

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.)NO.28688 OF 2017

Puja B. Lohar .. Petitioner.
v/s.
Returning Officer
Gram Panchayat, Kolhapur
& Others .. Respondents.

Mr. Chetan G. Patil, for the Petitioner.
Mr. S. D. Rayrikar, AGP for Respondent No.1.
Mr. S. S. Patwardhan i/b. Mr. Ruturaj Pawar, for Respondent No.3.

CORAM: M.S.SANKLECHA, J.
DATE : 11th OCTOBER, 2017.

P.C:-

The Petitioner has moved for urgent reliefs.

This Petition under Articles 226 & 227 of the Constitution of India, challenges the order dated 3rd October, 2017 passed by Respondent No.1 – Returning Officer of elections to Gram Panchayat, Sarambalwadi, Kolhapur. By the impugned order dated 3rd October, 2017, the Petitioner's nomination as a candidate for election to the post of Sarpanch of Respondent No.2- Gram Panchayat, Sarambalwadi, Kolhapur, was rejected under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1959 (the Act) i.e. encroachment on Government land.

2 The grievance of the Petitioner's is that the alleged encroachment even as per the impugned order is not by Petitioner herself

but by her father and in any event, it is her contention that the allegation of encroachment on Government land is not true/correct. The impugned order while accepting the objection to the nomination of the Petitioner places reliance upon decision of this Court in Writ Petition No.6089 of 2014 (Nagpur Bench) – wherein the Court has held that for the purpose of dis-qualification under the Act, encroachment of Government land by the family members of the candidate is sufficient to attract dis-qualification under the Act.

3 The State Election Commission has, declared election to the post of Sarpanch of Respondent No.2-Gram Panchayat. The elections as notified by the State Election Commission commenced on 14th September, 2017. As per the election process, the elections are scheduled to be held on 16th October, 2017.

4 Mr. Patwardhan, learned Counsel appearing for Respondent No.3- the original objector to the Petitioner's nomination, state that this Court should not interfere, as the election process has already commenced. The remedy available to the Petitioner is by way of Election Petition under Section 15 of the Act. Moreover, it is submitted that the Petitioner has already been elected to the post of the Sarpanch as she was the only candidate in the fray.

5 Article 243-O of the Constitution of India bars calling into question an election to a Panchayat by any manner other than a filing of Election Petition to the appellate authority constituted under the law. In this case, the Petitioner has a remedy of challenging the election under Section 15 of the Act. Moreover, it is settled position in law that High Court should not interfere with the election after the election process has

commenced as there is a remedy available for challenging the same by filing of an Election Petition. In fact, recently the Apex Court in ***Shaiji K. Joseph v/s. V. Vishwanath 2016(4) SCC 429*** has deprecated the practice of interfering with the process of election, once the process of election has commenced.

6 In the above view, the remedy for the Petitioner is to file a Election Petition under Section 15 of the Act, in case he is aggrieved by the rejection of her nomination papers for the election to the post of Sarpanch of Respondent No.2. Thus, there is no justification in exercising my extra ordinary jurisdiction under Articles 226 & 227 of the Constitution of India to interfere with the election process. Accordingly, Petition dismissed.

7 Needless to state, in case, the Petitioner does file Election Petition, same would be decided on its own merits in accordance with law. All contentions kept open.

8 **Petition dismissed.** No order as to costs.

(M.S.SANKLECHA,J.)