

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

WRIT PETITION NO. 8275 OF 2022

Sharad Shivaji Jamdar ...Petitioner

Versus

The State of Maharashtra and Ors ...Respondents

**WITH
INTERIM APPLICATION (STAMP) NO. 17101 OF 2022
IN
WRIT PETITION NO. 8275 OF 2022**

Pratap Ganpatrao Patil ...Applicant

Versus

Sharad Shivaji Jamdar and Ors ...Respondents

**WITH
WRIT PETITION NO. 7266 OF 2022**

Sharad Anandrao Patil ...Petitioner

Versus

Ld. district Collector of Kolhapur
and Ors ...Respondents

**WITH
WRIT PETITION NO. 8418 OF 2022**

Gaurav Ulhas Bhagar and Anr ...Petitioners

Versus

The State of Maharashtra and Ors ...Respondents

**WITH
WRIT PETITION NO. 8087 OF 2022
ALONG WITH**

INTERIM APPLICATION (STAMP) NO. 17092 OF 2022
IN
WRIT PETITION NO. 8087 OF 2022

Rahul Ramchandra Pasale and Ors ...Petitioners

Versus

State Election Commission and Ors ...Respondents

WITH
WRIT PETITION NO. 8155 OF 2022

Prakash Kalappa Awade ...Petitioner

Versus

The State of Maharashtra and Ors ...Respondents

WITH
WRIT PETITION NO. 8156 OF 2022

Mahaveer Anna Patil and Ors ...Petitioners

Versus

The State of Maharashtra and Ors ...Respondents

WITH
WRIT PETITION NO. 8159 OF 2022

Anandrao Jaysingrao Ingawale
and Ors ...Petitioners

Versus

The State of Maharashtra and Ors ...Respondents

WITH
WRIT PETITION NO. 8132 OF 2022

Nitin Jaysingrao Kharade and Ors ...Petitioners

Versus

State Election Commission and Ors ...Respondents

WITH
WRIT PETITION NO. 8101 OF 2022

Chandradip Shashikant Narke ...Petitioner

Versus

The State of Maharashtra and Ors ...Respondents

WITH
WRIT PETITION NO. 8045 OF 2022

Sanjay Namdev Khot ...Petitioner

Versus

The State of Maharashtra and Ors ...Respondents

WITH
WRIT PETITION NO. 8247 OF 2022

Hanmant Dharmaraj Kolawale ...Petitioner

Versus

The State of Maharashtra and Ors ...Respondents

WITH
WRIT PETITION NO. 8249 OF 2022

Pundalik Ravaji Patil ...Petitioner

Versus

The State of Maharashtra and Ors ...Respondents

WITH
WRIT PETITION NO. 8270 OF 2022

Sanjeev Manik Khailare ...Petitioner

Versus

The State of Maharashtra and Ors ...Respondents

WITH
WRIT PETITION (STAMP) NO. 16769 OF 2022

Amar @ Hambirrao Dinkar Patil ...Petitioner

Versus

The State of Maharashtra and Ors ...Respondents

WITH
WRIT PETITION NO. 8344 OF 2022

Amarsingh Gopalrao Ghorpade ...Petitioner

Versus

The CEO, Z.P., Kolhapur and Ors ...Respondents

WITH
WRIT PETITION NO. 8396 OF 2022

Kantilal Ramrao Narsale and Ors ...Petitioners

Versus

The State of Maharashtra and Ors ...Respondents

WITH
WRIT PETITION NO. 8558 OF 2022

Shrimant Shamrao Jadhav ...Petitioner

Versus

The State Election Commission
of Maharashtra and Ors ...Respondents

ALONG WITH
INTERIM APPLICATION (STAMP) NO. 17779 OF 2022
ALONG WITH
INTERIM APPLICATION (STAMP) NO. 17776 OF 2022
ALONG WITH
INTERIM APPLICATION (STAMP) NO. 17778 OF 2022

IN
WRIT PETITION NO. 8558 OF 2022

WITH
WRIT PETITION (STAMP) NO. 16839 OF 2022

Ravindra Bandu Patil and Anr ...Petitioners

Versus

The State Election Commission
and Ors ...Respondents

WITH
WRIT PETITION NO. 8557 OF 2022

Mohan Ramchandra Chaudhary ...Petitioner

Versus

The District Collector, Pune
and Ors ...Respondents

WITH
WRIT PETITION NO. 8904 OF 2022

Bharat Ankush Patil ...Petitioner

Versus

The State Election Commission
and Ors ...Respondents

Mr. Anil V. Anturkar, Senior Advocate a/w Mr. Amol Gatane for Petitioner in WP/8275/2022.

