
(2018) 07 BOM CK 0118
In the Bombay High Court
Case No : Writ Petition No. 9085 of 2017

Sania Mayur Sheth

APPELLANT

Vs

State of Maharashtra Through the Secretary, Urban
Development Department, Mantralaya, Mumbai

RESPONDENT

Date of Decision : 31-07-2018

Acts Referred:

Maharashtra Nagar Parishad, Nagar Panchayat and Industrial Township Act, 1965 —
Section 55A, 55B
Maharashtra Regional and Town Planning Act, 1966 — Section 44, 44(1)?
Bombay Municipal Corporation Act, 1888 — Section 16, 16(1D)
Limitation Act, 1963 — Section 44(4)

Citation : (2018) 07 BOM CK 0118

Hon'ble Judges : R.D. DHANUKA, J

Bench : Single Bench

Advocate : G.S.Godbole, S.S.Kothari, S.H.Kankal, Pramod Bhosale, Sharad Bhosale

Final Decision : Dismissed

Judgement

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 26th July, 2017 passed by the learned Minister, Nagar Vikas Urban Development allowing the appeal filed by the respondent no.4. Some of the relevant facts for the purpose of deciding

this writ petition are as under :-

2. It is the case of the petitioner that the husband of the petitioner vide a registered sale deed dated 5th June, 2012 had purchased the land bearing Gat

No.689 admeasuring about 15.6 R and constructed thereon, situated at Village Khandad, Taluka Mangao, District Raigad (hereinafter referred to as

the suit property). The said sale deed was duly registered with the office of the Sub Registrar, Mangaon. It is the case of the petitioner that at the time

of execution of the sale deed, in the 7/12 extracts annexed to the sale deed, the name of the State Government was not entered in other rights of the column. Neither the petitioner nor the husband of the petitioner was aware of the said alleged acquisition process.

3. The husband of the petitioner filed a regular civil suit bearing no. 163 of 2012 against Mr.Surendra Sali for seeking an order of permanent injunction in respect of the said property. On 19th August,2014, the husband of the petitioner submitted an application before the Gram Panchayat Mangaon for seeking building permission to carry out construction on the suit property. On 26th August,2014, the Gram Panchayat also granted permission to the husband of the petitioner for construction on the ground plus two upper floors of the suit property.

4. On 30th August,2014, the husband of the petitioner received a building permission from the Sarpanch, Mangaon Municipal Council for construction of the ground plus two floors on the suit property. On 17th August,2015, Mr.Surendra Sali filed an application in the said regular Civil Suit No.163 of 2012 inter alia praying for an order of status quo in respect of the suit property. By an order dated 17th August,2015 the regular Civil Judge, Senior Division, Mangaon directed both the parties to the said suit to maintain status quo in respect of the suit property. The said status quo order is in force even till today.

5. On or about 12th January,2016, the petitioner contested the election of the Municipal Council, Mangaon and was elected as a councillor of the said Council. On 22nd April,2016, the respondent no.4 filed a complaint before the respondent no.3 collector under section 44(1)(e) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short the said MMC Act). In the said complaint filed by the respondent no.4 it was alleged that the petitioner and her husband had carried out unauthorized construction on the suit property prior to the date of her declaration of her result as a councillor. The said application was resisted by the petitioner by filing a reply.

6. On 1st June, 2016, the respondent no.4 filed another complaint under the same provision in view of the fact that the first complaint could not be processed due to non payment of the process fees. The said complaint was filed on the basis that the petitioner and her husband had constructed

house no. 773 which was allegedly an unauthorized structure. In the said application/complaint the respondent no.4 admitted that the name of the State Government had not been entered in the 7/12 extract of the suit property.

7. In the month of September 2016, the petitioner filed a reply before the learned collector in the said 2nd complaint filed by the respondent no.4. By

an order dated 20th January,2017, the respondent no.3 collector dismissed the said application filed by the respondent no.4 under section 44(1)(e) of

the said Act. It is the case of the petitioner that the said order dated 20th January,2017 was conveyed to the petitioner as well as respondent no.4 by

the learned collector by his letter dated 23rd January,2017.

