

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

[Rule 4(e) (ii) of the Bombay High Court
Public Interest Litigation Rules, 2010]

PUBLIC INTEREST LITIGATION (PIL) PETITION No.: _____ of 2016

In the matter of Article 14, 19,
21, 243-S & 226 of the
Constitution of India (as
amended from time to time);

And

In the matter of 74th Amendment
to the Constitution of India (as
amended from time to time);

And

In the matter of Part IX-A of the
Constitution of India (as
amended from time to time);

And

In the matter of Sections 50 TT,
50 TU, 50 TV, 50 TW and 50TX
of the Mumbai Municipal
Corporation Act, 1888

And

In the matter of Model Nagar Raj
Bill, 2005 prepared by
Government of India, Ministry of
Urban Development

1. LOKSATTA MOVEMENT,
through its National President
Mr. Surendra Srivastava, A
Non-Profit civil society
movement, having its regional
office at Base Unit-6, Bycula
Service Industries Premises,

Dadoji Konddeo Rd, Byculla
(East), Mumbai 400 027.

2. FOUNDATION OF
DEMOCRATIC REFORMS,
through its authorized
signatory, Ms. Ankita Verma,
A Non-Profit research and
advocacy organisation, having
its regional office at Base Unit.
11, Bycula Service Industries
Premises, Dadoji Konddeo Rd,
Byculla (East), Mumbai 400
027.
3. LOKSATTA PARTY, through
its State President, Dr. Kedar
Diwan, a registered political
party and having its
Maharashtra Unit office at
Base Unit No. 4, Byculla
Service Industries, Dadoji
Kondeo Road, Byculla (East),
Mumbai 400 027

PETITIONERS:

Versus

1. UNION OF INDIA through
Ministry of Urban
Development Maulana Azad
Road, Rajpath Area, Central
Secretariat,
New Delhi - 110001
2. STATE OF MAHARASHTRA
through Ministry of Urban
Development, Mantralaya,
Mumbai - 400 001
3. Municipal Corporation Of

Greater Mumbai (MCGM)
BMC Head Quarters,
Mumbai - 400 001

4. Municipal Commissioner,
Municipal Corporation of
Greater Mumbai (MCGM)
BMC Head Quarters,
Mumbai -400 001
5. Bhartiya Janta Party
Having their office of
Maharashtra State Unit at;
C.D.O. Barrack No. 1,
Vasantrao Bhagwat Chowk,
Near Yogakshema,
Nariman Point,
Mumbai - 400020
6. Indian National Congress
Having their office of
Maharashtra State Unit at;
Tilak Bhawan, Kaka Saheb
Gadgil Marg, Prabhadevi,
Mumbai - 400025
7. Shiv Sena having their office
of Maharashtra State Unit at;
Shivsena Bhavan,
Ram Ganesh Gadkari Chowk,
Dadar, Mumbai – 400028
8. Nationalist Congress Party
Having their office of
Maharashtra
State Unit at;
Free Press Journal Marg,
Nariman Point, Mumbai,
Maharashtra – 400021

RESPONDENTS

TO
THE HON'BLE CHIEF JUSTICE
AND OTHER PUISNE JUDGES
OF THIS HON'BLE COURT

THIS HUMBLE
APPLICATION OF THE
APPLICANT ABOVENAMED

PUBLIC INTEREST LITIGATION PETITION

**1. PARTICULARS OF THE CAUSE OF ACTION ON WHICH THE
PETITION IS FRAMED:**

This Petition is founded on the 74th Constitutional Amendment; and for its enforcement in letter and spirit. The fundamental philosophy reflected in the aforesaid amendment was, and is, de-centralization of power and empowering citizens through participation in local self-governance. The "Legislature" having discharged this onus by amending the Constitution for enabling functioning of true democracy; the "State's Executive" has failed and or neglected to carry out faithfully the intent of the amendment by giving lip service to the amendments so that there is neither de-centralization, nor empowerment of people; with the result that the Petitioner is compelled to approach the "Judiciary" with a prayer for issuing an appropriate Writ, Order or Direction to the "Executive" at the National and State Level for exercising its authority and power for giving effect to the 74th Amendment to the constitution of India. Failure to exercise jurisdiction vested in "State" or an Authority, which is "State" for the purpose of Article 12, warrants use of Extra Ordinary Powers vested in this Hon'ble Court, and the present Petition is made in that hope.

Petitioner Submits that 80% to 85% quality of life of citizens in urban India depends on the quality of services provided by municipal authorities' i.e Respondent No. 3 in Mumbai. The local bodies are not ready and have shown marked unwillingness to provide efficient services on account of a variety of reasons, including the failure to hold regular elections, prolonged supersession's, unaccountable/non-transparent system & processes, deployment/creation of multiple agencies in having overlapping functions, state government's interference and inadequate devolution of funds etc. As a result, Urban Local Body has failed to perform effectively as vibrant

democratic units of governance including local self-governance. The Petitioners are filing the present Public Interest Litigation ensuring correct and proper interpretation and implementation of the 74th Constitution Amendment not only in letter but also in its spirit due to complete failure and/or neglect shown by Respondent Nos. 2 and 3 also in giving effect to the mandatory provisions for Community Participation as per Model Nagar Raj bill under JNURM, while framing Sections 50 TT, 50 TU, 50 TV, 50 TW, 50 TX of the Mumbai Municipal Corporation Act, 1888 and to reconstitute the Ward Committees not only in letter but also in spirit of the 74th Constitutional Amendment Act, 1992 in the City of Mumbai.

2. PARTICULARS OF THE PETITIONERS:

The Petitioner No.1 is “Loksatta Movement”, a Non-Profit and civil society movement registered with Office of Registrar of Societies, Hyderabad under Registration No.4963 of 1997 dated 6th October, 1997. Amongst various efforts for political and governance reforms, one of the objectives of the Petitioners is to make governance institutions truly transparent, accountable, responsive and efficient at all levels for creation of a suitable environment for effective democratic functioning leading to greater human happiness index and to ensure self-corrective institutional mechanisms of governance. The approach on one hand is by advocating various political/governance reforms to various governments, political parties, parliamentarians, legislatures and government institutions etc, on the other hand by building public opinions/movement as and when required through various public campaigns including round table conferences, seminars & public meetings. The Petitioner No.1 undertakes and craves leave to produce the copy of its Certificate of Registration and Memorandum of Association as and when called upon to do so.

Petitioner No.2 is “Foundation for Democratic Reforms”, a Non-Profit and voluntary association registered with Office of Registrar of Societies, Hyderabad under Registration No.5741 of 1996 dated 6th October, 1997. The primary objective of the Petitioner No.2 is the welfare of the general public at large. It is primarily a research organization in the field of political and governance reforms. Petitioner No.2 is recognized by D.S.I.R., Government of India as “Scientific & Industrial Research Organisation” The following are some of its office bearers:-

(i) Dr. Jayaprakash Narayan, (Former I.A.S. Officer of 1980 batch, who left IAS at the age of 38 in 1996, after 16 years of meritorious service, to start the political and governance reforms movement)

(ii) Mr. Surendra Srivastava; (Former President of The Great Eastern Shipping Co. Ltd, who left corporate service in 2005 at the age of 45 to join the political and governance reforms movement.

(iii) Mr. Suresh Nandawat, a practicing Chartered Accountant.

(iv) Ms. Ankita Verma, a practicing advocate and various others.

The Petitioner No.2 undertakes and craves leave to produce the copy of its Certificate of Registration and Memorandum of Association as and when called upon to do so.

The Petitioner No. 3 took birth and registered as a political party under Section 29A of *The Representation of the People Act, 1951* with the Election Commission of India (ECI) *vide* proceedings No. 56/152/2006/J.S.III, dated 22nd December 2006, out of a Non Governmental Civil Society Organization “Loksatta Movement” registered in the year 1996. Ten years work as a reform movement led us to believe that unless the vicious cycle of vote bank, muscle power, money power and dynastic politics is brought down, the ethical politics & good governance will remain dream despite India attaining Independence in the year 1947. Thus Loksatta Party seeks to promote and establish a platform for ethical politics by dismantling Vote Bank, Money Power, Muscle Power and Dynastic politics across India. Lok Satta Party will take long time to break this vicious cycle and therefore the party growth will be slow and incremental. The seekers of ethical politics will require determination, long term vision & sense of balance. Keeping this in mind Lok Satta Party is slowly but surely becoming a platform for those who strongly believe in politics as a noble endeavor to serve people. The Petitioner No. 3 undertakes and craves leave to produce the copy of its Registration document and constitution as and when called upon to do so.

The Petitioners takes the PIL route through judiciary as the last resort & after exhausting all other advocacy efforts like successful PIL for

cancellation of 2G licenses in honorable Supreme Court, all in the interest and welfare of the general public.