Mr. Anil V. Anturkar, Senior Advocate i/by Mr. Sandeep S. Koregave for Petitioner in WP/8155/2022.

Mr. Shekhar Jagtap a/w Mr. Ranjeet Nimbalkar i/by Mr. Rhea Francis, Ms. Sairuchita Chaudhary and Mr. Akash Pandey i/by Mr. Mayuresh Ingale for Applicant in IAST/17101/2022.

Mr. Manoj Patil for Petitioner in WP/7266/2022.

Mr. Surel Shah i/by Mr. Vishwajeet V. Mohite a/w Mr. Dipak Y. Jadhav for Petitioner in WP/8418/2022.

Mr. Abhijeet Kulkarni i/by DD and Abhijit Associates for Petitioner in WP/8087/2022 & 8132/2022.

Mr. Vaibhav V. Ugale for Applicant in IAST/17092/2022 in WP/8087/2022.

Mr. Surel Shah i/by Mr. Sandeep Koregave for Petitioner in WP/8101/2022, 8249/2022, 8159/2022 & WPST/16769/2022.

Mr. Surel Shah a/w Mr. Swaroop Karade i/by Mr. Pravin P. Mengane for Petitioner in WP/8156/2022.

Mr. Tejas Hilage for Petitioner in WP/8045/2022.

Mr. Samadhan A. Kashid for Petitioner in WP/8247/2022.

Mr. Anvil Kalekar for Petitioner in WP/8270/2022.

Mr. Virendra V. Pethe for Petitioner in WP/8344/2022

Ms. Manisha Devkar a/w Mr. S.M. Katkar for Petitioner in WP/8396/2022.

Ms. Ekta Tripathi for Petitioner in WP/8558/2022.

Mr. Shailesh Chavan for Applicant in IAST/17779/2022, IAST/17776/2022, IAST/17777/2022, IAST/17778/2022 in WP/8558/2022.

Mr. Prashant Bhavake for Petitioner in WPST/16839/2022.

Mr. Amjith M. Anandhan a/w Mr. Sachin R. Pawar a/w Mr. Rohan D. Kaiche, Mr. Nikhil P. Mallelwar i/by Mr. Harshad V. Bhadbhade for Petitioner in WP/8557/2022.

Mr. Sachin Hande for Petitioner in WPST/17704/2022.

Mr. A.A. Kumbhakoni, AG a/w Mr. P.P. Kakade, GP a/w Mr. A.I. Patel, Addl. G.P., Mr. V.S. Gokhale, B. Panel

Counsel, Ms. R.M. Shinde, AGP a/w Ms. M.S. Bane, AGP, Mr. R.S. Pawar, AGP & Ms. Sneha Bhange for Respondent – State.

Mr. Vishwanath Patil a/w Mr. Ankit Lodhe, Mr. Kewal Ahya for Respondent No. 5 in WP/8087/2022 & WP/8132/2022.

Mr. Sachindra B. Shetye a/w Mr. Irfan Shaikh, Ms. Priyanka H. Chavan and Ms. Sarika Shetye for Respondent No. 2 – State Election Commission.

**CORAM : PRASANNA B. VARALE, &
KISHORE C. SANT, JJ**

DATE : JULY 25, 2022

JUDGMENT (PER PRASANNA B. VARALE, J)

1. In these bunch of Petitions challenge is raised to the order passed by the Divisional Commissioner, Pune dated 17th June, 2022, as such, the Petitions are tagged together and with consent of learned Counsel appearing for respective parties, taken up together for hearing and disposal at admission stage itself. **Rule.** Rule made returnable forthwith.

2. Though, we have dealt with certain other issues raised in other Petitions also, for sake of convenience and ready reference to the facts, Writ Petition No. 8275 of 2022 filed by Sharad Shivaji Jamdar is treated as lead Petition and submissions

advanced by Mr. Anturkar, learned Senior Advocate are dealt with by this Court primarily.