8. On 30th January,2017 the respondent no.4 applied for a copy of the said order dated 20th January,2017 before the learned Collector. A copy of the

said order dated 20th January,2017 was issued to the respondent no.4 by the office of the learned collector on 30th January,2017 itself.

9. On 13th February, 2017 the respondent no.4 filed an appeal under section 44(4) of the said Act before the respondent no.1. The petitioner filed her

written submissions and reply before the respondent no.1 in the said appeal filed by the respondent no.4.

10. On 26th July, 2017, the respondent no.1 passed an order thereby allowing the said appeal filed by the respondent no.4 and disqualifying the

petitioner as a councillor in Mangaon Nagar Parishad. Being aggrieved by the said order dated 26th July, 2017 the petitioner filed this writ petition

under Article 227 of the Constitution of India on various grounds.

11. Mr.Godbole, learned counsel for the petitioner invited my attention to various documents annexed to the writ petition and more particularly the

application filed by the respondent no.4 before the learned collector, the reply filed by the petitioner, the order of status quo dated 17th August,2015

passed by the learned Civil Judge, Senior Division, copy of the permission granted by the Nagar Panchayat to the petitioner for carrying out

construction etc. My attention is also invited to the impugned order passed by the learned collector, the pleadings filed by both the parties and the

impugned order passed by the respondent no.1.

12. It is submitted by the learned counsel that admittedly it was the case of the respondent no.4 that the alleged unauthorized construction was carried

out by the husband of the petitioner prior to the date of the petitioner having

been elected as a councillor of the Mangaon Municipal Council. He submits that the Gram Panchayat had granted permission to carry out the construction in the suit property to the husband of the petitioner on the suit property much prior to the date of the petitioner having been elected as a councillor of the Gram Panchayat, Mangaon. The civil court had granted an order of status quo on 17th August, 2015 against the husband of the petitioner on an application filed by the said Mr. Suresh Sali which was admittedly prior to the date of the petitioner having been elected as a councillor of the Mangaon Municipal Council. Neither the petitioner nor her husband has thereafter carried out any construction on the suit property. It is submitted that it is not the case of the respondent no. 4 that the petitioner or her husband or any other family member had carried out any construction on the suit property after 12th January, 2016.

13. Learned counsel placed reliance on section 44(1)(e) of the said Act and would submit that the councillor can be disqualified to hold the office if

such councillor has constructed or constructs by himself, his spouse or his dependent, any illegal or unauthorized structure violating the provisions of

the said Act or the Maharashtra Regional and Town Planning Act, 1966 or the rules or bye-laws framed under the said Acts during the terms of the

office of the said councillor. He submits that the application filed by the respondent no. 4 for seeking disqualification of the petitioner on the ground that

the petitioner and her husband had carried out the unauthorized construction on the suit property prior to the date of her having been elected as a

Councillor of the said Mangaon Gram Panchayat itself was not maintainable.

14. Learned counsel invited my attention to various findings of fact rendered by the learned collector accepting the plea of the petitioner that neither

the petitioner nor her husband had carried out any unauthorized construction violating the provisions of the said Act prior to the petitioner having been

elected as a councillor of the said Gram Panchayat.

15. It is submitted by the learned counsel that the respondent no. 1 however has in violation of section 44(1)(e) and contrary to the admitted facts on

record has allowed the appeal filed by the respondent no. 4 by rendering various perverse findings and without application of mind. He invited my

attention to various findings recorded by the learned Minister in the impugned order. It is submitted that the learned Minister has disqualified the

petitioner on the ground that the husband of the petitioner had misled the Gram Panchayat while seeking permission of the Gram Panchayat to carry

out the construction on the suit property. The findings of the learned Minister disqualifying the petitioner on the ground that her husband had misled the

Gram Panchayat is beyond the scope of section 44(1)(e) of the Act. The learned Minister has not rendered any finding that either the petitioner or her

husband or her any dependent had carried out any unauthorized construction during the term of the office of the petitioner.

