

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

CIVIL REVISION APPLICATION NO. 10 OF 2019

Sayabai Gulab Patil
Age: 54 years, Occu: Household,
R/o. Mohadi, Tq. Parola,
Dist. Jalgaon

... Applicant
(Ori. Applicant)

Versus

1. The Returning Officer,
Grampanchayat, Mohadi,
Tq. Parola, Dist. Jalgaon
2. The State Election Commission
State of Maharashtra
Through District Collector,
Jalgaon, Dist. Jalgaon
3. Grampanchayat Mohadi,
Tq. Parola, Dist. Jalgaon,
Through its Gramsevak
4. Talathi Mohadi,
Tq. Parola, Dist. Jalgaon
5. Manjula Ananda Patil,
Age: 50 years, Occu.: Household,
R/o. Mohadi, Tq. Parola,
Dist. Jalgaon

... Respondents
(Ori. Respondents)

....

Mr. Vijay B. Patil, Advocate for applicant.
Mr. S. T. Shelke, Advocate for respondent No.2.
Mr. A. J. Patil, Advocate for respondent No.5.

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CORAM : R. G. AVACHAT, J.

JUDGMENT RESERVED ON : 19th SEPTEMBER, 2019

JUDGMENT PRONOUNCED ON: 10th OCTOBER, 2019.

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally, by consent.
2. The challenge in this revision application is to the order dated 19.09.2018, passed by the Civil Judge, Junior Division, Parola, District Jalgaon, rejecting the Election Petition, being No.1/2018 filed by the applicant.
3. The applicant has contested the village panchayat election. Respondent No.5 was also one of the contesting candidates against the applicant herein. It was an election for the post of Sarpanch of the village Mohadi, taluka Parola, District Jalgaon. Respondent No.5 was elected by a margin of two votes over the applicant herein. It is averred in the application that over 8 to 10 persons did cast their votes in favour of respondent No.5 after they cast their votes for the village panchayat election of the nearby village Fulpat, taluka Dharangaon. The applicant had raised objection for allowing them to cast their votes again. She was, however, advised to file election dispute after the

election results were over. The applicant, therefore, filed the election dispute, being Election Petition No.01/2018 before the Court of Civil Judge, Junior Division, Parola.

4. Respondent No.5 moved application Exh.15 for rejection of the election petition, referring the provisions of Order 7 Rule 11 of the Code of Civil Procedure, 1908.

5. The learned Judge was pleased to find that the applicant did not have cause of action to file the election petition/dispute. The petition, therefore, came to be rejected. The aforesaid order is under challenge in this revision application.

6. The learned counsel for the applicant, would submit that the provisions of the Code of Civil Procedure, particularly, Order 7 Rule 11 do not have application to grampanchayat election disputes. Section 15 of the Maharashtra Village Panchayats Act (for short “the said Act”), describes the procedure as regards determination of validity of election. On merits as well, the learned Counsel took me through the averments in the election petition to contend that the same disclosed the cause of action. The learned Judge erred in rejecting the election petition/dispute.

7. Learned counsel for respondent No.5, would on the other hand, support the impugned judgment.

8. Admittedly, the applicant and respondent No.5 have contested the election for the post of Sarpanch of village panchayat, Mohadi, taluka Parola. Respondent No.5 was declared elected by margin of two votes over the applicant. The applicant, therefore, immediately preferred the election petition/dispute, alleging therein that the applicant got 288 votes, whereas respondent No.5 secured 290. One Patil Jankabai Gopiram and Patil Samadhan Natthu, whose names appeared in the voters list from Ward Nos. 3 and 2 respectively of the village Fulpat, taluka Dharangaon, did cast their votes in the election of village grampanchayat of village Fulpat and then again cast their votes in the election of grampanchayat of village Mohadi at the instance of respondent No.5. It has also been averred in the petition that eight more persons, whose names did appear in the voters list from Surat, also cast their votes.

In short, the grievance of the applicant was that, about 8 to 11 voters from nearby villages have cast their votes in favour of respondent No.5 in the election of grampanchayat of village Mohadi. Casting of votes by the voters, twice, is said to have been illegality. Had

these voters been not allowed to cast their votes, the applicant would have been elected.

Be that as it may, the merits of the case are not being considered in this revision application.

9. Section 15 of the said Act, speaks on determination of validity of elections. The relevant portion of Section 15 of the said Act, runs as under:

“15. Determination of validity of elections: enquiry by Judge; procedure – (1) If the validity of any election of a member of a Panchayat is brought in question by [any candidate at such election or by] any person qualified to vote at the election to which such question refers, [such candidate or person] may, at any time within fifteen days after the date of declaration of the result of the election, apply to the Civil Judge (Junior Division), and if there be no Civil Judge (Junior Division) then to the Civil Judge (Senior Division) (hereinafter in each in case, referred to as “the Judge”) having ordinary jurisdiction in the area within which the election has been or should have been held for the determination of such question.

(2) Any enquiry shall thereupon be held by the Judge and he may after such enquiry as he deems necessary pass an order, confirming or amending the declared result, or setting the election aside. For the purposes of the said enquiry the said Judge may exercise all the powers of a Civil Court, and his decision shall be conclusive. [If the election is set aside, a date for holding a fresh election shall forthwith be fixed under Section 11.]

(3) All applications received under sub-section (1)-

(a) in which the validity of the election of members to represent the same ward in question, shall be heard by the same Judge, and

(b) in which the validity of the election of the same member elected to represent the same ward is in question, shall be heard together.

(4)”

10. It is true that for the purpose of the enquiry, there has been a person authorised to exercise all the powers of the civil Court. The learned Judge, however, appears to have erred in complying the provisions of Order 7, Rule 11 of the Code of Civil Procedure to the election dispute preferred by the applicant herein. Sub-Rule (2) of Section 15 of the said Act, mandates the Judge to hold an enquiry into the dispute.

11. Learned counsel for the applicant did not bring to my notice any provision, that makes applicable provision of Order 7, Rule 11 of the Code of Civil Procedure, to the grampanchayat dispute.

12. Since, Order 7 Rule 11 of the Code of Civil Procedure, has no application to the grampanchayat election petition/dispute, the trial Court ought not to have rejected the election petition on the ground of the same to have not disclosed cause of action on merits as well, the averments in the petition do disclose the cause of action. The revision application, therefore, succeeds.

13. The civil revision application is allowed.

14. The impugned order dated 19.09.2018 passed by the learned Civil Judge, Junior Division, Parola, in Election Petition No.1/2018 is hereby set aside. The Election Petition No.1/2018 is restored to the file of the Court of Civil Judge, Junior Division, Parola. The learned Civil Judge, Junior Division, Parola, is expected to decide the election petition/dispute as early as possible and not later than ten months from the date of receipt of this order.

15. The civil revision application is disposed of. Rule is made absolute.

[R. G. AVACHAT, J.]

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