

(2018) 05 BOM CK 0007

In the Bombay High Court

Case No : WRIT PETITION NO. 6175, 9193, 6351 OF 2016

**HARIBHAU S/O KASHINATH GULHANE AND ANOTHER @APPELLANT THE
MAHARASHTRA, STATE ELECTION COMMISSION, THROUGH SECRETARY,
MUMBAI AND OTHER S.**

Date of Decision : 04-05-2018

Acts Referred:

Constitution of India — Article 213(1)(a), 213(2)(a), 243R, 243ZA, 196, 213, 212,
213(1), 196(1), (2), (3), (4)(5), 356

Citation : (2018) 05 BOM CK 0007

Hon'ble Judges : B.P. DHARMADHIKARI, ARUN D. UPADHYE

Bench : Division Bench

**Advocate : A.K. Waghmare, S.V. Manohar, N.P. Mehta, J.B. Kasat, A.A. Joshi,
Firdos Mirza, J.B. Kasat**

Final Decision : Dismissed

Judgement

B.P. DHARMADHIKARI, J.

1.By these three petitions, the petitioners question the amendments made to the Maharashtra Municipal Councils, Nagar Panchayats and Industrial

Townships Act, 1965, as also Maharashtra Municipal Corporation Act, 1949 (hereinafter referred to as Municipal Acts), by Ordinance No. IX of

2016, XVI of 2016 and ultimately by Maharashtra Act No. IX of 2017, as against the or violating mandatory provisions in Article 213(1) (a) as well as

Article 213(2)(a) of the Constitution of India.

2.Nobody has raised any challenge to maintainability of the petitions. In Writ Petition No. 6175 of 2016, the State of Maharashtra, State Election

Commission of Maharashtra and Union of India are the party respondents. In Writ Petition No. 6193 of 2016, Maharashtra State Election

Commission, State of Maharashtra and the Collector, Yavatmal, are party respondents. In Writ Petition No. 6351 of 2016, State of Maharashtra and

State Election Commission of Maharashtra along with the Governor of Maharashtra are the party respondents. Thus, none of the local bodies to

which elections have been held in pursuance of these amendments or candidates who have elected in those elections, are parties.

3. In Writ Petition No. 6175 of 2016, prayers are to quash and set aside both the Ordinances as also Act No. IX of 2017. The reason for seeking

quashing of Maharashtra Act No. IX of 2017 is the defect in promulgation of above mentioned Ordinances. On 25.01.2017, prayer to stay Election

process commenced on the strength of Ordinance No. IX of 2016 and XVI of 2016, has been added. One prayer therein is to ignore the amendment

and to hold elections by adopting One Member One Ward system. In this petition, Rule has been issued on 24.10.2016 and the Court declined to pass

any interim orders.

4. In Writ Petition No. 6193 of 2016, by very same order dated 24.10.2016, petition came to be admitted for final hearing but interim relief has been

refused. It appears that after 03.10.2017, all three writ petitions have been listed together and hence common orders have been passed.

5. In Writ Petition No. 6351 of 2016, Rule came to be issued on 26.10.2016 with a direction to list writ petition for final hearing with Writ Petition Nos.

6175 of 2016 and 6193 of 2016. On that day, prayer for interim relief was rejected.

6. In Writ Petition No. 6351 of 2016, while passing orders on Civil Application No. 24 of 2017, on 10.01.2017 this Court while granting adjournment to

the State Government, refused to grant any interim relief but made it clear that the elections, if held, would be subject to result of the petition.

7. It is in this backdrop that we have heard Shri A.K. Waghmare, Shri Firdos Mirza and Shri S.D. Borkute, learned counsel for the respective

petitioners, Shri S.V. Manohar, learned Senior Advocate with Ms. N.P. Mehta, learned AGP for the respondents â?" State, Shri J.B. Kasat, learned

counsel for State Election Commission and Mrs. A.A. Joshi, learned counsel for Union of India.