In fact, in the aftermath of tragic failure of governance, depicted by the famous deluges of Mumbai on 26th July, 2005, and seeing the need of making Mumbai governance effective, accountable and transparent, more than 50 NGOs came together under the leadership of Petitioner No.1, with research work done by petitioner number 2 and launched the famous **“Vote Mumbai Campaign”**. The contours of Vote Mumbai Campaign were as under:-

- a. Constitution of empowered "Ward Committees" for each of the 227 councilors divisions/elected Corporator Wards and devolution of funds, functions and functionaries on the basis of “principle of subsidiarity” as per letter and spirit of 74th amendment.
- b. Constitution of empowered 'Area Sabhas' for population within the jurisdiction of every polling booth for direct citizen participation in local self governance & involvement in civic affairs and local decision making on the basis of “principle of subsidiarity / de-centralization”
- c. Election of two Area Sabha Representative’s, one female and one male from each polling booth and making them members of respective ward committees chaired by respective Councilor/Corporator.
- d. Effective and full empowerment of Mumbai’s Mayor including direct election of the Mayor by all voters in the city on the lines of major urban centers in the world thus making mayor directly accountable to citizen.
- e. Constitution of an effective and empowered Metropolitan Planning Committee for Mumbai metropolitan region as envisaged under the Constitution under Mumbai Mayor's chairmanship for effective coordination among all the multiplicity in the MMR region, which are working now in isolation.
- f. Statutory provision for DISCLOSURE NORMS, RIGHT TO RECALL, OMBUDSMEN (Lokadhikari), INDEPENDENT

AUDITORS, CITIZEN CHARTERS WITH PENALTIES, BENCH MARKING OF SERVICE LEVELS, E-GOVERNANCE.

In support of the Campaign and pushing its acceptance by the Government, Legislators, Councilors/Corporators and the political parties listed above, the following campaign activities were undertaken to sensitize people of seriousness of mis-governance and reforms required to fix the same:-

- i. Personal one-to-one meeting with PPT presentations with key leaders/parliamentarians, legislators, councilors/corporators of all political parties.
- ii. A detailed reform proposal presentation to then Mayor of Mumbai along with more than 100 Corporators.
- iii. Collection of more than 7 lakhs signatures in support of aforesaid reforms.
- iv. Conducting a human chain by more than 4000 school going children to highlight the serious failure of governance and that it needed reforms.
- v. Conducting numerous street plays across Mumbai to highlight the peoples' desire for better accountable and transparent governance.
- vi. Inter-collegiate debates on failure of Mumbai governance and the type of reforms needed in collaboration with Mumbai University and in presence of highly placed dignitaries, administrators, police officials as judges.
- viii. Petition to Hon'ble Chief Minister of Maharashtra.
- ix. Petition to Hon'ble Dy.Chief Minister of Maharashtra.

The Petitioners undertake and crave leave to produce, refer to and rely upon the details of the PILs filed by them as well as the compilation of material including PPT, video recordings, news reports etc with regards to Vote Mumbai Campaign as and when called upon to do so.

3. Descriptions of the Respondents:

The Respondent No. 1 is the Union of India, through its urban development department. The Respondent No. 2 is the State of Maharashtra through its Urban Development Department. The

Respondent No. 3 is the Local Municipal Corporation in charge of providing basic civic amenities/services to the public in the city and more particularly implementing the duties specified in the Mumbai Municipal Corporation Act, 1888. Respondent No. 4 is the principle officer of Respondent No. 3 and responsible for execution & monitoring the service provided and works done by the Respondent No. 3. The Respondent Nos. 5 to 8 are major political parties governing State of Maharashtra and BMC from time to time. All the Respondents will be parties directly affected by the outcome of this petition.

4. DECLARATION AND UNDERSTANDING OF THE PETITIONERS:

- I. That the present petition is being filed as a last resort by way of Public Interest Litigation and the Petitioners do not have any personal interest in the matter. The petition is being filed in the interest of members of public who have the right to have a say in local civic activities and governance of the area, which affects their day-to-day life and which are provided for in the Constitution of India.
- II. That the Advocate representing the Petitioners are doing so pro-bono and in the interest of the Society. No fee or charges are being billed by the Advocate to the Petitioners and ancillary expenses are borne by the Petitioners.
- III. The source of income of the Petitioners is as and by way of membership fees, voluntary donations and the P.A.N. with the Income Tax Department of the Petitioner No.1 is AAATL2275N and that of Petitioner No.2 is AAATF0233E and that of Petitioner No. 3 is AAABL0145R.
- IV. That a thorough research has been conducted in the issues raised in the petition.
- V. That to the best of the Petitioner(s) knowledge and research, the issue raised was not dealt with or decided and that a similar or identical petition was not filed earlier by him/it.

- VI. That the Petitioners have understood that in the course of hearing of this petition, the Court may require any security to be furnished towards costs or any other charges, the Petitioners shall have to comply with such requirements.

5. FACTS IN BRIEF, CONSTITUTING THE CAUSE:

- I. The framers of the Constitution believed that “Democratic” principles and system enshrined in the Constitution would percolate down to the lowest denominated unit in the country, viz. villages. It was clearly spelt out in the letter and spirit of the Constitution, under the “Directive Principles”. Since these principles were intended to embody the fundamental philosophical framework of the country; these were made legally unenforceable. But that proved to be their weakness. Nothing happened in that direction for more than 40 years after the people of India gave themselves the Constitution. The Governments of the day tended to centralize rather than de-centralize; conceal rather than be transparent; disempower rather than empower, monopolize rather than encourage participatory local self governance. Eventually 73rd and 74th Amendments were passed, whose avowed purpose was to give vibrancy to the principles and practices of local self-governments with the “principle of subsidiarity”. What was considered essential for the villages under the 73rd Amendment was considered equally essential for urban local areas and bodies, since both suffered from the same malady and were proving detrimental to the progress and welfare of the country and its people. In this petition, however, the focus is on 74th Amendment only.
- II. The 74th Amendment became part of the Constitution in June 1993. In the statement of objects and reasons it is stated that many local bodies in the States had become weak and ineffective on account of variety of reasons, which included, inadequate devolution of powers, funds and functions. These reasons resulted in the failure of Urban Local Bodies in their effective performance as vibrant democratic units of local self-government. Therefore, it was felt necessary to make provisions for various matters, chief amongst them being –
- Permit Local Bodies to have powers of taxation with respect to specified matters;

- Designate functions so as to decentralize the power structure;
 - Provide adequate representation for the weaker sections and Scheduled Castes, Scheduled Tribes and women;
 - Freedom to the State to make laws for the creation of Ward Committees and for the appointment of Chairpersons for the Municipalities and Ward Committees;
 - Devolution of powers and responsibilities with respect to preparation of plans for economic development and social justice.
- III. Article 243W was introduced, which permitted a State to make laws and endow –
- (a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to –
 - (i) the preparation of plans for economic development and social justice;
 - (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule.
 - (b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.
- IV. The Twelfth Schedule was added to the Constitution. The Twelfth Schedule sets out the following matters in respect of which the State was to make laws under the power given by Article 243 W: -
1. Urban Planning including town planning.
 2. Regulation of land-use and construction of buildings.
 3. Planning for economic and social development.

4. Roads and Bridges.
 5. Water supply for domestic, industrial and commercial purposes.
 6. Public health, sanitation conservancy and solid waste management.
 7. Fire Services.
 8. Urban forestry, protection of the environment and promotion of ecological aspects.
 9. Safeguarding the interests of weaker section of society, including the handicapped and mentally retarded.
 10. Slum Improvement and upgradation.
 11. Urban property alleviation.
 12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
 13. Promotion of cultural, educational and aesthetic aspects.
 14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
 15. Cattle ponds; prevention of cruelty to animals.
 16. Vital statistics including registration of births and deaths.
 17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
 18. Regulation of slaughter houses and tanneries.
- V. Apart from making provisions for the constitution of Municipalities, Article 243R indicated the composition of Municipalities. Article 243S provided for constitution of Ward Committees. Article 243T provides for Reservation of Seats for the Scheduled Castes and Scheduled Tribes and for women. Article 243U makes the duration of Municipalities for a term of five years. For enabling the Municipalities to have sufficient funds, Article 243X grants power to impose taxes, duties, tolls and fees and allow the State Government to assign funds, so collected, in favour of the Municipalities. Article 243Y allows the Finance Commission, set up under article 234-I, to make recommendations to the Governor as to the principles which should ensure that the State makes available to the Municipalities adequate funds to carry out its duties and responsibilities. Article 243ZE makes it mandatory that a Metropolitan Planning Committee be constituted for a Metropolitan area as a whole.
- VI. All the provisions made in the 74th Amendment indicate a clear scheme for empowering, strengthening and making self-sufficient, the

Urban Local Bodies to enable them to function as democratic vibrant units or centers of local self-governance.

