

Sequeira

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

WRIT PETITION NO. 11398 OF 2015

Shri Subhash Yashwant Suryawashi. .. Petitioner.

Vs.

Shri Babaso Vishnu Suryawashi & anr. .. Respondents

Mr.Satyajeet Rajeshirke, for the Petitioner.

Mr.Umesh Pawar, for Respondent No.1.

***CORAM : N.M.Jamdar, J.
Thursday, 22 September 2016.***

P.C. :

Heard learned counsel for the parties. By consent the Petition is taken up for disposal as the contested Respondent No.1 is represented. Respondent No.2 is served. He is stated to be a formal party.

2. The Petitioner was declared elected for the post of Councilor Ward No.3 from Islampur Nagar Parishad. The election results were declared on 15 December 2011. The Election Petition No.1 of 2014 was filed by the Respondent No.1 in the Court of Civil Judge Senior Division Islampur on 1 March 2014. The Petitioner filed reply and raised the grounds of lack of jurisdiction and bar of limitation. The

Petitioner also filed an application on 15 September 2015 for trying the issue of jurisdiction and limitation as a preliminary issue, which has been rejected by the impugned order dated 21 October 2015.

3. The order passed by the learned City Civil Judge is cryptic. The learned Civil Judge has only stated that the issue of jurisdiction is framed and the matter requires trial as it is a mixed question of fact and law. This approach is not correct. If the Election Petition is beyond time and is being heard without jurisdiction then the elected representative need not undergo trial of the Election Petition. Furthermore, the question whether the learned Civil Judge has jurisdiction to decide an Election petition is of importance and goes to the root of the jurisdiction. The learned counsel for the Petitioner has relied upon Section 21 of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 in which it has been specified that the Petition shall be inquired into and disposed of by the District Judge or by any Judge not lower in rank than an Assistant Judge to whom the case is referred to by the learned District Judge. The learned counsel for the Respondent No.1, after taking instructions, has not been able to make a statement as to whether the learned Civil Judge Senior Division would fall within the ambit of Section 21(5) and the power has been delegated. The learned Civil Judge will therefore, have to address himself to this issue and conclude the same before proceeding with the trial. The learned Civil Judge has simply kept aside the decision making on the

ground that it is a mixed question of fact and law.

4. As far as question of limitation, the Section 21(1) specifies the period of limitation. Perusal of this section would indicate that what is to be ascertained for the purpose of limitation is specified in Section 21(1) itself and therefore, this also cannot be said to be a mixed question of law and fact. Since both the above issues go to the root of the jurisdiction and without deciding these issues it will not be appropriate for the learned Judge to proceed with the matter, the approach of the learned Civil Judge will have to be corrected. The impugned order dated 21 October 2015 is quashed and set aside. The learned Civil Judge will take up the issue of jurisdiction and limitation first for consideration and it is only upon the decision of these issues will proceed further with the trial. This course of action is necessary to prevent a position where trial of an election petition is continued before court which does not have jurisdiction or that its cognizance is expressly barred. Keeping the contentions of parties open on these issues this Writ Petition is disposed of.

(N.M.Jamdar, J.)