3. The State Election Commission passed an order on 09th May, 2022. Copy of the said order is placed on record at D, page 41. The State Election Commission by referring to the provisions of Article 243 of the Constitution of India, 1950 and the provisions of Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, (for sake of brevity hereinafter referred to as '**Act of 1961**'), set out the backdrop for the order, namely, formation of wards being the pre-requisite for the ensuing elections. The order dated 09th May, 2022 also refers to an ordinance passed by the State Government dated 23rd September, 2021, an order passed by the Hon'ble the Apex Court dated 15th December, 2021 in Writ Petition No. 841 of 2021 and Special Leave to Appeal No. 19756/2021 and Writ Petition No. 1316 of 2021, an ordinance passed by the Government of Maharashtra of year 2022, the Government Gazette / Notification dated 21st February, 2022. Then the Election Commissioner for the State of Maharashtra by invoking the powers under the Constitution of India,

1950 as well as Act of 1961 passed order declaring the general elections for Zilla Parishad and Panchayat Samit. Then by referring to the relevant provisions guidelines are set out for formation of wards, number of wards, the number of election of the candidates following the various provisions for reserved seats, then priorities as per the roster etc.

4. Pursuant to the directions of the State Election Commission, Commissioner Pune declared the election program and as per the said election program and various wards were accordingly formed in the elections. As a pre-requisite, objections and suggestions were invited on the aspect of formation of wards and these objections and suggestions were to be submitted between 2nd of June, 2022 to 08th of June, 2022. Hearing on the objections/suggestions was scheduled on 16th June, 2022. Petitioner – Sharad Jamdar raised an objection. On the scheduled date of hearing i.e., on 16th June, 2022 one Rahul Sable, Pratap Chavre and Sachin Sapkal remained personally present before the Divisional Commissioner, Pune and sought permission for hearing so as to object the objector Sharad Jamadar

and prayed for no change be made in the ward formation. As these objectors failed to raised their objections within prescribed time limit, their request for grant of opportunity of hearing was turned down.

5. On considering the objections raised by the objector (Petitioner herein) Sharad Jamadar, the Divisional Commissioner, Pune passed a detailed order. The objector raised points, namely, the ward formation is done under political influence, the guidelines particularly geographical conditions and convenience of the voters are not followed. It was also an objection that due to new formation of wards the voters would be subjected to an inconvenience. The objections were raised in respect of the Zilla Parishad ward no. 74 – Bhigwan Shetphalgadhe, ward no. 75 – Anthurne Bori, ward no. 76 – Palasdev – Bijwadi, ward no. 77 – Wadapuri – Malawadi, ward no. 78 – Nimgav – Shelgav, ward no. 79 – Sansar – Belwadi, ward no. 80 – Lasurne – Walchandnagar, ward no. 81 – Kati – Warkute, ward no. 82 – Bawda – Lumewadi.

6. Now before we consider other objections, at the outset, it would be necessary to state that Mr.

Anturkar, learned Senior Advocate appearing for Petitioner submitted before this Court that he is not dealing with the objections in the nature of non following the guidelines in respect of geographical conditions or inconvenience but, he is on the aspect of a serious *lacunae* in the process of formation of wards.

7. Mr. Anturkar vehemently submitted that though there are various judgments of the Apex Court as well as this Court, the view expressed by the Hon'ble Apex Court and this Court cannot be treated as a blanket direction for this Court to stay its hands off from the election once the election program is declared. It was also submitted that the powers of the writ Court are not curtailed so as to prevent the parties for filing Writ Petitions and in appropriate cases this Court can pass interim orders by staying election program. Mr. Anturkar further submitted that this Court is not prevented from interfering in the election program where the facts are shaking the conscious of the Court. Then Mr. Anturkar invited attention of this Court to the order of the Election Commission dated 09th May, 2022 wherein the guidelines are formulated and

particularly clause 4.5 under caption "निवडणूक विभाग / निर्वाचक गण रचना करण्याची मार्गदर्शक तत्वे". Mr. Anturkar then invited attention to clause 4.7 of the guidelines under caption "गुगल मॅपवर प्रभागाचे नकाशे तयार करणे", loosely translated as preparation / formation of the wards as per the google map. Then Mr. Anturkar invited attention to clause 4.7.1 and it reads thus: "जिल्हा परिषद निवडणूक विभाग / पंचायत समिती निर्वाचक गणाच्या रचनेची मांडणी गुगल अर्थ (MRSAC) च्या नकाशावर करणे अनिवार्य आहे.".

8. Mr. Anturkar vehemently submitted that such insistence and a mandatory effect to use of google map by the State Election Commission is wholly untenable and unsustainable. Mr. Anturkar further submitted that the Archaeological Survey of India (ASI) had prepared the geographical map and there are digital maps also prepared by a Government Agency namely, Bhuvan and the Election Commission ought to have referred these maps as a basis for formation of wards, instead of this the Election Commission selected google map for formation of wards.