16. Learned counsel for the petitioner placed reliance on the judgment of this court in case of Jagdishchandra Narayanrao Karemore vs. District

Collector, Bhandara and others, 2009(2) Mh.L.J.553 and in particular paragraphs 3, 4, 7, 9 and 10 in support of the submission that for incurring

disqualification, unauthorized construction referred in clause (e) should have been done by the councillor during his term of office and not prior thereto.

17. Learned counsel for the petitioner also placed reliance on the judgment of Division Bench of this court in case of Javed Sheikh Mustaque Patel vs.

State of Maharashtra and others, 2009(2) Mh.L.J. 925 and in particular paragraphs 3, 20, 21 and 27 in support of the submission that the alleged

unauthorized construction carried out by the husband of the petitioner prior to the date of the petitioner having been elected as a councillor cannot be a

ground for disqualification of the petitioner as a councillor of the Gram Panchayat.

18. The next submission of Mr.Godbole, learned counsel for the petitioner is that the appeal filed by the respondent no.4 under section 44(4) of the Act

against the order of the collector itself was barred by limitation prescribed under the said provision. He submits that admittedly the order was passed

by the learned collector on 20th January,2017. A copy of the said order dated 20th January,2017 was forwarded by the learned collector to both the

parties along with his covering letter dated 23rd January,2017 and was received by both the parties on 27th January, 2017. The respondent no.4

however chose to apply for copy of the said order only on 30th January,2017. The appeal was admittedly filed on 13th February,2017 which was

beyond the period of 15 days from the date of communication of the order dated 20th January,2017. He submits that there was thus delay of one day

in filing the appeal.

19. It is submitted that there is no provision for condonation of delay provided

under the said Act or any other provision providing that the provisions of Limitation Act, 1963 would be applicable to the appeal filed by the parties under section 44(4) of the said Act. It is submitted that the respondent no.4 also admittedly did not make any application for condonation of delay in view of the fact that no such power for condonation of delay vested in the respondent no.1. The respondent no.1 however allowed the said appeal which was ex-facie barred by period of limitation prescribed under section 44(4) of the said Act. The impugned order passed by the learned Minister is thus deserves to be set aside on this ground itself.

20. Mr.Bhosale, learned counsel for the respondent no.4, on the other hand, invited my attention to the averments made by his client in the application filed before the learned Collector under Section 44(1)(e) of the said Act and also various documents annexed to the writ petition and also to the affidavit-in-reply filed by his client. It is submitted that the petitioner and her husband had carried out unauthorised construction during the term of the office of the petitioner. The petitioner as well as her husband has set up the title against the government. Though the property was acquired by the government, the husband of the petitioner claimed ownership right in respect of the property and had applied for permission of Mangaon Municipal Council for carrying out construction on the suit property.

21. It is submitted that the learned Minister has rightly allowed the appeal filed by his client on the ground that the husband of the petitioner had misled the Mangaon Municipal Council while obtaining permission to carry out construction on the suit property. The husband of the petitioner had also obstructed the competent authority from demolishing any illegal or unauthorised structure. Learned counsel for the respondent no.4 placed reliance on the second Part of Section 44(1)(e) of the Act and would submit that since the petitioner had helped her husband directly or indirectly in her capacity as a Councillor in carrying out such illegal or unauthorised construction or has obstructed or tried to obstruct the Mangaon Municipal Council from discharging its official duty in demolishing the illegal or unauthorised structure and thus the petitioner was rightly disqualified as a Councillor under the said provision.

22. In so far as the issue of limitation raised by the learned counsel for the petitioner in filing the appeal by his client under Section 44(1) (e) of the said

Act before the Minister is concerned, learned counsel invited my attention to the averments made in paragraph 4 of the affidavit-in-reply dated 8th

August, 2017 filed by his client and would submit that admittedly the order was passed by the learned Collector on 20th January, 2017. The respondent

no.4 had received a copy of the said order passed by the learned Collector however on 30th January, 2017. The appeal was filed by the respondent

no.4 on 13th February, 2017. There was thus no delay in filing an appeal. He submits that there is no rejoinder filed by the petitioner to the averments

made by the respondent no.4 in the said affidavit-in-reply.