8. The arguments of the respective counsel for the petitioners are identical. They submit that promulgation of Ordinance No. IX of 2016 and

thereafter Ordinance No. XVI of 2016 is nothing but fraud on the Constitution. There was no urgency and the Hon'ble Governor has not recorded

necessary satisfaction which is condition precedent. It is claimed that the State Legislature (both Houses) on 06.04.2015 amended above mentioned

Municipal Acts. The system of electing more than one member from each ward as also President/ Mayor directly from general public till then

prevalent, was modified and One Ward One Member system was introduced. Similarly, for President, indirect election was introduced. This

collective wisdom has been defeated in less than a year when on 19.05.1996 Ordinance No. IX of 2016 came to be issued. It again introduced system

to elect more than one member from a ward and direct election of President/ Mayor. This was without any urgency and only with a view to facilitate

political party in majority. The provisions in Article 213 of the Constitution of India have been abused. It is claimed that even today, material if any,

looked into by the Hon'ble Governor has not been pressed into service.

9.This Ordinance was placed before the Legislative Assembly as Bill No. XXVI of 2016. The Houses of State Legislature were convened on

18.07.2016 and Legislative Assembly considered this Bill and cleared it on 26.07.2016. It was then transmitted to Legislative Council. However,

before Session was prorogued on 05.08.2016, Legislative Council could not and did not apply mind and hence Bill No. XXVI of 2016 was not

converted into Act.

10.Life of Ordinance No. IX of 2016 expired on 28.08.2016 and, according to the petitioners, therefore, with similar malÂintention, another Ordinance

i.e. Ordinance No. XVI of 2016 was promulgated on 30.08.2016. This Ordinance called as Maharashtra Municipal Corporation and the Maharashtra

Municipal Councils, Nagar Panchayats and Industrial Townships (Amendments and Continuance) Ordinance, 2016, therefore, continued the provisions

contained in Ordinance No. IX of 2016 further, after 30.06.2016.

11.This Ordinance is claimed to have become Maharashtra Act No. IX of 2017 because of case of respondents â?" State that both Houses cleared

the Ordinance. The petitioners submit that Ordinance No. XVI of 2016 was never placed before any House and it is Bill No. XXVI of 2016, which is

purportedly passed by both Houses. The Legislative Assembly again passed Bill No. XXVI of 2016 on 09.12.2016 while Legislative Council passed it

on 17.12.2016. A repealed Ordinance i.e. Ordinance, not in force, could not have been looked into by the Houses in December 2016 and hence,

Maharashtra Act No. IX of 2017 is still parent instrument.

12. Shri Borkute, learned counsel has relied upon Article 196 of the Constitution of India to urge that Ordinance No. XVI of 2016 needed to be

considered and cleared by both Houses. According to him, such Ordinance ought to have originated in either House and here Amendment Bill

originated in the office of the Governor. He has also relied upon the provisions of Article 243A to Article 243ZA to urge that these provisions in

the Constitution squarely occupied the position in relation to Municipal Corporation and Municipalities and here by issuing Ordinance, State

Government has indirectly amended the Constitution. To explain his contentions to the Court, he also invited our attention to para 15 of Writ Petition

No. 6351 of 2016.

13. Shri Waghmare, learned counsel has submitted that material on record does not show placing of Ordinance No. XVI of 2016 in the House in

Winter Session. The Gazette Notification dated 12.01.2017 does not show that Ordinance No. XVI of 2016 is considered by any House.

14. The affidavit in reply filed by the respondent "State before this Court particularly para 7 therein which claims that Ordinance No. XVI of 2016

has been looked into in December 2016 by both Houses is therefore, false and incorrect. It is in this light that he has strongly relied upon the judgment

in the case of Krishna Kumar Singh and Anr. vs. State of Bihar & Ors., reported at (2017) 3 SCC 1, (paras 81 and 105).

15. Shri Mirza, learned counsel has in addition submitted that the Ordinance No. IX of 2016 being still born and there being no certainty that these

Ordinances would be converted into law, the order of State Election Commission dated 17.10.2016 proceeding further and holding elections in terms of

these Ordinances is, therefore, unsustainable and that order along with elections conducted in pursuance thereof are unsustainable. He submits that

such elections have been held in November 2016 up to January 2017. He has used very strong words in an attempt to demonstrate that neither on

19.05.1996 nor on 30.08.2016, was there any urgency needing the office of the Governor to issue Ordinance.