VII. In summary, the 74th Constitutional Amendment, with regard to urban local bodies, consists of the following:

1. Devolution of more functions and taxation powers.
2. Revenue sharing with State Government funds.
3. Regular conduct of elections.
4. Reservation of seats for SCs, STs and for women.
5. Uniform composition of the urban bodies throughout the country.
6. Prescription of criteria for categorizing urban local bodies like Town Panchayat, Municipalities, City Municipal Corporations.
7. Restriction on the formation of Townships only to industrial areas where the entire municipal services are provided or proposed to be provided by the industry.
8. Formation of District Planning and Metropolitan Planning Committee.

In letter and spirit, the 74th Amendment calls for taking democracy to the grassroots levels through “Ward Committee” concept making local governance more manageable and effective. Had the Ward Committees were formed as were contemplated in the Amendment; these Committees would enhance or improve the delivery of services to citizens and provide a better and vibrant democracy.

VIII. The Eleventh Central Finance Commission (setup in July 1998) observed that almost all the States have made the necessary legislative changes in conformity with the 73rd and 74th Constitutional Amendments. But many of them had not yet transferred to the local bodies, the schemes relating to the functions included in the Eleventh (11th) and Twelfth (12th) Schedules. Consequently, the funds and concerned staff for these schemes continue to remain under the control of the State Government even today. In some cases, the local bodies had been entrusted to implement the schemes, but without being directly involved in their planning and formulation. In some States, the local bodies were empowered to levy taxes, but the necessary rules were yet to be framed. The Commission was categorical that necessary action was required to be taken on these aspects as early as possible.

IX. Article 243W (Twelfth Schedule) empowers the self-governments in the cities to undertake 18 tasks. This exhaustive list shows that if the State empowers the Urban Local Bodies in cities to undertake all these activities, the State Government will be free to concentrate its attention on other important issues in the State. Most of its energies will be confined to legislative activities. Although the objective and purpose behind 73rd and 74th Constitution Amendment Acts was to keep the State Governments free by giving whatsoever powers it likes to the Panchayats and autonomous bodies in the cities, the conduct of the State Governments shows that the State Governments are not willing to part with all these powers.

X. In the background of the 74th Amendment, passed nearly 23 years ago, what is the situation in Mumbai City and Mumbai Metropolitan Region? Did Maharashtra Government take steps to give effect to the letter and spirit of the 74th Amendment? Has the Mumbai Municipality become the democratic vibrant unit of local self-governance it was expected to be?

XI. **74th Amendment & Mumbai**

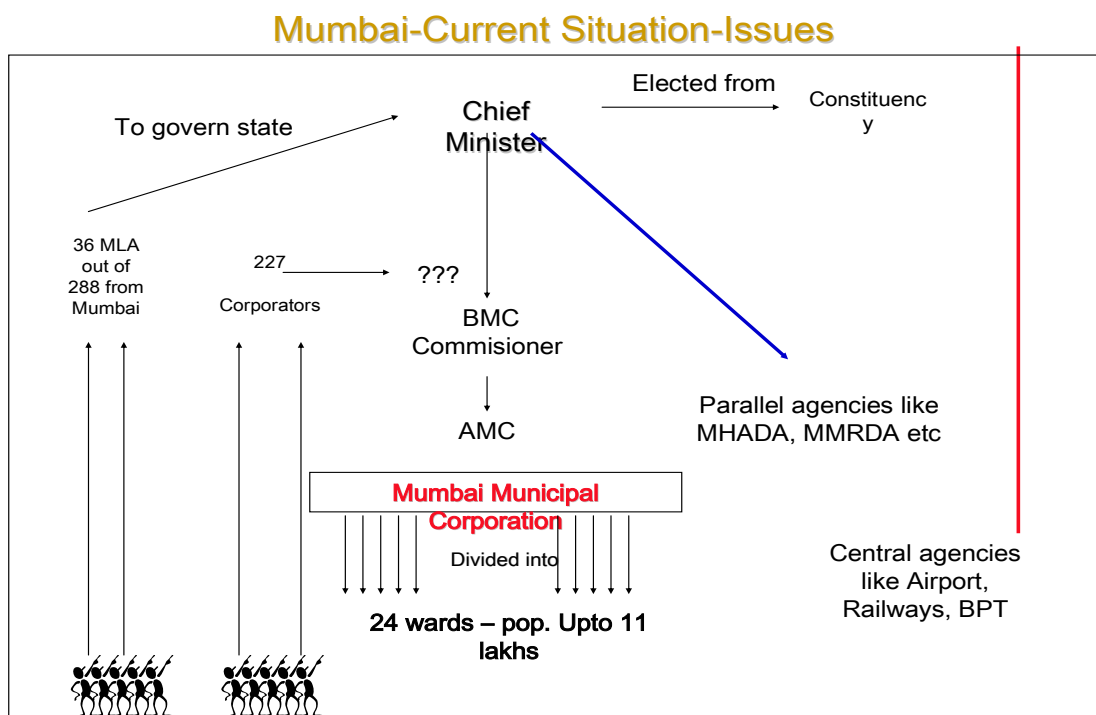
1. The State Governments were mandated to incorporate the provisions of these amendments. It was hoped that the State Governments would provide the flesh, bones and muscles to lend life to the amendments according to the peculiarities of each region. It was hoped that power would be devolved on the people by the process of de-centralization. But, what happened in Maharashtra and, more particularly in Mumbai city and Mumbai Metropolitan Region?
2. Maharashtra made changes in its existing Municipal laws, including the Bombay Municipal Act (BMC Act, for short), to provide for – constitution of Metropolitan Planning Committee, constitution of Ward Committees, reservation of seats for Scheduled Castes, Scheduled Tribes and women. But these changes have not ensured devolution of power to the people or encouraged local self-governance in any of the areas listed in Twelfth Schedule. For example, - (a) the act for constituting Metropolitan Planning Committee was passed, but such a committee never functioned as such and all the planning continued to be done under the Metropolitan Region and Town Planning Act. (MRTP Act, for short); (b) the BMC Act was amended to provide for Ward Committees, but the same neither provided for any

participation of the people in its constitution nor were the same constituted to be the effective tools of local self-governance, as is explained in detail later on; (c) instead of devolving power on BMC, several para-statal organisations were created with parallel authorities or with greater power, thus, rendering ineffective the functioning of BMC as a democratic unit of self-governance.

3. A further problem or flaw in BMC Act also remained un-rectified. That problem originated in the “Commiserate” form of administration in the Municipality. BMC Act was first enacted as early as 1888. Over the time, it has also undergone several amendments, with the result that it now consists of 21 Chapters, nearly 870 Sections and 40 Schedules. Although, it is a great piece of legislation, it has continued the pattern where “policy” matters are decided by the “Corporation” consisting of elected Corporators (227, at present), whereas all the executive powers are vested with the “Commissioner”, who is appointed by the State Government. This system, no doubt, suited the foreign rulers, for whom permitting limited self-rule was an acceptable experiment for perpetuating their rule in India. What this system does is that it separates the authority from the power. It separates the power from responsibility. It offends the first principles of management. People elected to rule have no power to rule, but only responsibility. That has become the lot of Corporators, who continue to be blamed although they have no power to oversee or ensure that the policies decided by them are executed faithfully.
4. The second major flaw is the existence and operation of parallel authorities having jurisdiction over the same area of operation. The State Government, many times, has tried to find short-term solutions to perceived or real problems in the area of operation of BMC or Mumbai Metropolitan Region. Therefore, all these agencies have no method by which duplication or overlapping of their operations can be avoided. There is no mechanism to synergies their effectiveness. In fact, the philosophy behind constitution of Metropolitan Planning Committee was to provide for the common platform where diverse authorities could come together and co-ordinate their efforts in such a way that they do not cancel out or nullify the effectiveness of each other. Mumbai City and Mumbai Metropolitan Region has several masters like, Municipal Corporations, Mumbai Metropolitan Regional Development Authority (MMRDA), MHADA, Board under the MRTP Act and other para-statal agencies. Add to that the areas in Mumbai

City and Mumbai Metropolitan Region falling under the control and jurisdiction of Airports Authority of India, Railways, Telegraph Dept, and Port Trust Authorities. All of these operate as semi-autonomous units. Some of these units function under the control and direction of the State Government and some under the Central Government. It should not be surprising that the governance system is not efficient. Furthermore, the Municipal Corporation still follows “Single Entry” book keeping system. There are no norms prescribing periodical disclosure of relevant and important information for the beneficiaries of these units of governance. There is no single coordinating authority for “Transport” to integrate the planning and execution of various modes of transportation. There is no single authority to collect and monitor vital reliable “data” or information on which the entire planning ought to be based or founded.

5. The current system depicted in a diagrammatical form will look something like the following: -



It will be seen that the voter is nowhere in the picture in the above diagram. He does not elect the “Mayor”, he does not elect the “Commissioner”, and he has no place in the “Ward Committees”. Except electing the Corporator once in five years, he has no role to play. Where is the self-governance? The Corporators themselves have very little control over the governance, if governance means ensuring efficient delivery of services. In addition, if other agencies work on their agenda independently, the Corporators are as helpless as the voters, who elect them.