9. Mr. Anturkar further submitted that firstly

the google map service is a private service and secondly as per the google terms of service there is a disclaimer clause. Mr. Anturkar then invited attention to certain guidelines under caption "guidelines for acquiring and producing geo partial data". Mr. Anturkar also referred to National Map Policy of 2005 as well as the criminal law amendment. Mr. Anturkar then referred to an article under caption legal challenges to mapping. The author of the article is a law student. The author in her article refers to an error committed by google map service. Mr. Anturkar then submitted that as there is no authenticity attached to the google map and when there are the other maps prepared by ASI and Bhuvan, the Election Commission ought not to have place an insistence upon the google map.

10. The another submission of Mr. Anturkar was in reference to the provision of Section 20 (a) Act of 1961. Then by referring to Section 12, 58 and 64 of Act of 1961, Mr. Anturkar submitted that in those provisions reference is made to the last census and last census was conducted in the year 1971 only. Mr. Anturkar submitted that while formation of ward in the

year 2022, the census figure of 1971 is considered for carving out the wards for SC and ST category wherein for rest category the census of the year 2011 is considered.

11. Mr. Anturkar further submitted that though in the judgment and order of this Court at Aurangabad bench, the Division bench declined to interfere in the elections. Mr. Anturkar placed heavy reliance on the judgment of State of Goa and Another Vs. Fouziya Imtiaz Shaikh and another¹. Mr. Anturkar submitted that the Apex Court in appropriate cases interfered in the elections. It was also the submission of Mr. Anturkar that it is only the declaration of the election program and the election as such has not been commenced and therefore, this Court can cause an indulgence. Thus, Mr. Anturkar prayed for allowing the Petitions and also prayed for grant of interim order in the nature of stay to the election.

12. Learned Counsel appearing for Petitioners in respective Writ Petitions submitted that as per the guidelines the formation of wards is to be done by

1 (2021) 8 SCC 401

considering the municipal wards as a basis. The guidelines also referred to convenience of people and adjustment of villages for formation of wards. A reference is made to Government Circular dated 01st November, 2021. The Counsel for Petitioner submitted that these guidelines are not duly followed while formation of ward and probably the concerned officer only sitting in his officer carried out the exercise of formation of ward without following guidelines. It is further submitted that in Writ Petition No. 8413 of 2022 the Petitioners filed their objection on 13th June, 2022 and requested for providing copies of the decision, but there was no response. A reliance was placed on the judgment of Dravida Munnetra Kazhagam Vs. Secretary and ors². It is submitted that the private map prepared by the office of the Collector itself was a faulty and as such, the Commissioner ought to have rejected the objection.

13. In Writ Petition No. 8577 of 2022, the Petitioner had not raised any objection but an objection was raised by one Rohan Buthe. Initially in 16/06/2022 the objection was rejected but on the same

² (2020) 6 SCC 548

day another objection was considered.

On perusal of the Petition it revealed that though on same day two objections were raised and one objection was rejected whereas another objection was considered. There was a difference in these two objections as such, the challenge raised in the Petition is clearly on a misconception of the facts.

14. In Writ Petition No. 8396 of 2022 again the Petitioner is not an objector but challenging an order whereby the objection was considered and allowed and formation of ward was done. Petitioners are from village Bhose. Now the village Bhose earlier in Gat No.- A and after formation of ward the village Bhose included in Gat No. - B.

15. In Writ Petition No. 8155 of 2022 an grievance was raised in respect of non following guidelines. The objection was that due to peculiar geographical condition, namely, there is a mountain between two villages and one village Male was earlier in ward no. 36 and in process of formation of ward it is now shifted and added in ward no. 31. It is also submitted that for Panchayat Samit Elections this objection was

considered whereas in so far as Zilla Parishad Elections is concerned, this objection is rejected.

16. Learned Counsel appearing for Petitioner in Writ Petition No. 8101 of 2022 submitted that the river flows between two villages and while conducting the process of formation of ward this peculiar circumstance is not taken into consideration.

17. Learned Counsel appearing for Petitioner in Writ Petition No. 855 of 2022 submitted that Petitioner has not raised any objection and coming before this Court aggrieved by private notification in respect of ward no. 57. Then there is also challenge of swapping of villages in the formation of ward and submission is this swapping of villages is against the guidelines.

18. Learned Counsel appearing for Petitioner in Writ Petition No. 7266 of 2022 submitted that as the term of Zilla Parishad would expire in November 2022, the Petition be entertained and Election Commission be directed to rectify ward formation.

