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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.14679 OF 2022

Abhijit P. Tayshetye & Ors.

...Petitioners

V/s.

State Election Commission,
Maharashtra State, Mumbai & Ors.

...Respondents

Mr.Prashant Bhavake with Mr.Utkarsh Desai for the Petitioners.

Mr.Sachindra B. Shetye with Mr.Vikrant Dere for State Election
Commission – Respondent No.1.

Ms.Kavita N Solunke, AGP for the State – Respondent Nos.2 to 4.

Mr.Dilip Bankar – Patil for the Respondent No.5.

**CORAM : R.D. DHANUKA &
S.G. DIGE, JJ.**

DATE : 29TH NOVEMBER, 2022.

P.C. :-

1. By this petition filed under Article 226 of the Constitution of India, the petitioners seek a writ of mandamus against the respondent no.2 – Urban Development Department to forthwith issue the final notification of the incorporation of the Radhanagari Nagar Panchayat within the stipulated period. The petitioners also seek a writ of mandamus against the respondent no.1 – State Election Commission not to conduct the elections of Radhanagari Gram Panchayat till the

issuance of the final notification of Radhanagari Nagar Panchayat as per the process conducted by the respondent no.2.

2. It is the case of the petitioners that the final notification has not been issued regarding incorporation of Radhanagari Nagar Panchayat till date and thus the State Government be directed to issue final notification so as to avoid a duplicate expenditure by conducting the elections. Learned counsel for the petitioners submitted that if the final notification is issued, the elections that would be held pursuant to the election programme issued on 9th November, 2022 will have to be declared and notified with further directions to hold a fresh election after the declaration of final notification by the respondent no.2.

3. Mr.Bhavake, learned counsel for the petitioners invited our attention to the order dated 25th November, 2022 passed by the Nagpur Bench of this Court in Writ Petition No.7319 of 2022 in case of **Advocate Ashish Nandkishor Jaiswal & Ors. vs. State of Maharashtra & Ors.** and submitted that in view of similar facts under consideration, Nagpur Bench of this Court had granted stay of the elections of Gram Panchayat, since the final notification was to be issued by the State Government.

4. Mr.Shetye, learned counsel for the respondent no.1 – State Election Commission per contra relies upon the judgment

delivered on 22nd December, 2020 in Writ Petition (Stamp) No.98524 of 2020 in case of **Anil Sahebrao Kadam vs. The State Election Commission & Ors.** and submitted that this Court after adverting to the judgment of the Hon'ble Supreme Court in case of **Kishansing Tomar vs. Municipal Corporation of the City of Ahmedabad & Ors. (2006) 8 SCC 352** rejected the said petition on the ground that the election programme once having been issued, the election has to be held. He distinguished the order passed by the Nagpur Bench of this Court in case of **Anil Sahebrao Kadam** (supra) and submitted that the said order cannot be relied upon by the petitioners for the reasons that the said order is an interim order and secondly the said judgment passed by the Nagpur Bench of this Court in case of **Anil Sahebrao Kadam** (supra) was not brought to the notice of Nagpur Bench of this Court while passing the said order dated 25th November, 2022 in case of **Advocate Ashish Nandkishor Jaiswal & Ors.** (supra).

5. It is not in dispute that the election programme has already been issued. It is also not in dispute that the final notification has not been issued by the State Government insofar as the constitution of the Village Panchayat is concerned.

6. The State Government has not made it clear as to when the said final notification would be issued. We cannot postpone the

election which is likely to be held as proposed by issuing the election programme. The judgment of this Court in case of **Anil Sahebrao Kadam** (supra) applies to the facts of this case. We are respectfully bound by the principles laid down in the said judgment by following the principles laid down by the Hon'ble Supreme Court in case of **Kishansing Tomar** (supra).

7. Insofar as the order dated 25th November, 2022 passed by the Nagpur Bench of this Court is concerned, a perusal of paragraph 4 clearly indicates that the Urban Development Department itself made a request to the State Election Commission to postpone the election of the existing Gram Panchayat. Accepting the said request, this Court had granted interim reliefs. Interim reliefs were granted without considering the view taken by this Court in case of **Anil Sahebrao Kadam** (supra). The said interim order would not advance the case of the petitioners. Be that as it may, the interim order passed by this Court cannot be considered as a precedent.

8. The writ petition is devoid of merits and is accordingly dismissed. The State Government may consider the issuance of the final notification expeditiously.

(S.G. DIGE, J.)

(R.D. DHANUKA, J.)