6. Therefore, it is clear that the present structure or system of governance suffers from the following deficiencies, each one of which is indicative of deficiency in the local self-governance:

- There is no devolution of power to people.
- There is no empowerment of people so that there is no participation of the people in local governance.
- There is no accountability to the people since people governing are not elected by the people.
- There is no transparency in the system of governance, which is a natural outfall of want of accountability.
- There is no democratization of government, with the result that there is absence of democratic governance at the grassroots.
- Hereto annexed and marked as “**Exhibit – A**” is the copy of the 74th Amendment along-with with its Statement of Objects and Reasons and 12th Schedule of constitution.

7. The Petitioner, by way of this Petition shall be delving into and pointing out concerns with regards to the half hearted attempt due to vested interest towards implementation of 74th Constitutional Amendment, Article 243 S of the Indian Constitution, Mandatory reforms provisions with regards to Urban local Self Governance under JNNURM in the form of Model Nagar Raj Bill, Section 50 TT, 50 TU, 50 TV, 50 TW and 50 TX of the Mumbai Municipal Corporation Act, 1888,

8. ARTICLE 243-S & FORMATION OF WARD’S COMMITTEES

- (i) The 74th Amendment in its Article 243 S provides constitution of “Ward Committees” to ensure greater & direct citizen participation including that of weaker sections including women, in the local decision making. The amendment envisages creation of Ward’s Committees through division of all Municipalities having population of more than 3 Lacs into territorial constituencies known as “Wards”. Thus, the benchmark for formation of Wards and Ward Committees was set as low as population of 3 lakhs. Clearly the concept was to render services more efficiently and have better governance. In fact

Ward's Committees with sufficient funds/functions and functionaries were to form nucleus of local Self Governance in respect of several key functions specified in a given geographical area called as "Ward" on the basis of the "Principle of subsidiarity".

(ii) As per Article 243S (1) every city with a population exceeding 3 Lakh was expected to be divided in two or more Wards and have a Ward Committee. It was clearly envisaged that a population of 3 lakh was considered high for a single authority like municipality to provide services effectively and therefore it was envisaged that even a municipality with a population of 3 lakh must be divided in to two or more wards. In effect a population of ward needs to be less than 3 lakhs, if to be effective. Effectively, it was envisaged that if a municipality is divided in to two wards, the population of each ward will be 1.5 lakhs, if divided in to 4 wards, the population of each wards will be 75 thousand but in no case population of each ward can be more that 1.5 lakh for effective people participation and effective service delivery. Article 243S prescribed that the State legislature by law, ought to make a provision for the composition of and defining the territorial area of the Ward Committees and the manner for filling the seats for Ward Committee.

(iii) As per Article 243S, if the Ward Committee consisted of one ward, then the Councilor (the member representing that ward, i.e. the elected representative) became the Chairman of the Ward Committee, whereas in case when the number of the wards were combined to constitute one Ward's Committee. In that case the Councilor (member representing such ward, i.e. elected representative) elected a Chairperson from amongst themselves.

9. INCORPORATION OF SECTION 50 TT IN THE MUMBAI MUNICIPAL CORPORATION ACT

In pursuance to the 74th Amendment, in 1994 Section 50 TT was incorporated in the BMC Act, 1888. Section 50 TT reads as follows:

Wards Committees

50TT. (1) *The Corporation shall constitute not more than twenty five Wards Committees each comprising such contiguous wards as may be decided by the Corporation.*

(2) *Each Wards Committee shall consist of—*

- (a) the Councillors representing the electoral wards within the territorial area of the Wards Committee ;*
- (b) the Ward Officer incharge of the territorial area of the Wards Committee ;*
- (c) such number of other members, not exceeding three, nominated by the Councillors referred to in clause (a), from amongst the members of recognised non-Government Organisations and community based organisations engaged in social welfare activities working within area of the Wards Committee :*

Provided that, such persons are registered as electors in the Wards within the jurisdiction of the Wards Committee :

Provided further that, the norms for recognition of the non-Government Organisations, the requisite qualification for nomination as members and the manner in which they are to be nominated shall be such as the State Government may, prescribe.

(3) *The duration of the Wards Committee shall be co-terminus with the duration of the Corporation.*

(4) *The elected Councillors referred to in clause (a) of sub-section (2) shall at the first meeting of the Wards Committee in each official year, elect from among themselves the Chairperson who shall hold office until the first meeting in the next following official year.*

(5) *The Chairperson of the Wards Committee shall be deemed to have vacated the office as soon as he ceases to be a Councillor.*

(6) *In the event of the office of the Chairperson falling vacant before the expiry of its term, the Wards Committee shall elect a new Chairperson :*

Provided that, the Chairperson so selected shall hold office so long only as the Chairperson in whose place he is elected would have held office if such vacancy had not occurred.

(7) *The functions of the Wards Committee shall, subject to the general supervision and control of the Corporation, be—*

(a) speedy redressal of common grievances of citizens, connected with local and essential municipal services like water supply, drainage, sanitation and storm water disposal;

(b) to consider and make recommendations on the proposals regarding estimates of expenditure pertaining to the wards under different heads of account of the budget before being forwarded to the Commissioner ;

(c) to grant administrative approval and financial sanction to the plans for municipal works to be carried out within the territorial area of the Wards Committee costing upto rupees five lakhs provided that specific provision exists therefor in the budget sanctioned by the Corporation.

(d) to make recommendations in regard to water supply, solid waste management, sewage disposal, drainage, storm water management, sanitation works and development scheme and to take periodical review thereof, to enlist people's participation in the voluntary activities necessary for successful implementation of the developmental activities of the Corporation, to ensure maintenance of parks in the ward and to recommend for appropriate budget allocation to each electoral ward.

(8) *Notwithstanding anything contained in sub-section (7), the Corporation may by a resolution, delegate to a Wards Committee such other powers, authority and functions as it may deem fit and expedient.*

(9) *The Wards Committee shall meet at least once in a month at the Ward Office.*

10. WARD'S COMMITTEE FORMATION IN MUMBAI, MAHARASHTRA

- a. Greater Mumbai is an urban agglomeration with population of 1,24,42,373 as per 2011 census, (the largest in India and one of the sixth largest in the world). For administrative purposes, Greater Mumbai is divided into 24 administrative wards each represented by an unelected bureaucrat called assistant municipal commissioner, appointed by State Govt. Mumbai is also divided into 227 electoral wards represented by an elected Councilor/Corporator directly accountable to citizens.
- b. Post 74th Amendment and Section 50TT of BMC Act, 1888, in complete derogation of true intent of the Amendment and by committing a fraud on the electorate; only **16 Ward's Committees** were established out of 24 Administrative Wards as under:-
1. 'A', 'B' and 'E' Ward Committee
 2. 'C' and 'D' Ward Committee
 3. 'F/South' and 'F/North' Ward Committee
 4. 'G/South' Ward Committee
 5. 'G/North' Ward Committee
 6. 'H/East' and 'H/West' Ward Committee
 7. 'K/East' Ward Committee
 8. 'K/West' Ward Committee
 9. 'P/South' Ward Committee
 10. 'P/North' Ward Committee
 11. 'R/South' Ward Committee
 12. 'R/Central' and 'R/North' Ward Committee
 13. 'M/West' Ward Committee and 'M/East' Ward Committee
 14. 'S' and 'T' Ward Committee
 15. 'L' Ward Committee
 16. 'N' Ward Committee
- c. All 227 electoral wards were brought under the jurisdiction of the (16) sixteen Ward Committees. Elected Corporators were made members of the respective Ward Committees within which their electoral wards fall.
- d. Each Ward's Committee consists of - Several councilors (Average fourteen), The AMC of respective administrative ward, Such number of other members, not exceeding 3, nominated by the councilors in the ward's committee, from amongst the members of recognized non-government organizations and community based organizations

engaged in social welfare activities within the area of the Ward's Committee.

6. ISSUES CONCERNING EXISTING WARD'S COMMITTEES IN MUMBAI, MAHARASHTRA – STRUCTURAL & FUNCTIONAL

- a. Petitioners state that Mumbai is the capital city of Maharashtra and also the financial capital of India. It is one of the most populous city in India with a population of 1.2 Crs (basis 2011 census) and not including daily floating population from nearby cities for jobs in Mumbai and the tourists population.
- b. Petitioners state that Ward's Committees are expected to play a vital role in providing, suggesting and monitoring various civic services. Solving day to day problems. Maintain minimum level of quality infrastructure including Municipal Schools, PHC's, Internal Roads, Street lighting, Open Spaces, Playgrounds, Parks, Footpath free of encroachments, making places for garbage segregation & disposal, beautification & overall cleanliness etc.
- c. Petitioners state that the main & primary function of the Ward's Committee is to act as legitimate/formal platform for local self-governance with citizen participation as per not only letter but also in the spirit of the 74th amendment with principal of subsidiarity.
- d. Petitioners state that as per present structure there are only 16 Ward's Committee in the city of Mumbai and they are formed on the basis of 24 administrative Wards and not on the basis of population formula defined for formation of Ward's Committees as per 74th Amendment.
- e. Petitioners state that the 16 Ward Committees constituted are neither as per the letter nor the spirit of the 74th Amendment.
- f. Petitioners state that the purpose of 74th Amendment is to give opportunity to citizen to participate directly in the day to day affairs of civic services at the local level.
- g. Petitioners state that while forming the Ward's Committee, the concept of citizens participation was not at all taken into consideration and Ward's Committee were constituted on the basis of

already formed 24 administrative wards.