19. An intervention application(s) is filed in the lead Petition. It is vehemently submitted by learned

Counsel for intervenor that all the objections were duly considered by the competent Authority. The Counsel for intervenor vehemently submitted that though the Petitioner raised hue and cry on the aspect of wrong formation of the wards by not following the guidelines of Election Commission, but, in Petition challenge is raised only to the order passed by Divisional Commissioner, Pune and if Petitioner was aggrieved by the non-adherence to the Election Commission's Guidelines and if the Petitioners submitted that the guidelines are framed whereby there is an unnecessary insistence on a private map, namely, google map, the Petitioner ought to have challenged the guidelines issued by the Election Commission. As there is no challenge to the guidelines, the submissions advanced by the Counsel cannot be accepted.

20. Mr. A. A. Kumbhakoni, learned Advocate General appearing for Respondent - State as well as Mr. Shetye, learned Counsel appearing for Election Commission submitted that as the election program is now declared and as it is a consistent view of the Hon'ble the Apex Court as well as this Court that once election program

is declared this Court may not interfere in the elections and the aggrieved party may avail other remedies to raise their grievance in respect of elections.

21. Mr. Kumbhakoni placed on record a copy of the order passed by the Hon'ble the Apex Court as well as a reliance was also placed on the order passed by this Court at Aurangabad Bench.

22. Mr. Shetye, learned Counsel appearing for Respondent – Election Commission while opposing the Petitions vehemently submitted that the Petitioners proceeded on misconception. He further submitted that guidelines framed by the Election Commission are only to assist competent Authority in formation of ward. The basic considerations as reflected in the guidelines are the population and geographical condition. Mr. Shetye then refers to clause 4.5.5 of guidelines and same reads as “रचना आटोपशीर व शक्यतोवर भौगोलिक रचना”, loosely translated as as far as possible. Hence, Petitioner cannot submit before this Court that while formation of ward their shall be a strict adherence to the geographical condition. Mr. Shetye submitted that

clause 4.5.6 of guidelines takes care of the population of SC and ST category. Mr. Shetye submitted that the State Election Commission made a strict adherence to the principle of natural justice and accordingly, objections were heard and decided considering their merits.

23. In an affidavit filed on behalf of Respondent No. 2 through Under Secretary, State Election Commission it is stated that the Hon'ble Apex Court vide order dated 04th May, 2022 in the matter of Rahul Ramesh Wagh vs. The State of Maharashtra and Ors (SLP (C) No. 19756 of 2021), has directed the State Election Commission to conduct the elections. It is further stated that as follows:

8. ...
...
...

The Apex Court has observed that the conduct of the elections of all local bodies of which the term have already expired are require to be conducted before the expiry of such term and the conduct of the elections of such local bodies cannot brook any delay. The Apex Court has further observed that the election program of such

local bodies must proceed and the State Election Commission is obliged to notify the election program within two weeks.

Then a reference is made to an order passed by the Hon'ble Apex Court on 10th May, 2022 in the matter of Suresh Mahajan Vs. State of Madhya Pradesh and Anr in Writ Petition (Civil) No. 278 of 2022. The copy of the said order is annexed to the affidavit-in-reply at annexure R-4, page 106.

It may not be out of place to refer to certain observations of the Apex Court which assumes importance and the same reads thus:

*5. The elections have not been held assumedly for the same reason as in the case of State of Maharashtra, namely, the State has still not been able to complete the triple test formalities as predicated in the decision of this Court in **Vikas Kisanrao Gawali Vs. State of Maharashtra**³. As a result of which, reservation of Other Backward Classes (OBC) category cannot be provisioned by the State Election Commission. This has happened despite the peremptory directions given by this Court vide successive orders, including dated*

³ (2021) 6 SCC 73

03.03.2022. This Court has made it amply clear that conduct of elections to install the newly elected body in the concerned local self-government cannot brook delay, owing to the Constitutional mandate expositied in Article 243-E and 243-U including the provisions in the concerned State Legislation in that regard.

6. A somewhat hiatus situation occurs and is permitted only when the dissolution of a local body is necessitated before the expiry of the term of that local body. Else, the term of the local self-government has been specified as 5 (five) years from its first meeting, "and no longer", in Article 243-E as well as in Article 243-U. This has been restated by the Constitution Bench of this Court in **Kishansing Tomar Vs. Municipal Corporation of the City of Ahmedabad & Ors⁴**.

7. Thus, all concerned are obliged to ensure that the newly elected body is installed in every local body before the expiry of 5 (five) years term of the outgoing elected body. Even in case of dissolution before the expiry of five years period, where an Administrator is required to be appointed by the State, that regime cannot be continued beyond 6 (six) months by virtue of relevant

4 (2006) 8 SCC 352

provisions in the respective State Legislation(s).