23. In his alternative submission, it is submitted that even if it is accepted that the copy of the order dated 20th January, 2017 passed by the learned

Collector was communicated to the respondent no.4 on 27th January, 2017, 15 days' period would expire on Saturday which was holiday and thus the

appeal filed on 13th February, 2017 was within the time prescribed under Section 44(4) of the said Act.

24. It is lastly submitted by the learned counsel for the respondent no.4 that the petitioner has not come to this Court with clean hands and has made

incorrect and misleading statement that the petitioner claimed to be in possession of the suit property though the land was already acquired by the

State Government. It is further submitted that the petitioner had carried out illegal construction by taking advantage of her post. The statement of the

petitioner that there was no unauthorised construction is false and thus this Court shall not interfere with the impugned order passed by the learned

Minister at the instance of such petitioner not having come to this Court with clean hands.

25. Learned counsel for the respondent no.4 placed reliance on the judgment of this Court at Aurangabad in the case of Yojna Bharat Mali Vs. State

of Maharashtra & Ors. decided 22nd December, 2014 in Writ Petition No.10961 of 2014.

26. Mr.Kankal, learned AGP for the respondent nos.1 & 3 supported the findings recorded by the learned Minister in the impugned order dated 26th

July, 2017 and would submit that the findings of facts rendered by the learned Minister being not perverse cannot be interfered with by this Court in

this petition under Article 227 of the Constitution of India.

REASONS AND CONCLUSIONS :-

27. This Court shall first decide the issue as to whether the alleged unauthorised construction was carried out by the petitioner or by her husband prior to the date of the petitioner having been elected as a Councillor of Mangaon Municipal Council or not and if any such alleged unauthorised construction was carried out prior to the date of the petitioner having been elected as a Councillor, whether under Section 44(1)(e) of the said Act, the petitioner could have been disqualified as a Councillor of the said Mangaon Municipal Council or not.

28. Section 44 of the Maharashtra Municipal Councils, Nagar

Panchayats and Industrial Townships Act, 1965 reads as under :- SECTION 44 : Disqualification of Councillor during his term of office :-

(1) A Councillor shall be disqualified to hold office as such, if at any time during his term of office, he(a) â?|..

(b) â?|..

(c) â?|..

(d) â?|.

(e) has constructed or construct by himself, his spouse or his dependent, any illegal or unauthorised structure violating the provisions of this Act, or the

Maharashtra Regional and Town Planning Act, 1966 or the rules or bye-laws framed under the said Acts; or has directly or indirectly been responsible

for, or helped in his capacity as such Councillor in, carrying out such illegal or unauthorized construction or has by written communication or physically

obstructed or tried to obstruct, any Competent Authority from discharging its official duty in demolishing any illegal or unauthorised structure,

and he shall be disabled subject to the provisions of sub-section (3) from continuing to be a Councillor and his office shall become vacant:

Â Provided that-

(i) a Councillor shall not be disqualified under clause (c) if he is engaged for the Council without receiving any remuneration therefor or appears and

conducts his own case in a Court of law or before any authority under this Act against the Council irrespective of whether such a Councillor is a legal

practitioner by profession or not;

(ii) for the purpose of clause (d) when the Councillor applies for leave, such leave shall be deemed to have been granted unless it is refused within a

period of sixty days from the date of his application.

(2) â?!

(3) â?!

(4) Any person aggrieved by the decision of the Collector may within a period of fifteen days from the date of receipt of the decision of the Collector

by him, appeal to the State Government and the orders passed by the State Government shall be final:

Provided that, no order shall be passed under sub-section (3) by the Collector or under sub-section (4) by the State Government in appeal, against any

Councillor without giving him a reasonable opportunity of being heard.