- h. Petitioners state that Parliament through the 74th Amendment envisaged that a population of maximum 3 Lakhs is considered as sufficiently large which cannot be managed by a single authority and needs to be further divided into wards & governance must be decentralized through ward's committee. Thus, a population of maximum 3 Lakhs is a benchmark for which two or more Ward's Committee have to be established.
- i. Petitioners state that in city of Mumbai there are only 16 Ward's Committee formed to handle the population of 1.25 Crs. So approximately each ward Committee is handling, on average, a population of more than 7.75 Lakhs, as against the benchmark figure of having more than one Ward Committee as soon as population was more than 3 Lac. This is neither in accordance with the letter nor the spirit of the 74th Amendment.
- j. Petitioners state that since each Ward's Committee provides services to a population of average 7.75 Lakhs, the quality of services provided by the Municipal Corporation is adversely affected. No powers, functions and budgets are placed at the disposal of these Ward's Committee in accordance with the Amendment, and its Schedules.
- k. Petitioners state that the way in which current Ward Committees in Mumbai are currently established/constituted, following issues are faced:-
 - Mumbai has 227 electoral wards (each with a population of 60-70 thousand) and only 16 Ward's Committees which are not enough to handle the huge population.
 - Average population covered under each wards committee is as large as 7.75 lakhs (Hereto annexed and marked **Exhibit "B"** is the table showing the Ward Wise population of Greater Mumbai in the year 2001 and 2011).
 - Because of less number of Ward's Committees, Citizens are suffering from poor quality of essential civic services. The Petitioners undertake and crave leave to produce, refer to the compilation of material including video recordings, news reports etc with regards mis-

governance by BMC and suffering of people as and when called upon to do so.

- Powers assigned to the Ward's Committees are limited, ambiguous and insufficient to solve the basic problems.
 - Nominated members are cronies of political leaders/councilors and have little say in the business transacted by these Committees as they have no voting rights.
 - There is no scope of direct community participation or even consultation like Gram Sabha's
1. Petitioners state that to understand the issues/problems faced in Ward's Committees, following is the case study of one of the total 16 Wards in the City of Mumbai:
- P North Ward:
 - (i) Address of the Ward is P/N Ward Committee office Bldg., Liberty Garden, Mamletdarwadi Marg, Malad (West), Mumbai – 400 064 which consist of 46.67 sq.km. As per the Census of 2001 population of P/North ward was 7,98,775 and as per census of 2011 the population is 9,41,366. However, Population of same ward as per June 2007 for the purpose of Pulse Polio House to House Survey was 12,90,000. Budget of the P/North Ward Committee is Rs. 387.71 Crs. for 2016-2017.
 - (ii) This clearly shows that Wards Committee of P/N Ward is handling the population much more than 3.00 Lakhs.
 - (iii) P/North ward office is responsible for 370 MT garbage per day, 157.2 km of roadside Storm Water Drains, 9 Major Nallas, 32 minor nallas, 42 major roads and 155 minor roads, 10 health posts, 9 Municipal Dispensries. P/North Ward has 2 Municipal Hospitals and 2 Municipal Maternity Homes
 - (iv) As per data available of P/N Ward main issues raised by citizens in the Wards Committee meeting in the year 2013 to 2015 are related to Road, drainage, solid Waste management, Water Supply etc.

- (v) Data clearly shows that in year 2014 in P/N Ward 4238 complaints have been received by the Ward Office and out of that 2562 complaints have been solved and 1552 registered complaints were pending. This means more than 37% complaints are still pending in the P/N ward in 2014. In the year 2015, in P/N Ward 4028 complaints has been received by the concerned Ward and out of which action were taken only in respect of 2982 registered complaints. Thus action is pending in 1046 registered complaints. This means that more than 25% complaints are still pending in P/N Ward in 2015. However, this does not disclose the status of pending complaints of previous years.
- (vi) This clearly shows that P/N Ward committee is not able to effectively handle the problems of population of 9,41,366 and more.
- m. The Petitioners state that in 2013 total 65913 complaints have been received in the all the 24 Wards and action is pending on 35176 complaints i.e. 53% complaints are pending. Further, in 2014 total 66747 complaints have been received in the all the 24 Wards of Mumbai Municipal Corporation and action is pending on 41998 complaints i.e. 63% complaints are pending. In 2015, total 61910 complaints were received in all 24 wards and action was pending in 14985 complaints, i.e. 24% complaints are pending. At the same time, data shows that 91% of the councillors have asked less than 10 questions in Wards Committee meetings across the last four years. Whereas data about answers given by the administration to Point of Order questions raised in Wards committee meetings by the Municipal Corporators in the Year 2015, shows that the total number of pending questions has risen by approximately 5 times in the last 4 years (from 327 to 1530).
- n. Petitioners state that due to fewer number of Wards Committees many health problems are faced by common people in Mumbai. Since the last five years 33,442 people have died due to TB, averaging 6688 every year, a total of 19 fatalities daily in Mumbai. Dengue has gone up eight times in last five years, currently the total number of cases are 15,244. From 2014-15 to 2015-16, the number of cholera cases registered has increased seven times with 31 in 2014-15 to 207 in 2015-16 respectively. Diarrhoea has affected 118093 in Mumbai on an average in last three year. Estimated annual family income spent on

hospital and medical costs in Mumbai is Rs.13,675 crores. Four councillors who are members of Public Health Committee have not asked a single question on health in 2015-16. Petitioners state that people suffered from all these kinds of diseases due to inability of Ward's Committees to provide proper sanitation and primary preventative and curative health services to people through PHS's.

- o. Petitioners state that all these problems are faced by people as Ward Committees are not able to handle the large population which in all cases are more than 3.00 Lakhs in each Ward. Petitioners state that above data clearly shows that due to failure to constitute number of Ward Committees, as mandated and intended, common citizens are suffering. Petitioners further state that Quality of essential and basic services will improve if population is of manageable size resulting in better quality of life to the citizen. Petitioner's state that if 227 Ward Committees are constituted as envisaged under 74th amendment, each Ward Committee would be responsible for manageable number of population, i.e. 60-70 thousand population per Ward's Committee, then the citizens will be benefited. In fact conjoint reading of Article 243 R and Article 243 S also points out the similar intention of Law makers of the Country. The Petitioner submits that above data and figures are based on Research of Praja Foundation and records of MCGM. Hereto annexed and marked as **Exhibit "C"** is the report on working of ward committees as prepared by Praja Foundation and is of April 2016. Hereto annexed and marked as **Exhibit "D"** is the report of Praja Foundation on the state of health of mumbai and is of July 2016. Hereto annexed and marked as **Exhibit "E"** is the record of MCGM concerning the subject downloaded from their official website.

p. **ALARMING INDIRECT DOUBLE TAXATION ON CITIZEN**

- i. The Petitioners states that deficiency in services provided by the MCGM on account of State Govt and Legislature adopting faulty interpretation of the 74th Amendment has and is resulting extra cost burden on citizen which is equal to double taxation e.g:-
- ii. When a primary health centre (PHC's) of BMC in each Corporator ward does not function effectively, this pushes citizen to seek a private practitioner's and medicine through private chemists thus double taxation.

- iii. When municipal schools do not function effectively & provide quality education citizens are compelled to send their children to the private school/ classes at higher costs thus double taxation.
 - iv. Roads with unending potholes not only risk the safety of the citizen but also add to the cost of maintenance of vehicles thus double taxation.
 - v. When there are traffic jams an extra cost is incurred by the citizen in terms of additional fuel, time & energy thus double taxation.
 - vi. When there is the filth lying around across Mumbai creating pollution thus pushing citizen toward extra cost of health maintenance thus double taxation.
 - vii. When municipality does not supply safe and clean drinking water through tap thereby pushing citizen to incur capital cost and annual maintenance cost on machines like Aqua guard and/or gasoline fuel for boiling the drinking water thus double taxation.
 - viii. When pedestrians do not get open spaces, encroached footpaths, they are dissuaded towards physical activity, thus adding to the cost of health care maintenance, thus double taxation.
7. From the aforesaid, it could be clearly seen that a fraud has been played on the Constitution by intentional faulty interpretation of the 74th Amendment, and passing of a toothless legislation only as paying a lip service by incorporating Section 50 TT to the Mumbai Municipal Corporation Act, 1888. Not much has been, or can ever be, achieved in terms of civic amenities and despite 23 years having passed after the passing of the 74th Constitutional Amendment, the effects of the same remain to be seen on the ground in Mumbai. The problems in the pre 74th Constitutional Amendment times are reflections of the problems faced by the public at large today.