16. He has invited attention to the stand of State Government in its affidavit dated 02.04.2018 in Writ Petition No. 6351 of 2016. According to him, the

facts disclosed in said affidavit do not support any urgency and, therefore,

cannot also show any satisfaction by the Hon'ble Governor enabling him to issue Ordinance. He submits that present political body in power in the State has assumed charge in December 2014 and thereafter necessary amendments were effected to both these Acts on 06.04.2015. As such, the Ordinances only show misuse of power. He has taken us through relevant observations of the Hon'ble Apex Court in the case of Krishna Kumar Singh and Anr. vs. State of Bihar & Ors., (supra) to urge that the order of Election Commission dated 17.10.2016, consequential elections and the Amendment Act IX of 2017 must, therefore, fall to ground.

17. Shri Manohar, learned Senior Advocate for the State submitted that the Ordinance issued by the office of the Governor itself show satisfaction and

that satisfaction has not been challenged as per law in present matters. The reasons for satisfaction are not required to be mentioned in Ordinance. If

the petitioners make out any case, the Court may call upon the respondents to produce relevant records and peruse the reasons. However, in present

matter there is no such need and effort. He further points out that Act No. IX of 2017 is passed by the competent body and there is no challenge to

its validity or then to retrospective operation of amendment. He submits that law made by the competent Legislature can be assailed only if it is

beyond its powers or then it infringes fundamental rights or any other similar right. He draws support from para 82 of the judgment of the Hon'ble

Apex Court in the case of Greater Bombay Coop. Bank Ltd. vs. United Yarn Tex. (P) Ltd. & Ors., reported at (2007) 6 SCC 236. He further

contends that as there is no independent challenge to Act No. IX of 2017, alleged defects in Ordinance issued, cannot be used to defeat the legislative

mandate. He further submits that Article 196 of the Constitution of India is in relation to Money Bill and the Ordinance cannot be seen as Bill at all.

He further submits that language in Article 213 is clear. It gives an Ordinance life of six months and six weeks, if the Houses meet at interval of six

months. It does not also impose any power of promulgation of Ordinance. He also adds that in emergent situations like flood, earthquake, problem to

be addressed may be urgent as also temporary. Hence, Ordinance issued may be short lived and as the problem is over, it may never be placed

before any of the Houses. He, therefore, contends that not placing of Ordinance before the House by itself is not a decisive factor.

18. Relying upon Article 212 of the Constitution of India, he submits that after an Act (enactment) is passed by the Legislature, the same needs

to be viewed and considered independently, ignoring the previous background. The defect in Bill or then defect in Ordinance, therefore, cannot creep

in such an Act. He draws support from paras 28 and 29 of the judgment of the Hon'ble Apex Court in the case of A.K. Roy vs. Union of India &

Ors., reported at (1982) 1 SCC 271. Similarly, the judgment in the case of Yogendra Kumar Jaiswal & Ors. vs. State of Bihar & Ors., reported at

(2016) 3 SCC 183, (para 38, 42 and 43), is relied upon for this purpose. He has invited our attention to the observations in the judgment in the case of

Dr. D.C. Wadhwa & Ors. vs. State of Bihar & Ors., reported at (1987) 1 SCC 378 (paras 5 & 7).

19. The dates and developments in affidavits placed on record by the respondents itself show the emergent situation then noticed and bonafides of the

respondents in the matter. To support his contentions, he places reliance upon paras 30, 50, 54, 57, 99, 100 and 115.2 of the judgment of the Hon'ble

Apex Court in the case of Krishna Kumar Singh & Anr. vs. State of Bihar & Ors., (supra).