8. This constitutional mandate is inviolable. Neither the State Election Commission nor the State Government or for that matter the State Legislature, including this Court in exercise of powers under Article 142 of the Constitution of India can countenance dispensation to the contrary.

24. In the present bunch of Petitions the principal ground pressed is of formation of ward and by pressing this ground the Petitioners prayed for allowing the Petitions and/or for grant of an interim relief. We may state that grant of any interim relief would certainly result in an interference in the course of election. It is also not in dispute that the election program is declared by the State Election Commission and any interim order would certainly an interference in the election.

On the backdrop of these facts, further observations of the Hon'ble Apex Court in the order dated 10th May, 2022 again assumes much importance and the same reads thus:

11. In any case, the ongoing activity of delimitation or formation of ward

cannot be a legitimate ground to be set forth by any authority much less the State Election Commission - to not discharge its constitutional obligation in notifying the election programme at the opportune time and to ensure that the elected body is installed before the expiry of 5 (five) years term of the outgoing elected body. If there is need to undertake delimitation - which indeed is a continuous exercise to be undertaken by the concerned authority - it ought to be commenced well-in-advance to ensure that the elections of the concerned local body are notified in time so that the elected body would be able to take over the reigns of its administration without any disruption and continuity of governance (thereby upholding the tenet of Government of the people, by the people and for the people). In other words, the amendment effected to the stated enactments cannot be reckoned as a legitimate ground for protracting the issue of election programme of the concerned local bodies.

12. Therefore, we direct the State Election Commission by way of interim order, to issue election programme without any further delay on the basis of the

wards as per the delimitation done in the concerned local bodies when the elections had become due consequent to expiry of 5 (five) years term of the outgoing elected body or before coming into force of the impugned Amendment Act(s) whichever is later. On that notional basis, the State Election Commission ought to proceed without any exception in respect of concerned local bodies where elections are due or likely to be due in the near future without waiting even for the compliance of triple test by the State Government for providing reservation to Other Backward Classes. We have no manner of doubt that only such direction would meet the ends of justice and larger public interests consistent with the constitutional mandate that the local self-government must be governed by the duly elected representatives uninterrupted except in case of its dissolution before expiry of the term on permissible grounds. (Emphasis supplied)

25. At this stage, we may state that though Mr. Anturkar vehemently submitted before this Court that the case of the Petitioners falls in the exceptional category of cases as carved out by the Hon'ble Apex

Court, we are unable to accept this submission for the reason, that only on the ground google map service is a private and as it is not a full proof service, the authority ought to have taken assistance of the maps prepared by the Archaeological Survey of India or by Bhuvan.

26. It is vehemently urged on behalf of Petitioners that the Respondent – State Election Commission in its guidelines permitted the authority to take assistance of google map while considering the formation of wards made. We find that it is not the case that in all wards at the time of formation of wards, google map is used as a base, in some cases authority have utilised the maps already prepared by the PWD and if there was no prohibition for the authority to use google map as a basis, the Petitioners only on basis of some article wherein the author has expressed her personal views cannot submit before this Court that using of google map is a wholesome error committed by the authority and on that comment alone the Petition be allowed and/or interim relief be granted.

27. Now coming back to the order of the Hon'ble Apex Court dated 10th May, 2022 we may refer to certain other observations in the very order as under:

28. We were also informed by the learned counsel appearing for the Madhya Pradesh State Election Commission during the course of arguments that some writ petitions are pending before the High Court in which interim orders have been passed and that may come in the way of the State Election Commission to notify the election programme. In that regard, we make it clear and also direct that the State Election Commission must abide by the directions and observations in this order uninfluenced by any order of the High Court or the Civil Court on the subject of elections of the concerned local self-government, as the case may be. If any order passed or to be passed hereafter by the High Court or the Civil Court in the State of Madhya Pradesh, is in conflict with the directions given by this Court, the same shall be deemed to have been superseded in terms of this order and not to be acted upon without the prior permission of this Court. (Emphasis supplied)

31. We also make it clear that this

order and directions given are not limited to the Madhya Pradesh State Election Commission/State of Madhya Pradesh; and Maharashtra State Election Commission/State of Maharashtra in terms of a similar order passed on 04.05.2022, but to all the States/Union Territories and the respective Election Commission to abide by the same without fail to uphold the constitutional mandate. (Emphasis supplied)

28. A reliance was also placed on the judgment of this Court dated July 05, 2022 in a bunch of Petitions at Aurangabad bench. In these bunch of Petitions also the interim prayer was for staying the order of ward formation. While considering the submissions, the Division bench of this Court was pleased to observed as under:

16. Upon hearing the parties, we are convinced that these writ petitions are not maintainable before this Court under Article 226 of the Constitution for more reasons than one which we shall presently assign.