8. JNNURM

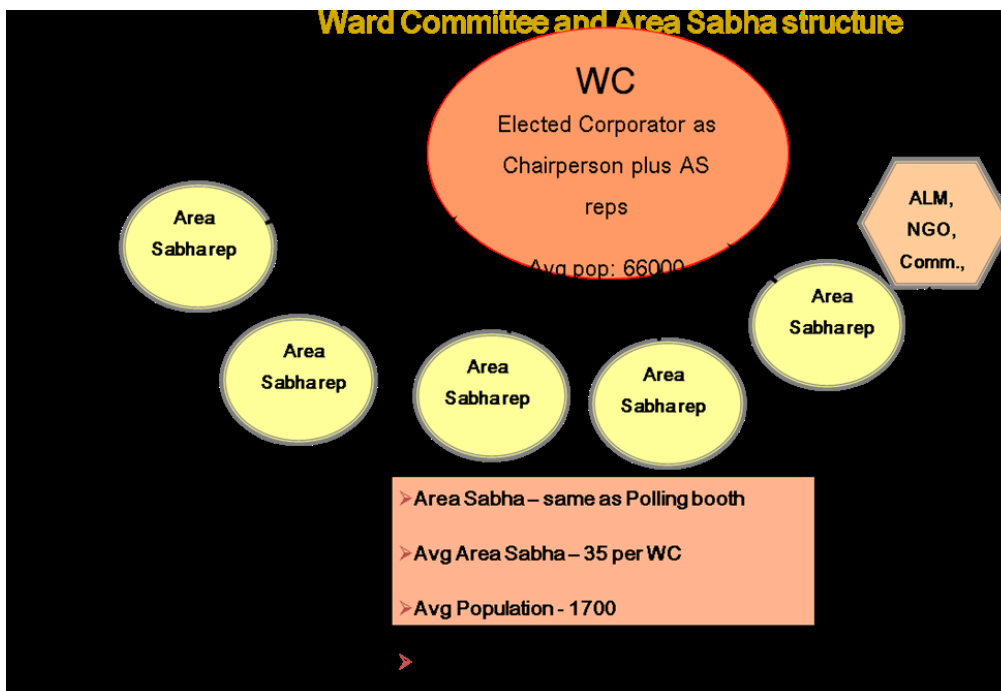
Petitioners further state that seeing the decay in urban governance and misinterpretation of 74th amendment by various state governments, in the year 2005 Union Government launched Jawaharlal Nehru National Urban Renewal Mission (JNNURM). The main aim of this Mission is to encourage reforms in the city's governance in the India and to focus on efficiency in urban infrastructure and service delivery mechanism, community participation and accountability of Urban Local Bodies (Municipalities) towards citizens. Petitioners state that for availing aid under JNNURM, it is one of the mandatory condition for the states to enact the Community Participation law i.e. Model Nagar Raj Bill. (Hereto annexed and marked **Exhibit "F"** is the copy of the Model Nagar Raj Bill, 2005 prepared by Government of India Ministry of Urban Development).

9. MODEL NAGAR RAJ BILL- STRUCTURE AND LINKAGE/ALIGNMENT/CONNECT BETWEEN AREA SABHAS AND WARD'S COMMITTEES ON THE BASIS OF "PRINCIPLE OF SUBSIDIARITY".

- a. Union government of India, through proposed community participation law recommended to state governments to implement 74th constitutional amendment in its entire spirit by forming correct numbers of ward's committees, form area sabhas at the polling booth levels with linkage through "area sabha representatives" as member in to each of the respective ward's committee as to create effective, Legitimate & formal platform for citizen participation and local self governance.
- b. Petitioners state that the purpose of model Nagar Raj Bill is to institutionalize Citizen Participation in the local civic functions. As per the provisions of Model Nagar Raj Bill, each Area Sabha is to consist of 2 to 5 polling booths means population of 2500 to 6000 people and each Area Sabha will elect their one/two (male/female) representatives called Area Sabha Representatives to be members of respective Ward Committee chaired by respective Corporator/Councilor.
- c. Petitioners further state that provision has been made in the Model Nagar Raj Bill, 2005 to constitute Ward Committees for each Electoral

ward in the Municipality i.e. one Ward Committee for approximately 50 - 60 thousand People. Further, Area Sabha representative within that ward will be the member of that Particular Ward Committee.

- d. Petitioners state that this clearly shows that in the Model Nagar Raj Bill an attempt that has been made to provide structure of governance for manageable population of approximately 60,000 People as also envisaged by 74th Amendment.
- e. The following diagram can be helpful in understanding the Model Nagar Raj Bill better.



- f. It proposes the creation of **Area Sabha** consisting of a group of about 1200-1500 registered voters in each polling booth. Every corporator ward will have 35-40 Area Sabhas in Mumbai. Each Area Sabha elects one/two (Male/Female) representative (Called Area Sabha Representative - ASR) who represents the area in the Ward's Committee.
- g. It proposes the creation of empowered **Ward's Committee** chaired by the elected corporator at the corporator ward level so that the ward committee will be empowered with certain funds, functions and functionaries allotted to it. A Ward Committee consists of all the elected ASRs being the 2/3 rd members and 1/3rd being selected on the basis of various interest groups of that ward like business, CBOs, NGOs. The ASR voices the concerns raised by members of his/her area in the ward committee and tries to get issues resolved.

- h. The members of the Area Sabha form various small groups and monitor various municipal services in the Area and if necessary, raise concerns on the same in the Ward Committee through the ASR.
- i. Area Sabha will generate proposals and determine priority of schemes and development programmes to be implemented in their locality.
- j. Area Sabha will identify deficiencies in services like water supply and street lighting etc and suggest remedial measures.
- k. Area sabha will have the right to obtain information from the concerned government officials about the services in their locality.
- l. Area sabha will have the right to be informed by the Ward Committee about every decision concerning the jurisdiction of the Area Sabha, and the rationale of such decisions made by the Ward Committee or the Government.
- m. The Ward Committee is the forum where ASRs meet to take collective decisions on ward development and quality of various services.
- n. The members of the Ward Committee will be empowered to obtain any information from the municipal officials pertaining to the development of the Ward
- o. The Ward committee will keep the tabs on the revenue and expenditure of the ward activities and also ensure that the development plans of the ward are synchronized with the overall development of the city
- p. The Ward committee will prepare the developmental calendar, prepare and compile ward plans, prepare ward budgets, maintain accounts, oversee developmental work.
- q. Ward Committee will be allocated certain funds based on Ward Infrastructure Index.
- r. Ward Committee will be accountable to Area Sabhas in that ward. Area Sabha members will have right of recall against their elected ASR.
- s. Ward Committees can recommend penalties against government employees for failure in performing their duties.

10. THE SECOND ADMINISTRATIVE REFORMS COMMISSION- 6TH REPORT

Infact, the Second Administrative Reforms Commission was entrusted with the task to examine in detail the issues relating to rural and urban local governance in India with a special focus on the need for real democratic decentralization in the country in order to usher in genuine grass roots democracy as envisaged by the founding fathers of our republic and as now specifically mandated by our Constitution. The Sixth Report of the Second Administrative Reforms Commission deals with common issues of local governance those are relevant for both rural and urban areas. With regards to Urban Local Bodies, the commission's report reflects misinterpretation and wrong implementation of ward's committee constitution in Mumbai. The report clearly in its Para 5.2.2.4 provided for the recommendations. Hereto annexed and marked as **Exhibit "G"** is the concerned paragraph of 2nd ARC 6th Report.

The Petitioners state that it can be clearly seen that the issues raised in this PIL have been a matter of concern for which recommendations were given way back in 2007 and specific recommendation regarding Constitution and Functioning of Ward's Committees and Area Sabhas have been made. The Petitioners crave leave of Hon'ble Court to refer and rely on the Second Administrative Reforms Commission's Sixth report as and when produced before this Hon'ble Court.

11. INCORPORATION OF SECTIONS 50 TU, 50TV, 50TW, 50TX IN THE MUMBAI MUNICIPAL CORPORATION ACT- PENDING NOTIFICATION

- i. On 3rd July 2009, the State of Maharashtra, by notification incorporated Sections 50 TU, 50 TV, 50 TW and 50 TX in the Mumbai Municipal Corporation Act, 1888 interalia providing for constitution and functioning of Area Sabhas. It is the humble submission of the Petitioner that the said Sections have been merely incorporated as an eye wash and grant no substantial powers to the members of the Area Sabhas and Ward Committees as was contemplated after detailed research in the Second Administrative Reforms Commission's Report.