20. Number of elections due in January 2016 and emergent situations springing therefrom is pressed into service by pointing out paras 3, 4 & 5 of the

affidavit dated 02.04.2018 mentioned supra. He further points out that validity of Ordinance No. IX of 2016 is already upheld by the this Court in the

case of Ambedkarite Party of India vs. State of Maharashtra & Ors., reported at 2017 (2) Mh. L.J. 575 (paras 15 to 17). The petitioner in Writ

Petition No. 6351 of 2016 is one of the petitioners in said matter.

21. In brief reply, Shri Waghmare, learned counsel, has submitted that the judgment of the Hon'ble Apex Court in the case of Krishna Kumar Singh &

Anr. vs. State of Bihar & Ors., (supra) particularly para 105.13 does not bar judicial review and hence in the light of material available on record,

Ordinance No. IX of 2016 and XVI of 2016 are unsustainable. As there was no Bill to support Ordinance No. XVI of 2016, alleged submission that

both Houses passed Ordinance No. XVI of 2016 on 09.12.2016 and 17.12.2016, therefore, cannot be accepted. Hence, Act No. IX of 2017 is also

bad in law.

22. Shri Waghmare, learned counsel for the petitioner relies upon para 101 of the

judgment in the case of Krishna Kumar Singh & Anr. vs. State of

Bihar & Ors., (supra) where para 7 in earlier judgment in the case of Dr. D.C. Wadhwa & Ors. vs. State of Bihar & Ors., (supra), is reproduced.

By placing reliance upon para 93, he submits that said Ordinances do not create any lasting effect and all actions taken in furtherance thereof stand

effaced. The regularization of such action is not possible.

23. Shri Mirza, learned counsel in reply relies upon the judgment in the case of S.R. Bommai vs. Union of India, reported at (1994) 3 SCC 1,

particularly 61, 62, 87, 88, 92, & 96, to urge that the defect in measures approved by the Legislature are not wiped out and also rendered invalid by the

later Legislative acceptance. He submits that report of sub-Committee of Cabinet or then the material looked into by such sub-Committee and its

consideration by the Hon'ble Governor is not made available for perusal of this Court. He invites attention to para 153 of the judgment in the case of

S.R. Bommai vs. Union of India, (supra), to urge that such a defective initiation results in vitiating entire action and, therefore, status quo ante needs to

be restored. According to him, in this situation, all elections conducted after order of State Election Commission dated 17.10.2016, therefore, must fall

to ground.

24. Shri Borkute, learned counsel submits that the petitioner in Writ Petition No. 6351 of 2016 challenged only Ordinance No. IX of 2016 and

introduction of multi numbered and by it. The Ordinance No. XVI of 2016 or subsequent events were not challenged at Bombay.

25. A perusal of Ordinance No. 9 of 2016 shows satisfaction of the Governor that circumstances existed which rendered it necessary for him to take

immediate action. This language also appears in Article 213(1) of the Constitution of India. It cannot, therefore, be said that the satisfaction has not

been recorded by the Hon'ble Governor. The affidavit of Joint Secretary of Urban Development Department, Sanjay Gokhale, reveals that on

19.01.2016, State Election Commission informed number of urban local bodies whose term was to expire between December 2016 and March 2017,

where elections were necessary. The copy of said letter is also annexed. It shows total number of such bodies to be 296 and number of Ward

members/ Councillors to be elected are 3120. The Cabinet considered this note in the meeting held on 18.04.2016 and appointed a Sub-Committee.

The Sub-Committee felt that such election should be held on the basis of multi ward member system. The matter was then placed before the

Cabinet on 10.05.2016. Cabinet felt need to amend relevant Acts and hence on 19.05.2016, Ordinance No. IX of 2016 was issued.

26. Letter dated 19.01.2016 of State Election Commission also points out the month by which steps preparatory to election like Ward formation etc.

needed to be initiated. This material is not in dispute before us. Though the report of Cabinet Sub-Committee is not made available for perusal, the

petitioners nowhere urge that there was no such Sub-Committee. They also do not even assert that factual matrix in said note or letter of election

commission is incorrect. In this situation, we cannot accept the contention that there was no material before the Hon'ble Governor to justify emergent

need to act. It is well settled that in judicial review, this Court cannot consider sufficiency or adequacy of such material. Its relevance only needs to

be looked into. Note dated 19.01.2016 and affidavit dated 02.04.2018 proves existence of relevant material, having bearing on satisfaction of the

Hon'ble Governor.

