

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.5636 OF 2019

Dattatraya s/o Narhari Kunde

..Petitioner

Versus

Yogesh s/o Sheshrao Salunke

..Respondents

Mr S.S. Thombre, Advocate for petitioner

CORAM : ANIL S. KILOR, J.

DATE : 10.12.2019

ORAL ORDER :

1. By the present writ petition, the petitioner is challenging the order dated 12.7.2018, passed by the learned 3rd Civil Judge, Junior Division, Vaijapur thereby rejecting applications at Exhs.14 and 21 preferred by the petitioner, raising preliminary objection regarding jurisdiction as per Section 9-A of the Code of Civil Procedure.

2. Heard Mr Thombre, learned Counsel for the petitioner.

3. The learned Counsel for petitioner points out that the petitioner is respondent no.2 in the Election Petition no.1/2017, pending before the learned 3rd Civil Judge, Junior Division, Vaijapur, challenging election of the petitioner held on 7.10.2017, for the post of Sarpanch of Gram Panchayat of village Kharaj Tittarkheda.

4. The learned Counsel for the petitioner points out that as per the provisions of Section 33 (5) of the Bombay Village Panchayats Act, 1959, dispute relating to election of Sarpanch be raised before the Collector and not before the Civil Judge and, therefore, according to him, the learned Election Tribunal ought to have allowed the applications Exh.14 and 21 of the petitioner.

5. To consider the contention raised by the petitioner, I have gone through the relevant provisions and the impugned order dated 12.7.2018. The Election Tribunal has considered the said contention of the petitioner in relation to provisions under Section 33 (5) of the Bombay Village Panchayats Act, 1959, in paragraph no.4 of the impugned order. The observations made are as follows :

“4. I have heard both the counsels. Perused application and say filed by petitioner. Also perused record of the case. It reveals that present election petition is filed under section 15 of Maharashtra Village Panchayat Act. On 19.7.2017, the State Government an ordinance to amend the Maharashtra Village Panchayat Act came into the force. As per the amendment in Maharashtra Village Panchayat Act, Section 33 Sub-section (5) the words Sarpanch were deleted and after section 30 the section 30A-1A is inserted. In section 30A-1A in subsection (6) it is provided that in case of regarding dispute election of Sarpanch, the provision of section 15 shall apply. As per section 15 any dispute regarding election of any member of Grampanchayat the matter is to be decided by Civil Judge, Junior Division or if there is no any Civil Judge Junior Division, the matter will be decided by Civil Judge, Senior Division. Therefore, considering this amendment in Maharashtra Village Panchayat Act, the present petition is maintainable before this Court.”

6. After amendment to Section 33, for directly elected Sarpanch under amended Section 30A – 1A of Act, 1959, Section 33 (1) (1A) (5) read thus :

“33. Procedure for election of Sarpanch and Upa-Sarpanch – (1) On the establishment of a Panchayat for the first time under this Act, or on its reconstitution or establishment under Sections 145 and 146, or on the expiry of the term of a Panchayat a meeting shall be called on the date fixed under sub-section (1) of Section 28 by the [Collector], for the election of the Upa-Sarpanch. In the case where the office of the Upa-Sarpanch become vacant, a meeting shall be called on the date fixed by the [Collector], for the election of the Upa-Sarpanch.

(1A) The election of the Sarpanch shall be held in accordance with the provisions of section 30A-1A of this Act.

(5) In the event of a dispute arising as to the validity of the election of a Upa-Sarpanch under sub-section (1) the officer presiding over such meeting or any member may, within fifteen days from the date of the election, refer the dispute to the Collector for decision. An appeal against the decision of the Collector may, within fifteen days from the date of such decision, be filed before the Commissioner, whose decision shall be final. The Collector or Commissioner shall give his decision as far as possible within sixty days of the receipt of the reference, or as the case may be, appeal.”

From the plain reading of the above referred amended provision, I have no doubt that Section 33 (5) would not apply to the case of petitioner as the petitioner was directly elected under amended Section 30A – 1A of Act, 1959, as Sarpanch. In the said backdrop, the argument of the learned Counsel for petitioner that the election dispute ought to have been filed before the Collector, is rejected.

6. Thus, I do not find any legal infirmity or illegality in the impugned order dated 12.7.2018, passed below Exhs.14 and 21. In the light of the said facts, this is not a fit case for interference under Article 226 and 227 of the Constitution of India.

7. In the light of above observations, the present Writ Petition is dismissed. No order as to costs.

(ANIL S. KILOR, J.)

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