

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 978 OF 2016

Ajit Harishchandra Dudhale .. Petitioner
Vs.
Nilesh Balasaheb Dagade and ors. .. Respondents

Mr.S.B.Shetye i/b Mr.Manish Bohra, for the Petitioner.
Mr.Chintamani K.Bhangoji, for Respondent No.1.
Mrs.M.P. Thakur, AGP for Respondents No.2 to 6 – State.

**CORAM : NARESH H. PATIL &
M.S.KARNIK, JJ.**

23rd NOVEMBER, 2016

P.C. :

. The petitioner is an elected member of Bhavdhan, Taluka – Mulshi, Dist. Pune. The petitioner challenges the validity certificate issued in favour of respondent No.1 who is the Sarpanch of Panchayet. The petitioner is the member of the said village panchayat. The election to the village panchayat was held in the year 2012. The term of Panchayat is to expire in October 2017. The petitioner had earlier filed Writ Petition bearing No.606 of 2014. Paragraph 2 of the order dated 16/06/2014 passed by this Court in the above Writ Petition

reads as under :

“We, therefore, decline to entertain this Petition under Article 226 of the Constitution of India. The Petition is accordingly rejected. We, however, make it clear that rejection of the Petition will not prevent the petitioner from adopting appropriate remedies in accordance with law. All contentions on merits raised in the Petition are kept open. Civil Application No. 1127/2014 does not survive and the same is accordingly disposed of.”

2. Learned Counsel appearing for the respondents takes preliminary objection to the maintainability of the Petition. It is submitted that the petitioner is not an aggrieved person and is no way affected by the certificate issued by appropriate committee. Reliance is placed in the case of **Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and ors., (2013) 4 Surpreme Court Cases 465.**

3. We perused the record. Paragraphs No. 9 & 10 of the above referred judgment read as under :

9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ

jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide : State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad & Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal & Ors., AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh, AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar & Ors., (2009) 2 SCC 784).

10. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: Shanti Kumar R. Chanji v. Home Insurance Co. of New York, AIR 1974 SC 1719; and State of Rajasthan & Ors. v. Union of India & Ors., AIR 1977 SC 1361).”

4. We find that there is delay in approaching the Court.

In view of the peculiar facts and circumstances, we are not inclined to exercise our writ jurisdiction.

5. Writ Petition is dismissed.

(M.S.KARNIK, J.)

(NARESH H. PATIL, J.)