27. Since the said material also has nexus with the measures adopted through the Ordinances, earlier amendment to both Acts on 06.04.2016 loses its

relevance in the wake of Cabinet decision dated 18.04.2016 and 10.05.2016. The Ordinance was then promulgated and hence the provisions of both

Acts stood amended accordingly. The amendment effected on 06.04.2015, therefore, is not relevant in this matter.

28. The contention that on 06.04.2015 one Ward one Member system was introduced or then indirect election of the President was provided and

through Ordinance these amendments have been done away, therefore, again is not relevant. Policy decision or legislative wisdom is not demonstrated

to be perverse or arbitrary.

29. As pointed out by the learned Senior Advocate, the law made by the Competent Legislature can be assailed only on two grounds viz., lack of

Legislative competence and violation of fundamental rights guaranteed in Part III of the Constitution of India or of any other constitutional provision.

In para 82 of judgment of the Hon'ble Apex Court in the case of Greater Bombay Coop. Bank Ltd. vs. United Yarn Tex. (P) Ltd. & Ors., (supra),

after reiterating this principle, Hon'ble Apex Court has relied upon its earlier

judgment in the case of State of A.P. & Ors. vs. McDowell & Co. &

Ors., reported at (1996) 3 SCC 709 and pointed out that there is no third ground on the basis of which law made by the competent Legislature can be

invalidated and the challenge seeking invalidation has to fall within four corners of the afore mentioned two grounds. Once we find that there was an

urgency justifying issuance of Ordinance and satisfaction recorded by the Hon'ble Governor is valid, the wisdom behind the provisions or scheme

stipulated in the Ordinance, is not justiciable.

30. It is not in dispute that the Ordinance No. IX of 2016 was tabled before both the Houses in Monsoon Session of State Legislative Assembly and it

was cleared only by one House on 26.07.2016. The Legislative Council to whom it was transmitted could not consider it as the Houses were

prorogued on 05.08.2016.

31. In this situation, as per mandate of Article 213, the Ordinance No. IX of 2016 occupied field till 28.08.2016. On 30.08.2016, the Governor has

promulgated another Ordinance vide Ordinance No. XVI of 2016 after recording similar satisfaction. The additional fact that Council could not

consider the Bill before 05.08.2016 is incorporated in preamble of this Ordinance and correctness thereof is not in dispute. None of the petitioners

urge that Ordinance No. IX of 2016 was deliberately not allowed to be considered by State Legislative Council. In view of these facts, Ordinance

No. XVI of 2016 also cannot be said to be unwarranted or unjust. In fact it is also a continuation Ordinance which carries further the amendments

i.e. measures introduced by Ordinance No. IX of 2016.

32. The petitioners, however, have relied upon clause 13 of this Ordinance. Clause 13(1) states that Ordinance No. IX of 2016 is withdrawn by

Ordinance No. XVI of 2016. Sub-clause (ii) therein saves the steps or actions etc. done or taken under Ordinance No. IX of 2016.

33. When Ordinance No. IX of 2016 cannot constitutionally survive after 28.08.2016, it is apparent that the repeal thereof by clause 13(1) is

superfluous. Only purpose appears to be to protect steps/ actions initiated or completed as per Ordinance No. IX of 2016 by extending to them an

umbrella of Ordinance No. XVI of 2016.

34. The respondents in affidavit filed on behalf of respondent Nos. 1 & 2 on 12.02.2018, in para 7, submit as under : "I say and submit that after the

reÂAssembly of the State Legislature in December 2016 the said Ordinance dated 30.08.2016 was placed before both the houses of the State

Legislature. I say and submit that thereafter the Maharashtra Municipal Corporation and the Maharashtra Municipal Councils and Nagar Panchayats

and Industrial Township (Amendment) Bill (L.A. Bill No. XXVI of 2016) which was under consideration of the State Legislature was considered and

passed by the Maharashtra Legislative Assembly for the second time on 09.12.2016 and by Legislative Council on 17.12.2016.â??

