

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12849 OF 2016**

Suresh Devappa Aawti : **Petitioner.**
versus
The District Collector and District Election
Officer, Sangli and ors. : **Respondents.**

Mr. G M Savagave for the Petitioner.
Mr. S D Rayrikar, AGP, for the Respondent No.2

CORAM : R. M. SAVANT, J.
DATE : 18th November 2016

P.C.

1 The writ jurisdiction of this court is invoked against the order dated 02/11/2016 passed by the Voters' Registration Officer Sangli/Satara i.e. the Respondent No.1 herein by which order the application filed by the Petitioner for inclusion of his name in the voters list for the election to be held for the Maharashtra Local Authorities Constituency in so far as Sangli/Satara area is concerned, came to be rejected.

2 The Petitioner was elected as a Councillor of the Respondent No.2 – Municipal Corporation in the general elections which were held to the said Corporation. The Petitioner has been disqualified as a Councillor pursuant to the order dated 22/02/2016 passed by the learned 2nd Joint Civil Judge, Senior Division, Sangli in Election Petition No.10 of 2013. The Petitioner has challenged the said order dated 22/02/2016 by filing Writ Petition No.3376 of 2016. The said Writ Petition was heard for admission along with other similar

Writ Petitions. By the order dated 18/03/2016 passed therein notice came to be issued and by way of ad-interim order stay to the disqualification which was granted by the learned 2nd Joint Civil Judge Senior Division Sangli, which was in operation, was continued by this Court subject to the condition that the Petitioner would not participate in the proceedings of the Municipal Corporation or draw allowances until further orders of this Court. The said order dated 18/03/2016 was clarified by the order dated 29/04/2016 in the Civil Applications filed by the Petitioner and the clarification issued was that the Petitioner is entitled to attend the meetings and take part in the discussion, but would not be entitled to vote in the meetings of the Corporation or of any Committee of the Corporation of which he is a member and would also not draw allowances. Hence the Petitioner was restrained from voting in the meetings or drawing allowances but was held entitled to attend the meetings and participate in the discussion.

3 The Writ Petition filed by the Petitioner being Writ Petition No.3376 of 2016 thereafter came to be dismissed by a learned Single Judge of this Court by the order dated 05/08/2016 resultantly the disqualification of the Petitioner was upheld. Against the said order dated 05/08/2016 the Petitioner approached the Apex Court by way of Petition for Special Leave to Appeal (c) No.30160 of 2016. The Apex Court by the order dated 24/10/2016 issued notice and passed following interim order :-

“The interim protection granted by the High Court in the impugned order shall continue until further orders”

Hence the ad-interim order which was passed by this Court in the Writ Petition filed by the Petitioner was continued by the Apex Court until further orders.

4 In view of the ensuing election to the Maharashtra Local Authorities Constituency for Sangli/Satara region, the Petitioner made an application to the Voters' Registration Officer for inclusion of his name in the voters list as being a Councillor of the Respondent No.2 – Municipal Corporation. The electors in respect of the said Constituency are the Councillors of the Municipal Corporation and the Municipal Councils. The Petitioner's application has been rejected by the Respondent No.1 having regard to the ad-interim order which was passed in the said Writ Petition No.3376 of 2016 as also on account of the fact that the Apex Court in the SLP filed by the Petitioner has by way of interim relief continued the said ad-interim order.

5 The learned counsel for the Petitioner now seeks to rely upon the ad-interim order passed by the Apex Court dated 24/10/2016 to contend that in terms of the stay, the Petitioner is entitled for his name being included in the voters list. In so far as the said aspect is concerned, since the Apex Court is now seized with the matter, the Petitioner ought to have made an application

before the Apex Court that his name be directed to be included in the voters list. Since the Apex Court is now seized with the matter, this Court does not deem it appropriate to entertain the Petitioner's claim.

6 In so far as the ad-interim order passed by this Court is concerned, reliance was placed on the said ad-interim order by another Councillor similarly situated as the Petitioner being one Mainuddin Shamshoddin Bagwan who had also made an application to the Respondent No.1 for inclusion of his name in the voters list on the basis of the ad-interim order passed by this Court in Writ Petition being No.6743 of 2016 filed by him, which ad-interim order was in the same terms as the ad-interim order which was operating in the Writ Petition filed by the Petitioner herein. The application filed by the said Mainuddin Shamshoddin Bagwan was also rejected by the Respondent No.1 as a consequence of which the said Mainuddin Shamshoddin Bagwan had filed Writ Petition Stamp No.30878 of 2016 in this Court, which Writ Petition came to be dismissed by this Court on 16/11/2016 on the ground that since the said Mainuddin Shamshoddin Bagwan had been restrained from voting in the meetings of the Corporation or of any Committee of the Corporation of which he is a member and drawing allowances, obviously he could not be permitted to participate in the elections to the Maharashtra Local Authorities Constituency. The aforesaid fact is mentioned so as to complete the narration.

7 However, in so far as the instant case is concerned, in view of the fact that the Apex Court is now seized with the matter, it would not be appropriate for this Court to exercise its writ jurisdiction. The above Writ Petition is accordingly dismissed on the said ground.

[R.M.SAVANT, J]