

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.734 OF 2013

Shankar Bhimrao Todkar .. Petitioner

V/s.

Jaywant Vilas More & Ors. .. Respondents

**WITH
WRIT PETITION NO.735 OF 2013**

Vaishali Subhash Nimbalkar .. Petitioner

V/s.

Jaywant Vilas More & Ors. .. Respondents

**WITH
WRIT PETITION NO.11225 OF 2012**

Raghunath P. Fasale & Ors. .. Petitioners

V/s.

Popat Keshav Sutar & Ors. .. Respondents

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Mr. S. S. Shah i/b. Mr. N. V. Kalantri, Advocate for the Petitioner in W.P. Nos. 734 and 735 of 2013 and for Respondent Nos.6 and 8 in W.P. 11225 of 2012.

Mr. Vikas Mali, AGP for the State.

Mr. S.S. Salunkhe, Advocate for Respondent Nos. 4 to 6, 8 to 11 and for Petitioner in W.P.No.11225 of 2012.

Mr. S.B. Shetye, Advocate for Respondent No.15 in W.P. No.11225 of 2012..

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**CORAM : NARESH H. PATIL AND
S.B. SHUKRE, JJ.**

DATED : SEPTEMBER 1, 2015.

P.C.

The petitioner has prayed for the following reliefs:

- “a. This Hon'ble Court be pleased to issue writ in the nature of writ of Mandamus or any other writ in the like nature or appropriate Writ or order or directions to the respondent no.12 & 16 to withdraw the election notice issued to the members of Grampanchayat Tambave Tal. Walva Dist Sangli dated 22/01/2013.*
- b. This Hon'ble Court be pleased to issue writ in the nature of writ of Mandamus or any other writ in the like nature or appropriate Writ or order or directions to the respondent no.12 & 16 to postpone or stay the election for the post of Sarpanch and Upsarpanch of Grampanchayat Tambave Tal Walve Dist Sangli to be held on 28/01/2013.”*

2 Consequent to the notice issued, admittedly, the elections are held for the posts of Sarpanch and Upsarpanch of Tambave Gram Panchayat.

3 The learned counsel appearing for the petitioner submitted that there are 13 elected members who would constitute a Gram Panchayat. After the elections to the Gram Panchayat, which were held in the year 2012, a notice of election of Sarpanch and Upsarpanch was issued on 27th November, 2012, but as one contesting candidate out of a multi-member ward of three members died, the elections to the said ward could not be held. The Gram Panchayat was represented by 10 members.

4 A Writ Petition No.11225 of 2012 was filed with the following prayer:

“a) This Hon'ble Court to be pleased to issue writ of mandamus or any other appropriate writ, order or direction directing the Respondent State of Maharashtra to declared the Elections of the Ward no.2 of Village Tambve, Tal - Walva, Dist Sangli.”

The said petition came to be disposed of by an order dated 25th February, 2013. It is submitted that by an ad-interim order dated 13th December, 2012, passed in Writ Petition No.11225 of 2012, the Division Bench (Coram : S.J. Vazifdar and R.D. Dhanuka, JJ.) stayed further elections for the posts of Sarpanch and Upsarpanch of the Gram Panchayat Tambve.

5 The elections to ward no.2 were held on 23rd December, 2012. By an order dated 13th December, 2012, passed in Writ Petition No.11225 of 2012, the Division Bench of this Court observed as under:

“1.....It will not be open to the petitioners to contend that merely because the elections to the said posts are held any rights are created in their favour.”

6 The learned counsel appearing for the petitioners, therefore, submits that in view of the observations of the Division Bench that it will not be open to the petitioners to contend that merely because the elections to the post of Sarpanch and Upsarpanch were held any rights were created in their favour. The petitioners are entitled to claim that the elections shall be held on the basis of the first notice of election of Sarpanch and Upsarpanch which was issued on 27th November, 2012. Fresh elections to the said post after holding the elections of the remaining three members are to be set aside as contrary to the Bombay Sarpanch and Upsarpanch Rules, 1965.

7 The learned counsel appearing for the respondents referred to the order passed by the Division Bench on 3rd December, 2012 in Writ Petition No.11225 of 2012. In paragraph nos. 5 and 6 of the said order, this Court observed as under:

“5. Under Article 243K of the Constitution of India, the term of the previous Panchayat cannot exceed five years. We have proceeded on the basis that the period comes to an end today, 3.12.2012. The term of the new Panchayat would be for five years. It would indeed be inequitable to deprive the members from Ward No.2, an opportunity of offering themselves for election to the said post as well as from voting for the candidates offering themselves for the election to the said posts in these peculiar circumstances caused by the unfortunate death of one of the candidates from this Ward No.2.

In our opinion, prima facie, at least the ends of justice would be met by directing the respondents to postpone the elections to the post of Sarpanch and Upsarpanch. To postpone the elections of the Sarpanch and the Upsarpanch till the elections of the members of the Panchayat of Ward No.2 are held would be just, fair equitable and also in public interest. It would result in a duly elected Sarpanch and Upsarpanch. That is clear and obvious. The Sarpanch and the Upsarpanch are to be elected by

the 13 members of the 5 wards. Each of them is entitled to stand for elections to the said post. Each of them is also entitled to vote at the elections for the said posts. If the elections are not postponed the three members who will ultimately be elected to ward No.2 would be denied the opportunity of voting for the Sarpanch and the Upsarpanch as well as standing for elections to the said posts for no fault of theirs.

6. The 10 members of the other wards cannot possibly have any justifiable complaint if the elections to the said posts are postponed till the members of Ward No.2 are elected. They can hardly claim a vested right on account of the fortuitous circumstances as a result of the unfortunate death of a candidate who stood for elections from ward No.2."

8 It is submitted that considering the prayer clauses, it is clear that this petition itself has become infructuous. The learned counsel submits that fresh elections were held after three members were elected to the Gram Panchayat. 13 members have elected the Sarpanch and Upsarpanch and they are discharging their duties for more than two years. Considering the submissions advanced, the Division Bench, while passing the order dated 3rd December, 2012 in Writ Petition No.11225 of 2012 has clarified

this position that the Sarpanch and Upsarpanch are to be elected by the 13 members. Each of them was entitled to stand as candidate for the said post i.e. Sarpanch and Upsarpanch and each of them was also entitled to vote at the elections for the said post.

9 Perusal of the order passed on 3rd December, 2012, passed by this Court makes its implicitly clear that the Sarpanch and Upsarpanch were to be elected after the election to the three seats were held so that total number of members of Gram Panchayat would elect Sarpanch and Upsarpanch. The order passed on 13th December, 2012, by this Court cannot be read and considered in isolation.

10 The 13 members of the Gram Panchayat elected Sarpanch and Upsarpanch and they are discharging their duties since last about two years. In the facts, no interference is therefore warranted. Writ Petition is dismissed.

(S. B. SHUKRE, J.)

(NARESH H. PATIL, J.)