35.This para, therefore, shows that in Winter Session, Ordinance dated 30.08.2016 has been considered by both Houses. The amendment sought to

be introduced in Municipal Acts was already incorporated in Bill No. XXVI of 2016. This Bill was under consideration of State Legislature. It was

cleared by Legislative Assembly on 26.07.2016 and transmitted to Legislative Council. Because of prorogation, Legislative Council was not able to

consider it and this incomplete consideration, therefore, was available to both Houses. Article 196 (1) specifically states that such a bill may originate

in any House. Under subÂarticle (2), a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative

Council unless it has been agreed to by both Houses. Under Article (3) a Bill pending in the Legislature of a State does not lapse by reason of the

prorogation of the House or Houses thereof. Sub article (4) & (5) are on effect of dissolution of Houses and we are not concerned with that

contingency. Thus, Bill No. 26 of 2016 does not lapse and remains alive even after 5.8.2016 due to Continuation Ordinance XVI of 2016. Here, Bill

No. XXVI of 2016 was again placed before the Legislative Assembly on 09.12.2016 and Legislative Assembly cleared it again. Thereafter it was

transmitted to and cleared by the Legislative Council also on 17.12.2016.

36.In this situation, we find no substance in the contention that a separate Bill should have been drawn and submitted on the strength of Ordinance No.

XVI of 2016. The purpose of issuing Ordinance No. XVI of 2016 was to continue measures contained in/ on Ordinance No. IX of 2016 and

therefore, to further Bill No. XXVI of 2016. This object is achieved by amendment and continuation Ordinance. The very same measures were,

therefore, looked into in Winter Session by both Houses and it culminated into Act No. IX of 2017.

37.The petitioners do not urge that no such business was transacted in Winter Session. Hence, birth of Act No. IX of 2017 and amendment of

Municipal Acts by it, therefore, is not in doubt. The contention that there ought to have been a separate bill to support Ordinance No. XVI of 2016 is,

therefore, misconceived.

38.In the case of Yogendra Kumar Jaiswal & Ors. vs. State of Bihar & Ors., (supra), the Hon'ble Apex Court has pointed out in paras 38 to 43, law

in this respect. The consideration therein shows a finding that such an error of not drawing separate Bill on the strength of Ordinance No. XVI of

2016 cannot be seen as a gross or substantive irregularity or unconstitutionality. It is only an irregularity and after competent Legislature adopts the

measures suggested in the Ordinance, those measures become a valid law. Alleged errors cannot vitiate such a law at all.

39.The petitioners have pointed out judgment in the case of S.R. Bommai vs. Union of India, (supra) to urge that availability of material to support

satisfaction is justiciable and the contention that defect in Ordinance also travels to Act No. IX of 2017. Paragraphs to which our attention has been

invited are already mentioned by us supra. Additionally, paragraphs 374 and 434 were also pressed into service by Shri Mirza, learned counsel.

Paragraph 434 summarizes the conclusions.

40.We find that paragraph 96 in this judgment shows that the Hon'ble Apex Court was considering the provision relating to proclamation of emergency

i.e. Article 356 of the Constitution of India. The Hon'ble Apex Court has pointed out that proclamation has potential to unsettle or subvert the entire

constitutional scheme. The exercise of power therein, therefore, needed to be circumscribed to maintain the fundamental constitutional plans.

41.In paragraph 153 of the report, in first conclusion, the Hon'ble Apex Court has observed that the burden is on government to prove that the relevant

material in fact exists. Conclusion at â??Vâ? shows that if proclamation of emergency issued is declared invalid, then even if it is approved by both

the Houses of Parliament, courts can restore the status quo ante to the issuance of proclamation i.e. courts can restore Legislative Assembly and

