent person and cannot be a person occupying a post or office under the Central or any State Government. The Supreme Court also issued directions under Article 142 of the Constitution to ensure that the

Constitutional mandate of appointment of an independent State Election Commissioner under Article 243K to conduct elections under Part IX and IXA of the Constitution, be strictly followed in future. It is not the case of the Petitioners in the instant case that the person who is appointed as the State Election Commissioner is not an independent person. The case of the Petitioners is that the State Election Commissioner could not have delegated the power of issuing draft Notification to the Municipal Commissioner.

10. Reference may also be made to Article 243K(3) under Part IX of the Constitution which deals with Panchayats. Article 243K(3) stipulates that the Governor of a State shall when so requested by the State Election Commission make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1). The said clause (1) provides that superintendence, direction and control of the preparation of electoral rolls for and the conduct of all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. We note the submission of learned Counsel for the Respondent No. 2-State Election Commission that the State Election Commission has skeletal staff and most of the persons working for the State

Election Commission are employees of the State Government who are on deputation and the State Election Commission does not have the machinery, manpower and wherewithal to conduct the elections on its own and that this not the first time that the power of publication of the draft Notification has been delegated to the Municipal Commissioner.

11. Learned Senior Counsel for the Respondent No. 1 - Corporation has placed on record a copy of the order dated 03.02.2022 of the State Election Commissioner. By the said order, the State Election Commissioner exercising powers under section 18A(2) of the MMC Act has authorized Mr. Manoj Saunik, Addl. Chief Secretary, Department of Finance, to hear the objections and suggestions received to the draft Notification in respect of delimitation viz redrawing of the Ward boundaries of the Corporation. It is pointed out that the said Addl. Chief Secretary is an Officer higher in the rank than the Municipal Commissioner and the hearing would be conducted by the said Officer in presence of Municipal Commissioner and other officers as provided in the said order. The said order dated 03-02-2022 further provides that after hearing by the said Officer, the statement alongwith objections, suggestions and feedback are to be submitted to the State Election Commissioner by 1<sup>st</sup> March, 2022 through the Municipal Commissioner. It is submitted that the final decision in respect of

redrawing of the Ward boundaries is to be taken by the State Election Commissioner.

12. In the circumstances, there is no merit in the 1<sup>st</sup> submission of learned Counsel for the Petitioners. It is accordingly rejected.

13. We shall now deal with the 2<sup>nd</sup> submission of learned Counsel for the Petitioners. It is contended that there is an express bar under the order dated 27 January 2005 of the State Election Commission to carry out the exercise of alteration in the boundaries within six months of the Corporation Election. In our view, the said submission is based on a complete misreading of the said order dated 27 January 2005 of the State Election Commission. The said order states that no alteration in the boundaries of the local/self government bodies should be made six months prior to the month of election (or to the month in which the term of the local-self government body gets over). Thus, the bar applies only to alteration of the outer boundaries of the Corporation area. The bar does not apply to alteration of Ward boundaries within the Corporation area. In other words, there should not be any inclusion/exclusion of area within/from the area of the Corporation within six months prior to the month of election. In the present case, there is no alteration in the boundaries of the Corporation.

The exercise of division of area of the Corporation into Wards and specifying the boundaries of the Wards so that, as far as practicable, all Wards are compact areas and the population in each Ward is approximately the same, is an exercise which is required to be carried out prior to election to comply with the mandate of section 19(1)(a) of the MMC Act and section 5A of the MMC Act read with Article 243T of the Constitution for the rotation of reserved seats allotted to Wards. Moreover, such exercise is also necessitated this time, to accommodate 9 new Councillors in the Corporation after the recent amendment on 30 November 2021 to section 5(1) of the MMC Act by which the number of Councillors has been increased from 227 to 236. We note the submission on behalf of the Respondents that there are errors in the English translation of the order dated 27 January 2005 and other documents furnished by the Petitioners.

14. In the circumstances, the 2<sup>nd</sup> submission of the learned Counsel for the Petitioners is also without merit and is accordingly rejected.

15. For the aforesaid reasons, we find that the PIL Petition is thoroughly misconceived. The PIL Petition, filed by members of rival political parties to the ruling coalition government, appears to be politically motivated ostensibly filed in public interest, and without any averment whether the

Petitioner had raised any objections to the draft Notification, for which the last date was 14 February 2022. In paragraph 8.1 of the PIL Petition, it is averred that the exercise to change the boundaries of the Wards is being done to gain political mileage, without laying any foundation in support of such assertion. The PIL Petition is filed without the mandatory averments and disclosures required to be made under Bombay High Court Public Interest Litigation Rules, 2010. The PIL Petition is dismissed with costs quantified at Rs. 50,000/- to be paid by the Petitioners (Rs 25,000/- by each of the Petitioners) to the Maharashtra State Legal Services Authority within three weeks from today.

**(ABHAY AHUJA, J.)**

**(A. A. SAYED, J.)**