

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 3794 OF 2005

Suresh Raghunath Mhatre)
Age 38 years, Occupation Agriculture,)
Resident of Kana, Taluka Alibag,)
District Raigad.) ... Petitioner

V/s.

1. Group Gram Panchayat Sasawane,)
At & Post Sasawane, Taluka Alibag,)
District Raigad.)
2. Tehsildar, Alibag and Returning Officer,)
Group Gram Panchayat Sasawane,)
3. Addl. District Collector, Raigad,)
District Raigad.)
4. State Election Commission, Maharashtra)
having its office at Mantralaya Annexe)
Mumbai 400 032.)
5. State of Maharashtra) ... Respondents

WITH

WRIT PETITION NO. 2860 OF 2008

1. Suresh Raghunath Mhatre)
Age 41 years, Occupation Agriculture,)
Resident of Kana, Taluka Alibag,)
District Raigad.)
2. Group Gram Panchayat Sasawane,)
At & Post Sasawane, through Santosh)
Mahadeo Gavand, Age 45 Years,)
Occ: Agriculture, Incharge Sarpanch) ... Petitioners

V/s.

1. Awas Gram Panchayat, Awas)
Post Sasawane, Taluka Alibag,)
District Raigad.)
2. Tehsildar, Alibag and Returning Officer,)
Group Gram Panchayat Sasawane,)
3. District Collector, Raigad,)
District Raigad.)
4. State Election Commission, Maharashtra)
having its office at Mantralaya Annexe)
Mumbai 400 032.)
5. State of Maharashtra) ... Respondents

Mr. C.G. Gavnekar for the Petitioner in both W.P.
Mr. Manish Pabale, AGP for the Respondent Nos. 2, 3 and 5 in both W.P.
Ms. D.S. Mondkar-Hule i/b Mr. S.B. Shetye for the Respondent No. 4 in
both W.P.

**CORAM : A.S.OKA &
SMT. VIBHA KANKANWADI, JJ.
DATE : 14th JUNE, 2017**

ORAL JUDGMENT (PER A.S. OKA, J.)

1. Writ Petition No. 3794 of 2005 concerns election of Group Gram Panchayat of Sasawane. The election program was declared in the year 2005. A contention was raised by the Petitioner that the areas Indrapai and Kana are part of village Avas, which is a revenue village, included within the limits of Sasawane Gram Panchayat. An objection was raised regarding the exclusion of villagers whose names appeared

in the voters' list of Vidhan Sabha Constituency and who were residents of Indrapai and Kana. The challenge is to the communication dated 24th May, 2005 (Exh. D) issued by the Tahasildar communicating the decision of the Additional Collector, Raigad dated 09th May, 2005. The decision was that as per Government Notification dated 01st February 1995, revenue village Avas was not included within the limits of Sasawane Gram Panchayat and there is no further notification issued under Section 4 of the Maharashtra Village Panchayats Act, 1958 including the said village within the limits of Sasawane Gram Panchayat. It was stated that areas of Indrapai, Kana and Wakde Ali are not separate villages, but these areas are a part of revenue village Avas.

2 In Writ Petition No. 2860 of 2008, the challenge is to the order dated 01st February 2008 passed by the District Collector on objections raised regarding exclusion of residents of villages/areas Indrapai, Kana and Wakde Ali from the voters' list of Sasawane Gram Panchayat. In the said order, it was mentioned that Indrapai and Kana had been excluded from the limits of Sasawane Gram Panchayat and in fact the decision excluding the said villages is subject matter of challenge in a Writ Petition pending in this Court. Therefore, the objection regarding non-inclusion was overruled.

3 The learned Counsel appearing for the Petitioner relied upon a notification published in the Government Gazette dated 07th September 1961 issued under Sub-Section 1 of Section 10 of the said Act of 1958 for showing that revenue village Avas is included within the limits of the said village Panchayat. His submission is that the impugned orders

are factually incorrect.

4 We have considered the submissions. As per Section 10A of the said Act of 1958, the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of all elections to the Panchayats vests in the State Election Commissioner. Section 12 deals with the list of voters which reads thus:

“12. List of voters-(1) The electoral roll of the [Maharashtra Legislative Assembly] prepared under the provisions of the Representation of the People Act, 1950 (XLII of 1950) and in force on such day as the [the State Election Commissioner may by order] notify in this behalf for such part of the constituency of the Assembly as is included in a ward or a village shall be the list of voters for such ward or village.

(2) An officer designated by the [State Election Commission] in this behalf shall maintain a list of voters for each such ward or village.”

5 Thus, lists of voters for the election of a village panchayat is prepared on the basis of electoral roll of the Maharashtra Legislative Assembly in force on such date as be notified by the State Election Commissioner by an order. The effect of sub-section (1) of Section 12 is that the electoral roll for election of a village panchayat will be the electoral roll for such part of the Constituency of the Assembly as is included in a village or a ward.

6 In the impugned order in the first Writ Petition as well as in the affidavit-in-reply filed by the Additional Collector, it is contended that boundaries of the village Sasawane have been delineated under the Gazette notification dated 01st February 1995 and Indrapai, Kana and Wakde Ali are not included within the limits of Sasawane village panchayat.

7 The petitioners are relying upon the old notification of 7th September, 1961.

8 For each election of village panchayat, the electoral roll is required to be prepared as per Sub-Section 1 of Section 12 of the said Act of 1958. In the present case, the objection was raised to the electoral roll prepared in the year 2005. As per the notification dated 01st February, 1995, the area of Avas village comprising of Indrapai and Kana was not included in the village panchayat Sasawane. Hence, the impugned orders cannot be faulted with. If in future, village Avas is included in village Sasawane, the petitioners can raise that contention when an electoral roll for elections to be held in future is prepared.

9 In view of this position, it is not necessary to entertain these petitions on merits.

10 Subject to what is observed above, Rule is discharged with no order as to costs.

(SMT. VIBHA KANKANWADI, J.)

(A.S.OKA, J.)