- ii. The Petitioner states that further apathy of the Respondent No. 2 and Respondent No. 3 can be seen from the fact that despite the legislation being enacted way back in 2009, no steps have been taken to give any effect to the same, however toothless, it maybe.

Section 50 TU reads as under

“The State Government shall by Order published in the Official Gazette, determine-

- a. *The areas into which each electoral ward of the Corporation may be divided; and*
- b. *The territorial extent of each area, which shall necessarily include all the geographical territory, in which all persons mentioned in the Electoral Roll of any polling booth in such territory , or, if the Government so decides, two or more contiguous polling booths (not exceeding five such polling booths) in such territory , are ordinary resident”*

- iii. The Petitioner humbly states that no such notification has been made by the State Government in this respect and the concept of Area Sabhas still remains to be only on paper, thus constitution of ward’s committee remains incomplete even after 24 years of 74th Amendment. Hereto annexed and marked as **Exhibit “H”** is the notification dated 3rd July 2009 issued by State of Maharashtra.

12. Experience of local self governance in Mumbai through informal platforms Local Area Management (ALM).

It is well known that numerous non-political groups, NGO’s and civil society organizations have worked closely with the civic body in the fields of, though not limited to, education, public health, urban amenities, art and culture, heritage conservation, etc but all through informal platforms, without authority/power from time to time. The experience is mixed. Wherever citizen gets self motivated, are proactive, gets engaged despite repulsive governance system, those Corporator wards have shown better results. However in absence of legitimate local self governance, even those wards have not been able to reach the best of quality of services. Juhu, Colaba and Bandra areas/wards are some of the examples where citizen are self motivated. It is therefore easy to understand that effective and

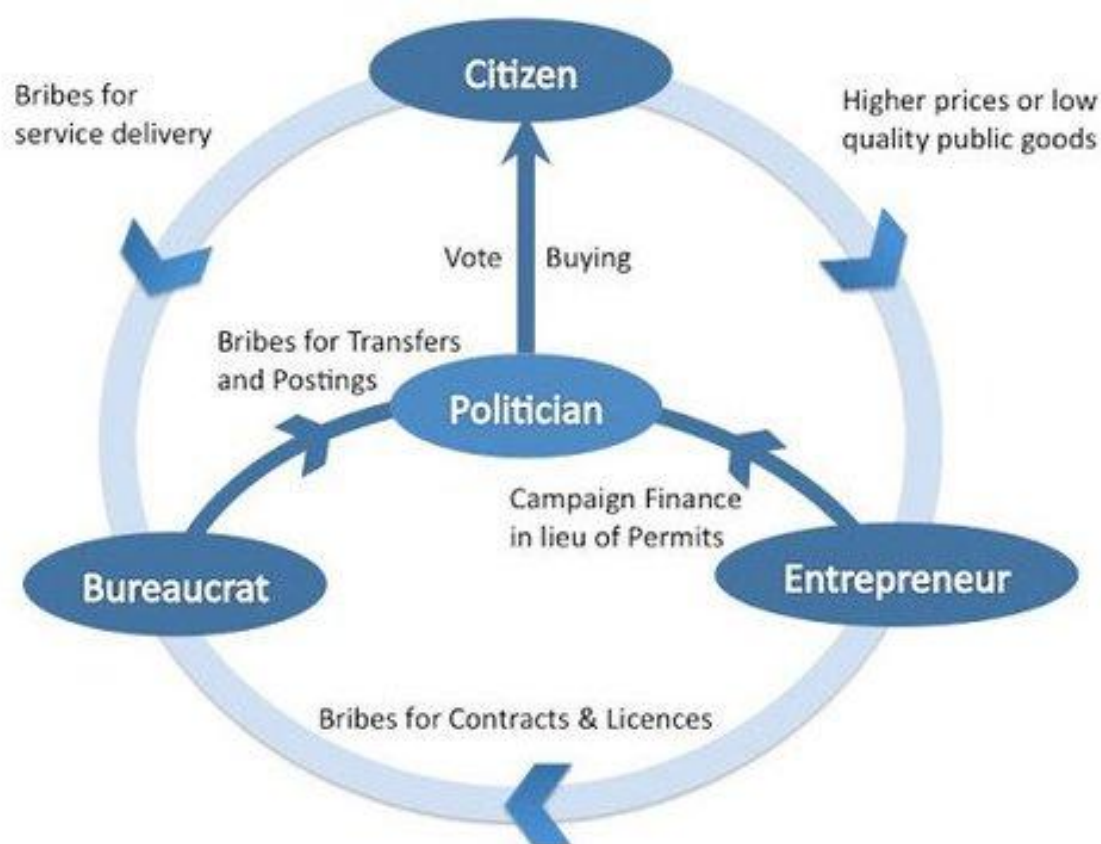
legitimate local self governance platforms for citizen participation will revolutionize the local governance in Mumbai by making system more transparent/accountable on one hand and by making citizen more accountable on the other. A win-win formula.

13. Political Nexus between politicians, bureaucrats and law breakers.

- i. Why state government, state legislators, councilors/ corporators and political parties at the state and local levels are and will oppose decentralization, citizen participation in local self governance and empowerment of citizen.
- ii. It is a well established saying & practice in India that “empowerment and decentralization only up to me not below me”. Thus it is natural that decentralization by forming effective ward committees & Area Sabhas will be opposed for political economy benefiting the politicians, bureaucrats & political parties.
- iii. It is also established understanding that under the political patronage and bureaucratic support, the vendors have encroached upon every available public space even the pedestrian footpath across Mumbai. It is also well known fact that, these vendors are political workers and sublet the public places to the innocent sub-vendors. Shiv Vada Pav is one of the official schemes declared by one of the political party. Similarly many unpublished schemes of things are fully in operation across Mumbai completely disregarding rights of millions of citizen on footpath. It is an easiest way to employ political workers and provide them sense of belonging to a political party.
- iv. Similarly rule breakers, whether it is noise polluters or parking in middle of roads under the newly constructed flyovers by local shopkeepers or establishing Govinda & Ganpati Mandals with full political patronage and bureaucratic support in return of election/political work or even financial contributions in cash to the local political leaders are well established practices and evolved by almost all political parties.
- v. If that was not so why Mumbai cannot have only 7 to 10 big Ganpati locations on major public grounds and rest small in individual homes to be submerged in the home ponds itself.

- vi. Therefore petitioner is constrained to say that governance largely has been handed over to the courts including and like setting up of the guidelines even for height of the Govinda.
- vii. It is the pathetic situation that we are in today in spite of understanding that urbanization is irrevocable as history world over has proved. It is time that we recognize the seriousness of urbanization & therefore Ward Committee and Area Sabha with full devolution of appropriate funds, function & functionaries on the basis of principle of subsidiarity.
- viii. Having empowered Ward Committee with citizen participation will also bring accountability on the part of citizen who with their participation in local self governance, will be able to feel, experience, understand and decide on the Local Governance Issues. Informed citizen is always an accountable citizen. The current system of vested interests depicted in a diagrammatical form will look something like the following:

THE WHEEL OF CORRUPTION



14. IMPLEMENTATION OF LOCAL SELF GOVERNANCE IN OTHER STATES OF INDIA

Petitioners state that State of Kerala and West Bengal has created Wards Committees in more effective manner as compared to State of Maharashtra (Mumbai Municipal Corporation). (Hereto annexed and marked as **Exhibit "I"** is the copy of structure of Wards Committees in the State of Kerala and West Bengal). The Petitioners submits that though the Kerala and West Bengal model are not in tune with letter and spirit with 74th Constitutional Amendment Act, they are more effective compared to state of Maharashtra. The Petitioner submits that even Hon'ble High Court of Karnataka as well as Hon'ble High Court of Andhra Pradesh has given direction concerning Ward Committees and Area Sabha's from time to time. Hereto annexed and marked as **Exhibit "I-1"** are such newspaper reports available online.

15. SOURCE OF INFORMATION:

The Petitioners declare that the facts pleaded in the petition are gathered from their self research, local sources, internet and other secondary sources.

16. NATURE AND EXTENT OF INJURY CAUSED/APPREHENDED

All the residents of the city of Mumbai, where basic civic amenities have become a bone of contention.

17. ANY REPRESENTATION ETC. MADE:

The Petitioner had made representation to Hon'ble Chief Minister of Maharashtra and Hon'ble State Finance Minister and Mumbai City Guardian Minister as well as heads of various political parties in Maharashtra. (Hereto annexed and marked as **Exhibit "J"** **collectively** are the copies of the letter written by Petitioner to Hon'ble Chief Minister of Maharashtra and Hon'ble State Finance Minister and Mumbai City Guardian Minister in 2008).

However neither the State Government nor the elected MLA's were/are ready to empower citizen as it seems there is a financial and otherwise vested interest in controlling the municipal activities and thereby petitioner is forced to seek redressal through this petition. The Petitioners have also presented their suggestions with regard to urban local governance and required reforms to all the concerned authorities as stated above. However, the authorities have not paid any attention to the same. Hereto annexed and marked as **Exhibit**

“K” is the suggestion as put up by the Petitioners.

