

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

WRIT PETITION STAMP NO.11228 OF 2018

Kiran Mahadev Yepre	]	
Age adult, Occupation Agriculture	]	
Residing at Pisoli, Taluka Haveli	]	
District Pune	]	 Petitioner.

Versus

1]	Asha Tanaji Kalbhor	]	
		]	
2]	Mangesh Bhairu Masal	]	
		]	
	Both adults, Occ : Agriculture	]	
	Residing at Pisoli, Taluka Haveli	]	
	District Pune	]	
		]	
3]	Gram Panchayat, Pisoli through its Gram Sevak	]	
		]	
4]	Collector of Pune	]	
	Having his office at Pune	]	
		]	
5]	Additional Commissioner (Revenue)	]	
	Pune Division, Pune having his	]	
	Office at Pune	]	 Respondents.

Mr. S S Patwardhan a/w Ms. Sukhman Rait for the Petitioner.

Mr. T D Deshmukh for the Respondent No.1.

Mr. S H Kankal AGP for the Respondent Nos. 4 and 5.

**CORAM : S. S. SHINDE, J
DATE : 22nd March 2019**

ORAL JUDGMENT :

1 Rule, considering the challenged raised in the above Writ Petition,
made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 21/03/2018 passed by the Additional Commissioner (Revenue) Pune Division, Pune by which order Appeal No.30 of 2018 filed by the Respondent No.1 came to be allowed and resultantly the order dated 19/12/2017 passed by the Collector of Pune came to be set aside.

3 The brief facts of the case are that the Petitioner and the Respondent No.1 are the elected members of Pisoli Village Panchayat in the elections held in 2017. The Respondent No.1 was elected on the post of Deputy Sarpanch on 14/07/2017. On 03/09/2017, the Respondent No.1 has resigned from her post of Deputy Sarpancha. It appears that the said resignation of the Respondent No.1 was placed in the meeting dated 13/09/2017 and was accepted by passing a resolution. Thereafter on 18/09/2017 the Respondent No.1 filed an application under Subsections (3) and (5) of Section 29 of Maharashtra Village Panchayat Act, 1959 for quashing the resolution dated 13/09/2017 under which her resignation was accepted. Accordingly the Respondent No.4 – The Collector of Pune issued notice. Thereafter by a letter dated 07/11/2017 addressed to the Collector of Pune, the Respondent No.1 sought permission to withdraw the said dispute application. On 20/11/2017, the Respondent No.1 again submitted an application to withdraw the dispute application. The Respondent No.1 also submitted her affidavit to that effect.

4 On the basis of the applications dated 07/11/2017 and the affidavit submitted by the Respondent No.1, the Respondent No.4 passed an order dated 19/12/2017 and allowed the Respondent No.1 to withdraw her dispute application.

5 Against the said order dated 19/12/2017 passed by the Respondent No.4 allowing the Respondent No.1 to withdraw her dispute application, the Respondent No.1 filed Appeal No.30 of 2018 before the Additional Commissioner (Revenue), Pune Disivion, Pune on the ground that the so called resignation given by the Respondent No.1 is not in her handwriting and is not signed by her. In the Appeal the Respondent No.1 alleged that her resignation was illegally accepted in the meeting dated 13/09/2017 and that she had not give any resignation in her handwriting and signed by her, and therefore, she filed the dispute application before the Collector of Pune.

6 The Appellate Authority after considering the material on record, by the order dated 21/03/2018 allowed the said Appeal filed by the Respondent No.1 and set aside the order passed by the Collector of Pune allowing withdrawal of the dispute application filed by the Respondent No.1 on the ground that the Collector of Pune has failed to take into consideration

the fact that the resignation is not in the handwriting of the Respondent No.1. It is the said order dated 21/03/2018 passed by the Appellate Authority which is taken exception to by way of the above Writ Petition.

7 It is the contention of the Petitioner that the appeal filed by the Respondent No.1 before the Respondent No.5 is not maintainable inasmuch as it is preferred against the order permitting the Respondent No.1 to withdraw her dispute application. The Respondent No.1 could have applied to the Respondent No.4 for recall of his order, and therefore the Respondent No.5 erred in allowing the appeal filed by the Respondent No.1.

8 The Respondent No.1 has filed affidavit in reply. It is stated by the Respondent No.1 that the so called resignation alleged to have been given by her is one of those blank forms which has been misused by some of the panel members with a mala fide intention to oust her from the post of Deputy Sarpancha. She further stated that she has not given resignation in her handwriting and signed by her. It is further stated that the so called resignation came to be illegally accepted without giving an opportunity of hearing to her in the meeting dated 13/09/2017. Hence she filed a dispute application before the Collector of Pune. It is the case of the Respondent No.1 that she has not issued any application/letter dated 07/11/2017 and 20/11/2017 and same do not bear her signature. She therefore submitted that

the Collector of Pune erred in relying upon the said applications dated 07/11/2017 and 20/11/2017. The learned counsel of the Respondent No.1 contended that the order passed by the Respondent No.5 is a well reasoned after taking consideration the materials on record.

9 The learned counsel for the Respondent No.1 would submit that the Respondent No.1 disputed her handwriting in the resignation letter and the signature on the same. The learned counsel therefore submits that the Collector of Pune has not taken into consideration the said fact and without going into the said aspect has passed the order. He further submits that the Respondent No.5 after considering all these aspects has passed the impugned order.

10 In my view, as the Respondent No.1 disputed her handwriting and signature on the resignation, it would be proper to remand the matter back to the Collector of Pune for a de-novo consideration. Hence the order passed by the Additional Commissioner (Revenue) Pune Division Pune, is quashed and set aside. The Dispute Application No.178 of 2017 is restored to its original file. The Collector, Pune is directed to decide the said Dispute Application afresh as expeditiously as possible, however, within 8 weeks from the receipt of the copy of this order. The contentions of the parties are kept open for being urged before the Collector of Pune. The Collector of Pune would decide the

said Dispute Application on its own merits and in accordance with law. Needless to observe that such a decision would be taken after giving opportunity of being heard to the parties. The parties are at liberty to file the documents. The parties to appear before the Collector of Pune on 04/04/2019. The above Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[S. S. SHINDE , J]