

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

910 WRIT PETITION NO. 11293 OF 2016

RAHUL RAJARAM MASKE
VERSUS
BHARATBHUSHAN SONAJIRAO KSHIRSAGAR AND
OTHERS

Shri. A.A. Shelke, Advocate, for petitioner.

Shri. G.K. Naik-Thigle, Advocate, for respondent No.1.

Shri. S.T. Shelke, Advocate, for respondent No.2.

Shri. R.B. Bagul, Assistant Government Pleader, for State
of Maharashtra.

CORAM: T.V. NALAWADE, J.

DATE : 18 NOVEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by the Returning Officer by which the objection raised against the nomination form of respondent No.1 is rejected and the the proceeding is also filed to challenge the order made by the District Court in Election Appeal No.12/2016. Heard learned counsel for the petitioner and the learned counsel for the Returning Officer.

2) The petitioner had filed objection to the nomination on the ground that the candidate had made illegal and unauthorised construction on some property. He had contended that in lay out No.LYT/BHR/2612 dated 31-7-1974 the development of the property was approved and some open space having size of 35 ft. x 601 ft. was required to be kept open during development. This open space was to be handed to the local body according to the petitioner. It is the case of the petitioner that, plots were prepared by the developer in this open space also and Plot Nos.4 and 5 out of those plots were purchased by the candidate and his family and they have made construction of bungalow not only on this space but on some more space also situated behind these plots and so the candidate was not entitled to contest the election in view of provision of section 44(1)(e) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965.

3) It was submitted by the learned counsel for the petitioner that on the objection application itself endorsement was made by the Returning Officer that

hearing will be given on the objection at 5.00 p.m. on the same day i.e. on 2-11-2016. It was submitted that on that date when at the relevant time counsel for the petitioner went to the office of the Returning Officer, the Returning Officer asked him to come on the next day for hearing. Learned counsel for the petitioner submitted that on the next day when his counsel went there, it was informed that the objection cannot be considered and it was received after the declaration was made by the Returning Officer that nomination form was valid. Learned counsel submitted that there was proof of video recording of the incident which took place in the office of the Returning Officer and that would show that on the date the counsel of the petitioner had gone to the office of the Returning Officer to make submission with regard to the objection. He submitted that this circumstance is not considered even by the District Court.

4) Learned counsel for the petitioner was asked to show material on the basis of which *prima facie* it can be inferred that the candidate had made encroachment. Learned counsel submitted that inquiry was made in these

allegations when the application for disqualification was filed by the present petitioner against the candidate in respect of previous tenure and this inquiry report could have been used. The submissions made show that there is nothing with the petitioner to show that the inquiry report was accepted by the Chief Officer or the Collector and after that some order was made against the candidate, respondent No.1. Only on the basis of inquiry report, the Returning Officer could not have rejected the nomination as the report needs to be accepted by the authority and some order is required to be made by the authority on the report. In view of this circumstance, this Court holds that interference is not possible in the decision given by the District Court in the election appeal. It will be open to the present petitioner to take appropriate proceeding even like election proceeding if the candidate gets elected. Liberty to the petitioner to file election petition. The petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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