18. DELAY, IF ANY, IN FILING THE PETITION AND EXPLANATION THEREFORE:

The Petitioners state that the issue involved in this Public Interest Litigation is proper interpretation of the 74th Constitutional Amendment Act, 1992 and further implementation and formation of Ward Committees, which provide for better administrative system and therefore, there is no delay on behalf of petitioners in filing the present Public Interest Litigation.

19. DOCUMENTS RELIED UPON:

- i. 74th Amendment to the Constitution of India
- ii. Section 50 TT of Mumbai Municipal Corporation Act, 1888
- iii. Model Nagar Raj Bill, 2005 prepared by Government of India, Ministry of Urban Development, New Delhi
- iv. White paper on State of Health of Mumbai by Praja Foundation in the year 2016
- v. White paper on Working of Ward Committees in the City of Mumbai and Civic Problems Registered by Citizens by Praja foundation in 2016
- vi. Manual of Mumbai Municipal Corporation.
- vii. All annexures to this PIL and the documents referred to and relied upon in this PIL.

20. Caveat :-

The Petitioners have not received a notice of Caveat till date from any of the Respondents.

21. The Petitioners undertake to supply an English translation of vernacular documents as and when required.

22. The Petitioner has filed the present Petition before this Hon'ble Court under Article 226 of the Constitution of India and therefore this Petition can be heard and disposed of by this Hon'ble Court being

within the territorial limits of this Hon'ble Court. The cause of action to file the present Petition arose within Mumbai and the Petitioner is also based in Mumbai having its office in Mumbai and therefore this Hon'ble Court has jurisdiction to try, entertain and dispose off this present Petition in accordance with law.

- 23.** The Petitioner states that the Petitioner has paid the applicable Court fees of Rs 250/- (Rupees Two Hundred & Fifty Only) for the purpose of this Petition.
- 24.** The Petitioner shall rely upon documents, a list of the same are annexed herein with this Petition.
- 25.** The Petitioner states that Petitioner has not filed any other Petition in respect of the reliefs prayed in this Petition, in any other Court of law. The Petitioner further submits that, in the facts of the case, the Petitioner have no other remedy available save and except by way of approaching this Hon'ble Court under Article 226 of the Constitution.
- 26.** The Petitioner states that the Office of Respondents are within the jurisdiction of this Hon'ble Court; and the present Petition involves question of infringement of Public Interest; and therefore this Hon'ble Court shall have the territorial jurisdiction to entertain and pass authoritative Orders, as prayed for hereinafter.
- 27.** The Petitioners have not filed any other Petition and/or proceedings either in this Hon'ble Court or in any other Court including Hon'ble Apex Court touching the subject matter of this PIL, except the present PIL.
- 28.** The Petitioners crave leave to add, amend, delete and/or modify and of the grounds/submissions/pleadings as and when required.
- 29.** Petitioners therefore pray that:-
 - a) That Hon'ble Court be pleased to allow the present PIL;
 - b) That Hon'ble Court be pleased to declare that Section 50TT introduced by the Respondent No. 2 in the Mumbai Municipal

Corporation Act, 1888 is not in consonance with the letter and spirit of the 74th Constitutional Amendment Act, 1992, in as much as it seeks to restrict the Formation of the Ward Committees to the maximum number of 24 Ward Committees for the entire city of Mumbai;

- c) That Hon'ble Court be pleased to declare that Sections 50 TU, 50 TV, 50 TW and 50 TX introduced by the Respondent No. 2 in the Mumbai Municipal Corporation Act, 1888 is not in consonance with the letter and spirit of the 74th Constitutional Amendment Act, 1992 and the suggestions mandated under JNNURM by following Model Nagar Raj Bill and suggestions made by the Second Administrative Reforms Commission's Sixth Report of 2007 regarding Urban Local Self Governance in as much as it fails to confer any independent status and substantive powers on the Area Sabhas proposed to be constituted by virtue of Section 50 TU of the Mumbai Municipal Corporation Act, 1888;
- d) That Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ, Order or Direction in the nature of Writ of Mandamus interalia ordering and directing the Respondent No. 2 and 3 to form and constitute 227 Ward Committees for the entire city of Mumbai comprising of 227 Wards in consonance with the letter and spirit of the 74th Constitutional Amendment Act, 1992 following the guidelines and suggestions mandated under JNNURM by following Model Nagar Raj Bill and suggestions made by the Second Administrative Reforms Commission's Sixth Report of 2007 regarding Urban Local Self Governance;
- e) That Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ, Order or Direction in the nature of Writ of Mandamus interalia ordering and directing the Respondent No. 2 and 3 to form constitute and appoint Area Sabhas for each of the Polling Booths across the city of Mumbai at present comprising of 9839 Polling Booths and for such numbers as may be applicable from time to time in consonance with the Model Nagar Raj Bill drafted by the Respondent No. 1 and the suggestions of the Second Administrative Reforms Commission's Sixth Report;
- f) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ, Order or Direction in the nature of Writ of Mandamus interalia ordering and directing the Respondent Nos. 2 and 3 to issue

appropriate Orders, Directions, Circulars, Notification linking and connecting the hierarchy, structure and functioning of the Area Sabhas and Ward Committees for ensuring smooth functioning, sustainable administration and better Urban Self Governace as envisaged under 74th Constitutional Amendment Act, 1992, following the guidelines and suggestions mandated under JNNURM by following Model Nagar Raj Bill and suggestions made by the Second Administrative Reforms Commission's Sixth Report of 2007;

- g) That this Hon'ble Court be pleased to appoint a Committee of such persons as this Hon'ble Court may deem fit and proper having expertise in the field of Administration and Self Governance for the purpose of keeping supervision, looking after and ensuring the implementation of the suggestions and recommendations made by 74th Constitutional Amendment Act, 1992 and the suggestions mandated under JNNURM by following Model Nagar Raj Bill and suggestions made by the Second Administrative Reforms Commission's Sixth Report of 2007 regarding Urban Local Self Governance and ensuring constitution and formation of 227 Ward Committes and Area Sabhas corresponding to each Polling Booth across the city of Mumbai and submit its detailed report to this Hon'ble Court in a time bound manner;
- h) That pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to order and direct the Respondent No. 1, 2 and 3 to file a detailed affidavit with respect to the following aspects:
- i. The total number of Ward Committees that are functioning as of date in the city of Mumbai including the particulars as regards the Constitution and Composition of such Ward Committees;
 - ii. The manner and the procedure according to which the persons/ representatives are nominated and appointed as the office bearers of such Ward Committees;
 - iii. The particulars as regards the Power, Functions, Authorities etc of the persons appointed to such Ward Committees and the scope and the ambit of the Functions to be discharged by such Ward Committees;

- iv. The manner of funding and the financial aid provided to such Ward Committees and the authority under which such Ward Committees Report;
 - v. The particulars with regards to the functioning of the Ward Committees so far constituted in the previous 3 years and the particulars as regards the meetings and day to day management and functioning of such Ward Committees;
 - vi. The steps taken by Respondent No. 2 and 3 for the purpose of increasing the number of Ward Committees across the city of Mumbai comprising of 227 Wards and the extent to which the recommendations and suggestions of the Respondent No. 1 as mentioned in the JNNURM, Model Nagar Raj Bill and the Second Administrative Reforms Commission of 2007 has been implemented;
 - vii. The steps taken by the Respondent No. 2 and 3 to successfully implement the provision of Sections 50 TU, 50 TV, 50 TW and 50 TX of the Mumbai Municipal Corporation Act, 1888 for the formation of Area Sabhas;
 - viii. The steps taken by the Respondent Nos. 2 and 3 for the purpose of notifying the Boundary Limits of each of the Area Sabhas to be constituted across the city of Mumbai as contemplated in Section 50 TU of the Mumbai Municipal Corporation Act, 1888
- i) Interim and Ad-interim reliefs in terms of Prayer Clause d to h above;
 - j) for costs;
 - k) to grant any other and further reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Place:

Date:

Petition drawn, drafted & settled

1)

By Rakesh K. Singh, Advocate

2)

3)

(Signature)

Advocate for Petitioner(s).

Petitioners

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

[Rule 4(e)(ii) of the Bombay High Court
Public Interest Litigation Rules, 2010]

PUBLIC INTEREST LITIGATION (PIL) PETITION

NO:_____ 2016

Loksatta Movement and Ors.

.. Petitioners

Versus

The State of Maharashtra Ors.

.. Respondents

PUBLIC INTEREST LITIGATION

Dated this ___ day of September 2016

Rakesh K. Singh

Advocate for Petitioners
Office No. 26, 2nd Floor,
Kamdar Shopping Centre,
Tejpal Road, Vile Parle (East),
Mumbai – 400 057

Email:

mumbai@rksassociate.com

Cell: 07208084201

Advocate Code: I5768