Ministry. We need not dwell more on this judgment. Proclamation of emergency and approval thereof cannot be equated with an Act (LAW) made

by competent Legislature by passing a legislation. The defects in proclamation of

emergency militate with very need of proclaiming the same and, therefore, drastic measures adopted or flowing therefrom. Same cannot be said to be true in relation to Ordinance or the Legislative enactments. The Ordinance may operate for short duration and expire without any further action. The Ordinance may be approved by the competent Legislature or then similar measures can be independently approved by such Legislature. Here, the measures are approved by both Houses of State Legislature and there is no challenge to constitutionality or otherwise of those measures. The challenge is to procedure through which changes are inserted and actual changes i.e. amendment have not been assailed either as malafide or grounds available as in Greater Bombay Coop. Bank Ltd. vs. United Yarn Tex. (P) Ltd. & Ors., supra. S.R. Bommai vs. Union of India, (supra), therefore, has no application in facts before us.

42. In Constitution Bench judgment in the case of Dr. D.C. Wadhwa & Ors. vs. State of Bihar & Ors., (supra) reported at (1987) 1 SCC 378, in para 5, the Hon'ble Apex Court, has given list of 256 Ordinances which were kept alive for periods ranging between 1 to 14 years by repeated promulgation from time to time. The further discussion in para 7 is in the backdrop of facts noted in para 5. There on facts, a finding has been reached that the State of Bihar did by-pass the Legislature and without enacting Ordinances into Acts in the Legislature, repromulgated the Ordinance as soon as Legislature was prorogued. Thus, on facts again, the judgment does not support petitioners before us. Here effort was made in July, 2016 to convert Ordinance IX of 2016 into an Act of Legislature.

43. The larger Bench judgment of the Apex Court in the case of Krishna Kumar Singh & Anr. vs. State of Bihar & Ors., (supra) relied upon by the petitioners as also respondents needs a look in this backdrop. The Hon'ble Apex Court in para 93 has observed that upon an Ordinance ceasing to operate, all consequences that have ensued would stand effaced and obliterated. In paragraph 99, it is held that Ordinance which has not been placed before Legislature is of no consequence whatsoever. In paragraph 100, the Hon'ble Apex Court holds that once an Ordinance is placed before Legislature, Constitutional fiction by which it has the same force and effect as a LAW enacted, comes into force and relates back to the date of Ordinance. In the absence of this compliance, this constitutional fiction does not

come into existence. In paragraph 102, the Hon'ble Apex Court comments upon its Constitution Bench judgment in the case of Dr. D.C. Wadhwa & Ors. vs. State of Bihar & Ors., (supra) and further observes that

in the matter before larger Bench, it was not the case of State of Bihar that there was any reason or justification to continue with chain of Ordinances.

44.The conclusions of Hon'ble larger Bench are in para 105. In para 105.11, it points out that there is no express provision under Article 213 for

saving of rights, privileges, obligations and liabilities which arise under an Ordinance, which have ceased to operate. However, in the very same

paragraph, the Hon'ble Apex Court has pointed out that issue is essentially pertaining to construction; of giving content to the â??force and effectâ?

clause while prescribing legislative supremacy and rule of law. In paragraph 105.12, consequence of irreversible character finds mention. In

paragraph 106, the Hon'ble Apex Court applies law as laid down by its Constitution Bench in the case of Dr. D.C. Wadhwa & Ors. vs. State of Bihar

& Ors., (supra).

45.In the case before us, when Maharashtra Act No. IX of 2017 looks into entire history i.e. Ordinance No. IX of 2016 and thereafter Ordinance No.

XVI of 2016 and then unequivocally amends the provisions of Municipal Acts accordingly, we do not find any substance in various contentions raised

by the petitioners and noted supra. This Act No. IX of 2017 is deemed to have come into force on 19.05.2016 i.e. the date on which the Ordinance

No. IX of 2016 was promulgated. This retrospective operation is again not assailed by any of the petitioners.

46.In this situation, we find the effort of the petitioners to assail constitutional validity of Ordinance No. IX of 2016 or Ordinance No. XVI of 2016

without any merit. Their consequential effort to challenge Act No. IX of 2017, therefore, also has to fail. Accordingly, we dismiss these writ petitions.

Rule discharged in all matters. However, in the facts and circumstances of the case, there shall be no order as to costs.