*19. While perusing the decision in **State of Goa** (supra), we noticed that the decision of the Constitution Bench of the*

Supreme Court in Lakshmi Charan Sen and others Vs A.K.M. Hassan Uzzaman and others, reported in (1985) 4 SCC 689, was cited. Although any detailed discussion with reference to such decision is not available in State of Goa (supra), the conclusions recorded in paragraph 68 are in sync therewith. The Supreme Court culled out the principles from its earlier precedents, which each Court ought to bear in mind while dealing with proceedings seeking relief in respect of election matters. Although Mr. Palodkar sought to draw support from paragraph 68.8, we have not been able to persuade ourselves to agree with him. We are conscious that a judgment of a Court cannot be read as if it were a statute, yet, the Supreme Court having expressed what are the results of its reading and understanding of the precedents, it would not be open for the High Court to take a view which strikes a discordant note with the view of the Supreme Court. The words in paragraph 68.8, on which we have laid emphasis, leave none in doubt that a challenge can be laid to orders relating to delimitation or allotment of seats including preparation of electoral rolls, which do not form part of the election process, in the manner

provided by the statutory provisions dealing with delimitation of constituencies and allotment of seats to such constituencies. Here, it is the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereafter "1965 Act", for short) which not only deals, in section 10, with 'Elections and Publication of Names of Elected and Nominated Councillors' but also provides, in section 21, how a dispute in respect of, *inter alia*, election of an elected councilor should be adjudicated. The remedy of the petitioners, therefore, would lie in a petition presented in the District Court in terms of sub-section (1) of section 21. Mr. Palodkar was heard by us to contend that a dispute of the nature raised in these writ petitions is not capable of being adjudicated by the District Court. We have no reason to agree with him, yet, even if we assume this contention to be correct, the constitutional validity of section 21 could require a challenge on the principle of *ubi jus ibi remedium* and the lack of a forum. That is not the challenge in any of the writ petitions. Thus, resting on paragraph 68.8 of the decision in **State of Goa** (*supra*), we hold that these writ petitions are not maintainable.

20. The second reason has its roots in the self-imposed restrictions, which a writ court is required to abide by in the course of exercise of its discretionary jurisdiction. The decision of the Supreme Court in **Anugrah Narain Singh and another Vs State of U.P. and others**, reported in (1996) 6 SCC 303, considered the decision in **Lakshmi Charan Sen** (supra) in some detail. The law laid down by the Supreme Court in **Lakshmi Charan Sen** (supra) that an election cannot be allowed to be stalled on the complaint of a few individuals, for, such stalling would cause grave injustice to other voters having the right to elect representatives to the local bodies, was reaffirmed. The conclusions recorded by the Supreme Court in an order dated 30th August, 1982, which formed part of the final judgment/decision in **Lakshmi Charan Sen** (supra) were noticed in **Anugrah Narain Singh** (supra), to the effect that no High Court in exercise of its powers under Article 226 of the Constitution shall pass any order, interim or otherwise, having the tendency or effect of postponing an election that is reasonably imminent and in relation to which its writ jurisdiction is invoked, and that imminence of the

electoral process is a factor which must guide and govern the passing of orders in the exercise of the High Court's writ jurisdiction. The Court emphasized that "the more imminent such process, the greater ought to be the reluctance of the High Court to do anything, or direct anything to be done, which will postpone that process indefinitely by creating a situation in which, the Government of a State cannot be carried on in accordance with the provisions of the Constitution". The High Courts were also urged to bear in mind self-imposed limitations on their power to act under Article 226, by refusing to pass orders or give directions which will inevitably result in an indefinite postponement of elections. (Emphasis supplied)

29. The Division bench further observed as under:

26. On due consideration of the judgment in **Suresh Mahajan** (supra), we cannot by a judicial fiat stall the elections which are imminent. The same have to be conducted and completed without any delay, as directed by the Supreme Court. (Emphasis supplied).