Explanation:- If any elected, * * or nominated Councillor were subject to any disqualification specified in section 16, at the time of his election, [or

nomination] and continues to be so disqualified, the disqualification shall, for the purposes of this section, be deemed to have been incurred during the

term for which he is elected,* * or nominated.

29. A perusal of the application filed by the respondent no.4 before the learned Collector clearly indicates that it was alleged by him that the alleged

unauthorised construction was carried out by the petitioner and her husband prior to the date of the petitioner having been elected as a Councillor of

the Mangaon Municipal Council.

30. Be that as it may, a perusal of the record further indicates that the husband of the petitioner had applied for permission to carry out construction on

the suit property on 19th August, 2014 which permission was received by the husband of the petitioner on 30th August, 2014. The husband of the

petitioner had filed a Regular Civil Suit No.163 of 2012 in the Court of Civil Judge, Senior Division, Mangaon against Mr.Surendra Sali. The said

Mr.Surendra Sali had filed an application in the said suit inter alia praying for an order of status quo against the husband of the petitioner in respect of

the said property.

31. A perusal of the record further indicates that the learned Civil Judge, Senior Division, Mangaon had passed an order of status quo on the said

application filed by the said Mr.Surendra Sali on 17th August, 2015 in respect of the suit property. The said order of status quo continued to be in force

even after the date of the petitioner having been elected as a Councillor of

Mangaon Municipal Council. Admittedly, the petitioner was elected as a Councillor of the said Mangaon Municipal Council on 12th January, 2016 i.e. much after the date of the said order of status quo passed by the Civil Judge, Senior Division, Mangaon.

32. It is neither the case of the respondent no.4 nor the respondent no.4 demonstrated either before the learned Collector or before the learned Minister or before this Court any unauthorised construction alleged to have been carried out by the petitioner or husband of the petitioner after 12th January, 2016. Learned counsel for the respondent no.4 could not dispute before this Court that the respondent no.4 could not produce any material on record to show that either the petitioner herself or her husband had carried out any unauthorised construction on the suit property after 12th January, 2016 i.e. during the term of her office.

33. This Court in the case of Jagdishchandra s/o Narayanrao Karemore Vs. District Collector, Bhandara & Ors. (supra) has distinguished the judgment of this Court in the case of Edwin Francis Britto Vs. Municipal Corporation of Greater Mumbai & Ors., 2006 (5) ALL MR 640 and held that Section 44(1)(e) of the said Act clearly conveys a meaning that the unauthorized construction referred in clause (e) has to be done by the Councillor during his term of office for the purpose of disqualification.

34. Division Bench of this Court in the case of Javed s/o Sheikh Mustaque Patel Vs. State of Maharashtra & Ors. (supra) on reference made by the learned Single Judge of this Court in view of difference of opinion in the case of Javed s/o Sheikh Mustaque Patel Vs. State of Maharashtra & Ors.

(supra) and in the case of Edwin Francis Britto Vs. Municipal Corporation of Greater Mumbai & Ors. (supra) has held that a bare perusal of Section

44(1)(e) of the said Act clearly indicates that a Councillor is disqualified to hold office as such if at any time during his term of office, he has

constructed or constructs by himself, his spouse or his dependent any illegal or unauthorised structure violating the provisions of the Maharashtra

Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 or the Maharashtra Regional and Town Planning Act, 1966 or the rules or

bye-laws framed under the said Acts. Any other interpretation would render the words "if any time during his term of office" otiose.

35. Division Bench held that Section 16(1-D) of the Bombay Municipal

Corporation Act, 1888 was not applicable to the facts in that matter. In paragraph 27 of the said judgment, Division bench of this Court held that in order to attract disqualification under Section 44(1)(e) of the Act, illegal or unauthorized construction violating the provisions of the said Act or the Maharashtra Regional and Town Planning Act, 1966 or the rules or bye-laws framed under the said Acts must have been carried out by a Councillor, either by himself, his spouse or his dependent during the term of his office and consequently any construction undertaken prior to his tenure cannot be a ground to disqualify the Councillor. The unauthorized construction has to be during the term of the office of a Councillor for the purpose of incurring disqualification.

