

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.35 OF 2019

Sujata Basavraj Kankanwadi ...Applicant
vs.
Avakka Varadshankar Vardapgol and Ors. ...Respondents

Mr. Pradeep Dalvi, for the Applicant
Mr. Ajay Bhise, for the Respondents

CORAM : M. S. SONAK, J.

DATE : APRIL 02, 2019

P.C.:

. Heard Mr. Dalvi, learned counsel for the Applicant and Mr. Bhise, learned counsel for the Respondents.

2. The challenge in this Petition is to the order dated 5th December, 2018 made by the learned single Judge as held that he has jurisdiction to entertain and try the Election Petition instituted by the Respondents.

3. Mr. Dalvi, learned counsel for the Applicant submits that the only allegation in the Election Petition is that the Petitioner had more than two children and therefore was disqualified under Section 14(J-1) of the Maharashtra Village Panchayat Act, 1959

(said Act). He submits that the issue of such disqualification can only be gone into under section 16 of the said Act and before the Collector and not by way of Election Petition under Section 15 of the said Act. He relies on the decision of the Supreme Court in ***State of H.P. and Ors. vs. Surinder Singh Banolta, AIR 2007 Supreme Court, 903.***

4. Mr. Bhise, learned counsel for the Respondents defends the impugned order on the basis of reasoning reflected therein. Further he submits that the issue indeed raised no longer *Res Integra* in view of the decision of the learned single Judge of this Court (B.P. Dharmadhikari, J.) in ***Shrikrishna Wasudeo Dhage v s. Shivcharan Trimbakrao Kalne and Ors. , Writ Petition No. 5034 & 5658 of 2009 dated 15th February, 2010*** in the precise context of the provision of the said Act.

5. According to me, there is no jurisdictional error whatsoever in the view taken by the learned trial Judge. In fact, the view taken by the learned trial Judge is consistent with the decision of this Court in the case of this Court ***Shrikrishna Dhage*** (supra). The decision

in **Surinder Banolta** (supra) in fact assists the case of the Respondents rather than that of the Petitioner. Even in the said decision, the Hon'ble Supreme Court has clearly held that correct remedy under said circumstance is to institute an Election Petition. Therefore, by following the reasoning in **Shrikrishna Dhage** (supra) this Petition is liable to be dismissed and is hereby dismissed.

6. There shall be no order as to costs.

(M. S. SONAK, J.)