27. It is well known that a Court

*exercising plenary jurisdiction under Article 226 of the Constitution ought to issue a writ which would further public interest and not thwart it. What emerges, giving due regard to the law laid down by the Supreme Court in **State of Goa** (supra), **Anugrah Narain Singh** (supra) and **Lakshmi Charan Sen** (supra) is that an otherwise imminent election process, therefore, need not be derailed merely because there are certain disgruntled voices who wish to have the wards formed in the manner they like, while disligning the formation brought about by the State Election Commission. If there be any genuine legal grievance which calls for being addressed, the forum prescribed by law has to be approached.*

30. Now in so far as the grounds raised by the Counsel for Petitioners in respect of non-following the guidelines about the aspect of population and google map is concerned, in the written submissions filed before this Court by the State Election Commission it is specifically stated thus:

13. *The perusal of the said order shows that all possible care and precautions are directed to be taken before formation of gats and gans as provided*

under the Act. The formation of gats and gans and determination of its boundaries are basically dependent of his population and it has to adjusted by its geographical continuity. It is a fact that it is impossible to determine arithmetically perfect population and geographically perfect contiguity of boundaries of each constituency. Taking into consideration it is proved under the said order dated 09.05.2022 that as far as average populations of each gats and gans is concerned the 10% more or less is allowed to adjust geographical contiguity. As the same is provided in the clause no. 4.1. Similarly clause 4.5.5 provides that AS FAR AS PRACTICABLE the geographical contiguity should be taken into consideration.

14. Even clause no. 4.5.6 provides that a proper care should be taken in the population of reserved categories is required to be divided. (The said order of the State Election Commission is annexed by the Petitioner in WP/8275/22 at Exh. 'D' pg. no. 41). The said order further provides that use of google map for the purpose of gats and gans.

15. One of the ground of the challenge is that the google map should not

have been for the purpose of determination of the boundaries of gats and gans. It is submitted that first of all there is no prohibition for the use of google map, the said google map are used for the sake of convenience. In fact the use of google map gives more transparency to understand the public at large the exact boundaries of the constituency.(Emphasis supplied)

16. As far as the population is concerned for this election, the population of last presiding census of which the relevant figures are finally published are of 2011 and the same are taken into consideration Section 2 (20.A) of the act provides the definition of 'Population'. Even the figures of population of SC and ST are made available of last presiding census of 2011 and therefore the same are considered for the purpose of giving representation to the reserved categories i.e. SC and ST.(Emphasis supplied)

17. ...

...

...

It is submitted that if at all any of the Petitioners were aggrieved with the procedure laid down in the order dated 09.05.2022 the order should have been

independently challenged. Admittedly none of the Petitioner has done so. It is not in dispute that all Petitioners submitted their objections and suggestions and participated in the proceedings of hearing of objections and suggestions, before taking final decision on objections and suggestions the objector or person who has given suggestion are heard by the Ld. Divisional Commissioner, the report of the Ld. Collector / Revenue Authorities qua, the objections and suggestions were placed before the Divisional Commissioner after having considered the material placed before the Divisional Commissioner, the Commission has disposed of objections and suggestions as per the suggestions and directions given under provisions of law and as per the directions given in order dated 09.05.2022. Thus, it may be considered that the maximum care was taken by the Ld. Divisional commissioner while disposing of objections and suggestions and thereafter the final notification of final gats and gans wee issued. This Hon'ble Court may consider and appreciate that this is not the quasi judicial proceedings. It is not provided under the Act. However, to conduct the elections free and fair and to bring transparency before public at large,

the said procedure is provided under the said order. The legitimate expectation is that, the Principle of Natural Justice is followed. The SEC has followed it.

19. As on today the election process has come to an advanced stage. The voters list also finalized and the reservation of the schedule caste, scheduled tribes and OBC are to be determined shortly. Thus, interfering at this stage and entertaining these Petitions and passing any interim order would amount to delay the election process and thus this Petition and other companion petitions may kindly be dismissed.

31. In view of the above referred facts, we are of the opinion, that the grounds raised by Mr. Anturkar and learned Counsel appearing for Petitioners in other respective Writ Petitions in challenge to the order impugned in the Petitions about formation of wards, are unsustainable and untenable. On the contrary, we find considerable merit in the submissions of Mr. Kumbhakoni, learned Advocate General appearing for Respondent – State and Mr. Shetye, learned Counsel appearing for Respondent – State Election Commission.

32. In view of above referred considerations, we are of the opinion, that Petitions are devoid of any merits, deserves to be dismissed. Accordingly, Writ Petitions are dismissed.

33. In view of dismissal of Petitions, no separate orders are required to be passed in pending applications, if any, and the same stand disposed of accordingly. Rule is discharged.

(KISHORE C. SANT, J.)

(PRASANNA B. VARALE, J.)