36. A perusal of the record indicates that the alleged unauthorised construction, if any, even if was carried out by the petitioner or by her husband in

the suit property, the same was alleged to have been carried out prior to 12th January, 2016 i.e. when the petitioner was elected as a Councillor of

Mangaon Municipal Council and not during the term of her office. In view of plain reading of Section 44(1)(e) of the said Act, the petitioner could not

have been disqualified as a Councillor for the alleged unauthorized construction carried out by her or by her husband prior to the date of the petitioner

having been elected as a Councillor of the Mangaon Municipal Council. The judgments of this Court in the cases of Jagdishchandra s/o Narayanrao

Karemore Vs. District Collector, Bhandara & Ors. (supra) and Javed s/o Sheikh Mustaque Patel Vs. State of Maharashtra & Ors. (supra) are

applicable to the facts of this case. I am respectfully bound by the said judgments. In my view, the impugned order passed by the learned Minister

thereby disqualifying the petitioner as a Councillor is ex facie contrary to the law laid down by this Court and also in violation of Section 44(1)(e) of the

said Act.

37. A perusal of the impugned order passed by the learned Collector while rejecting the application filed by the respondent no.4 clearly indicates that

the learned Collector has rightly rendered a finding of fact that the alleged unauthorised construction, if any, was carried out by the petitioner or by her

husband prior to 12th January, 2016 and has rightly rejected the said application filed by the respondent no.4.

38. A perusal of the impugned order dated 26th July, 2017 passed by the learned

Minister clearly indicates that the learned Minister has not recorded any finding that the petitioner or her husband had carried out any unauthorised construction after 12th January, 2016 i.e. during the period of her office as a Councillor. The learned Minister has disqualified the petitioner while allowing the appeal filed by the respondent no.4 on the ground that the husband of the petitioner has misled the Mangaon Municipal Council while obtaining permission for carrying out construction work in the suit property. A perusal of the record indicates that when the husband of the petitioner had applied for permission from the Mangaon Municipal Council, the name of the State Government was not mentioned in the 7/12 extract in respect of the suit property.

39. Be that as it may, the petitioner could not have been disqualified as a Councillor on that ground under Section 44(1)(e) of the said Act. In my view, the learned Minister has rendered a finding and has disqualified the petitioner as a Councillor on the ground beyond the purview of Section 44(1)(e) of the said Act and shows perversity. The impugned order passed by the learned Minister is also contrary to the principles of law laid down by this Court in the cases of Jagdishchandra s/o Narayanrao Karemore Vs. District Collector, Bhandara & Ors. (supra) and Javed s/o Sheikh Mustaque Patel Vs. State of Maharashtra & Ors. (supra) and thus deserves to be set aside.

40. In so far as the submission of the learned counsel for the respondent no.4 that the petitioner had assisted her husband in carrying out unauthorised construction and thus the petitioner could be disqualified as a Councillor on that ground under second Part of Section 44(1)(e) of the said Act is concerned, a plain reading of Section 44(1)(e) of the said Act would clearly indicate that the said Councillor shall be directly responsible for, or would have helped in his capacity as such Councillor in, carrying out such illegal or unauthorised construction or tried to obstruct any competent authority from discharging its official duty in demolishing any illegal or unauthorised structure. None of these allegations were made by the respondent no.4 in his complaint before the learned Collector.

41. These submissions now made before this Court were even not made before the learned Minister by the respondent no.4. Be that as it may, the learned Minister has not disqualified the petitioner on the ground that the petitioner had directly or indirectly been responsible for helping her husband

in her capacity as a Councillor in carrying out such illegal or unauthorised construction or tried to obstruct any competent authority from discharging its official duty in demolishing any illegal or unauthorised structure. In my view, second Part of Section 44(1)(e) would also apply only if such unauthorised acts provided therein were during the term of office of such Councillor and not prior thereto. It is not the case of the respondent no.4 that after the date of the petitioner having been elected as a Councillor, any such acts set out in Second Part of Section 44(1)(e) of the said Act were carried out by the petitioner. In my view, there is thus no merit in this submission of the learned counsel for the respondent no.4.

