

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

WRIT PETITION NO.11805 OF 2017

Prakash Wekhande
and others

... Petitioner.

Versus

Collector,
Thane District Collectorate
thane and others

... Respondents.

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Mr. Mihir Desai, Senior Advocates i/b.Ms. Kranti L.C. for the
Petitioner.

Mr. S.B. Shetye for Respondent No.3.

Ms. Nisha Mehra, AGP for State.

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***CORAM : Smt. Vasanti A Naik &
Riyaz I. Chagla, JJ.***

DATE : 1st November, 2017.

P.C. :

By this writ petition the petitioners have challenged the order of the Divisional Commissioner, Konkan Division dated 27.09.2017, overruling the objection raised by the petitioners to formation of the wards under the provisions of the Maharashtra Zilla Parishad and Panchayat Samitis Act for the elections to the Zilla Parishads and Panchayat Samitis of District Thane. The petitioners have sought a direction against the respondents to again draw electoral wards and electoral divisions for the Zilla Parishads and Panchayat Samitis in Thane District on the basis of

the instructions of the State Election commission, vide order dated 04.10.2011.

According to the petitioners, who are the residents of the nearby villages and who are allegedly affected by the formation of the wards by the impugned notification dated 04.10.2017, have sought for the redrawing of the electoral wards. According to the petitioners, the directions of the State Election Commission, Maharashtra vide order dated 04.10.2011 are violated by the respondent authorities while preparing the wards, specially clauses 6, 9 and 10 of the order.

Mr. Desai, the learned senior counsel appearing for the petitioner submitted that the formation of the wards is not in consonance with the order of the State Election Commission, Maharashtra dated 04.10.2011. It is submitted that for redrawing of the wards for the elections to the Maharashtra Zilla Parishad and Panchayat Samitis, it would be necessary for the concerned authorities to consider that ever electoral ward or division should be geographically contiguous and its boundary should be decided by considering the natural limits of roads, rivers, *nalas* etc. It is submitted by taking this Court through the impugned notification pertaining to the formation of the wards, specially ward No.32 of 'Borivili T- Rahur' that though 'Borivili T- Rahur' is included in ward no.32, 'Rahur' by itself is placed in ward No.33 i.e. Padgha ward. It is submitted that since there is a distance of only half a foot between 'Rahur' and 'Borivili T.', both 'Rahur' and 'Borivili T' should have been placed in one ward only. It is submitted that the

'Rahur' is wrongly placed in ward No.33 i.e. 'Padgha' ward when the distance between 'Padgha' and 'Rahur' is 6 Km. It is submitted that there is a clear violation of the directions in the order of the State Election Commission dated 04.10.2011, specially clause 9 thereof. It is then submitted that as far as possible, as per the order of the State Election Commission dated 04.10.2011 there cannot be a division of a Grampanchayat but while forming the wards vide impugned notification, the villages in Grampanchayat Aasangaon are placed in different wards thereby dividing the Grampanchayat, in violation of the directions in clause 9 of the order. To substantiate the submission the learned senior counsel referred to the impugned notification in respect of formation of ward No.8 'Aasangaon' and ward No.10 'Gothehar'. It is submitted that there is a river dividing 'Aasangaon' and 'Gothehar' and hence 'Kallambhe' and 'Borsheti Bk.' Should not have been separated and placed in ward No.10 - 'Gothehar' thereby dividing the Grampanchayat of Aasangaon. It is submitted that the villages in the same Grampanchayat i.e. Grampanchayat Aasangaon are placed in two different wards i.e. 'Aasangaon-ward' and 'Gothehar-ward' in violation of direction No.9 in the order of the State Election Commission.

On hearing the learned counsel for the parties and on a perusal of the order of the State Election commission dated 04.10.2011 and the impugned notification, it appears that there is no merit in the submission made on behalf of the petitioners that, the wards have been re-drawn in violation of the directions in the order of the State Election Commission, dated 04.10.2011. It

would be necessary to firstly bear in mind that the scope for interference in the matter of formation or re-drawing of the wards, in exercise of the writ jurisdiction is very limited. For seeking indulgence of this Court in the matter of re-drawing of the wards, it would be necessary for the petitioners to clearly point out that there is apparent and clear violation of the directions of the State Election Commission while re-drawing the wards. In the instant case, we do not find that there is violation of any of the directions issued by the State Election Commission, vide order dated 04.10.2011. We have perused the maps prepared by the learned counsel for the petitioners for the perusal the court. On a perusal of the maps we find that there is no violation whatsoever of clause 9 of the order dated 04.10.2011, as canvased on behalf of the petitioners. Though much has been stated about the wrongful formation of 'ward no.32-Borivili' and 'ward No. 33-Padgha' by laying stress on the fact that the 'Borivili T. Rahur' and 'Rahur' are placed in two different wards of 'Borivili T. Rahur' and 'Padgha' when Borivili T. Rahur and Rahur are geographically contiguous, on a perusal of the map we find that 'Borivili T. Rahur' and 'Rahur' may be geographically contiguous but 'Rahur' which is placed in 'Padgha' is also geographically contiguous with Padgha, Bhokri, Kurund, Sape etc. which are placed in 'ward No.33-Padgha'. It is possible that a village would be contiguous to one village on one side and it may also be contiguous to some other villages on the other side. On a perusal of the map, we find that though 'Borivili T. Rahur' is contiguous to 'Rahur', 'Rahur' is also contiguous to 'Padgha', 'Bhokari', 'Sape' etc. and there is a geographical contiguity between the boundaries of these villages which are

placed in ward No.33-'Padgha'. We do not therefore find any illegality, much less an apparent illegality in the redrawing of ward No.32 'Borivili T. Rahur' and ward No.33 'Padgha' as per the submission made on behalf of the petitioners. Similar is the case in respect of formation of ward No.8 'Aasangaon' and ward No.10 'Gotheghar'. Here we find that though the Grampanchayat of Aasangaon is divided, the villages in ward No.8- Aasangaon are contiguous to each other and the villages in ward No.10- Gotheghar are also contiguous to each other. 'Borsheti Bk.' and 'Borsheti Kh.' are joined with village Vafe, Gotheghar, Bamne, Hiv, Ras, etc. in ward No.10 of Gotheghar. If the objection, as raised on behalf of the petitioners is accepted, every villager would come forward to say that his village may be joined not with the other village to which it is joined but with some other village to which his village is contiguous on the other side. What is prohibited by the order of the State Election Commission dated 04.10.2011 is the division of the Grampanchayat that results in dividing the wards. In this case, the learned senior counsel for the petitioner fairly states that the wards in Grampanchayat Aasangaon are not divided while dividing the Grampanchayat. What is prohibited by direction No.9 is the division of the Grampanchayat resulting in the division of the wards. However, that is not the position in the instant case.

On a perusal of the map prepared by the petitioners which is clear and explanatory, it is apparent that none of the directions, as submitted on behalf of the petitioners, are violated while redrawing the wards for the Zilla Parishad and Panchayat Samiti

elections in district Thane. It is worthwhile to note that the redrawing of the wards was required because of the bifurcation of the Thane district in 'Thane' and 'Palghar' districts. When there is a division of one district into two, it is likely that a particular village which falls in one ward during the previous election may not fall in the same ward in the next election after the district is bifurcated. A villager cannot effectively challenge the placement of his village in another ward in the next election if the directions of the election commission, pertaining to the formation of wards are not violated. In any case, since we do not find any apparent illegality in the re-drawing of wards, the writ petition is liable to be dismissed. Hence, we dismiss the same with no order as to costs.

(Riyaz I. Chagla J)

(Smt. Vasanti A Naik, J)