42. In so far as reliance placed by the learned counsel on the judgment of this Court in the case of *Yojna Bharat Mali Vs. State of Maharashtra & Ors.* (supra) is concerned, this Court in the said judgment has considered Sections 55A and 55B of the Maharashtra Nagar Parishad, Nagar Panchayat and Industrial Township Act, 1965 and not Section 44(1)(e) of the said Act. The said judgment, in my view, is not even remotely applicable to the facts of this case. Reliance placed on the said judgment by the learned counsel is totally misplaced.

43. In so far as the issue of limitation raised by Mr.Godbole, learned counsel for the petitioner in filing the said appeal by the respondent no.4 under Section 44(1)(e) of the said Act is concerned, it is the case of the petitioner that the intimation of the order dated 20th January, 2017 was issued to both the parties by the learned Collector vide his letter dated 23rd January, 2017 and the said communication was received by the respondent no.4 on 27th January, 2017. Per contra, it is the case of the respondent no.4 that the said intimation dated 23rd January, 2017 was received by the respondent no.4 on 30th January, 2017. The respondent no.4 applied for a copy of the order on 30th January, 2017 and was issued a copy thereof by the office of the learned Collector on the same date. On 13th February, 2017, the respondent no.4 filed an appeal under Section 44(4) of the said Act before the learned Minister.

44. A perusal of the affidavit-in-reply filed by the respondent no.4 on 8th August, 2017 and more particularly paragraph 4 thereof clearly indicates that it was a specific case of the respondent no.4 that copy of the order was received by the respondent no.4 only on 30th January, 2017. In the writ

petition filed by the petitioner, it is not the case of the petitioner that copy of the intimation dated 23rd January, 2017 was received by the respondent

no.4 on 27th January, 2017.

45. The petitioner had not controverted the averments made by the respondent no.4 in the affidavit-in-reply that copy of the order was available to the

respondent no.4 only on 30th January, 2017. The petitioner thus cannot be allowed to raise this plea for the first time across the bar that copy of the

intimation dated 23rd January, 2017 was served upon the respondent no.4 by the office of the Collector on 27th January 2017. In view of these facts, I

am not inclined to accept the submission of Mr.Godbole, learned counsel for the petitioner that the appeal filed by the respondent no.4 under Section

44(4) of the said Act was not filed within the time contemplated under the said provision and was barred by limitation.

46. I am inclined to accept the submission of the learned counsel for the respondent no.4 that the respondent no.4 had received a copy of the order

and also the copy of the intimation dated 23rd January, 2017 on 30th January, 2017 and the appeal thus filed by the respondent no.4 admittedly 13th

February, 2017 was within time of 15 days from the date of receipt of the copy of the decision of the learned Collector by him. This Court thus need

not go into the issue as to whether the respondent no.1 has power to condone any delay in filing an appeal under Section 44(4) of the said Act or not

or as to whether the provisions of the Limitation Act, 1963 are applicable to such appeal filed under Section 44(4) of the said Act. In my view, the

impugned order passed by the learned Minister is totally perverse and thus deserves to be set aside.

47. I therefore pass the following order :-

(i) The impugned order dated 26th July, 2017 passed by the respondent no.1 in Appeal No.MUN-4427/Case No.47/Navi/5 of 2017 filed by the

respondent no.4 is quashed and set aside.

(ii) The Appeal No.MUN-4427/Case No.47/Navi/5 of 2017 filed by the respondent no.4 is dismissed.

(iii) Rule is made absolute in terms of prayer clauses (a) and (b).

(iv) There shall be no order as to costs.

(v) Parties to act on the authenticated copy of this judgment.