

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10169 OF 2022**

Sou. Asmita Rajesh ChaudharyPetitioner
V/s.
Sou. Neha Ketan Patil and Ors.Respondents

**WITH
WRIT PETITION NO.1266 OF 2022**

Neha Ketan Patil ...Petitioner
V/s.
Asmita Rajesh Chaudhary and Ors. ...Respondents

Mr. Atul Damle, Senior Advocate i/by Mr. R.D.Suryawanshi for
Petitioner in WP/10169/22 and for Respondent No.3 in WP
1266/22.

Mr. G.S.Godbole i/by Mr. Shivraj Patne and Mr. Rahul Soman for
Petitioner in WP/1266/22 and for Respondent in WP 10169/22.

Ms. Pooja Singh i/by Mr. N.R.Bubna for Respondent No.3 in both
petitions.

CORAM : SANDEEP K. SHINDE, J.
RESERVED ON : 20TH OCTOBER, 2022.
PRONOUNCED ON: 10TH NOVEMBER, 2022

P.C. :

1. In the Election held on 24th May, 2017, Sau Asmita Rajesh Chaudhary, was elected as a councillor ('Returned Candidate' for short) from Ward No.23, Seat "B", reserved for Women Candidate of Bhiwandi Nizampur City Municipal Corporation. Sau Neha Ketan Patil, Petitioner in WP No.1266 of

2022 lost the election to Sau. Asmita Rajesh Chaudhary. Thus, she, filed Election Petition, under Section 16 of the Maharashtra Municipal Corporation Act, in the Court of Civil Judge, Senior Division (Link Court) Bhiwandi, District Thane. The Petition questioned qualification of returned candidate to be elected as councillor in terms of Section 10(1D) of the Maharashtra Municipal Corporation Act ('Act' for short). It is petitioner's case that, husband of the returned candidate and family members encroached over the forest land and constructed house therein. The regularisation of the unauthorised construction was refused by the Tehsildar. Thereafter, Zonal Forest Officer, Bhiwandi issued notice on 28th July, 2011 calling upon family members of the Returned Candidate to remove the unauthorised construction. The said notice was challenged by husband of the Returned Candidate and others, in the Suit No.433 of 2021, instituted in the Court of Civil Judge, Senior Division, Thane. To fortify the allegations, petitioner relied upon the plaint in the Suit and the orders, passed therein. The Petitioner would largely rely upon affidavit of Mr. Rajesh Harishchandra Chaudhary, husband of the returned candidate. This affidavit, according to the Petitioner, admits encroachment on the forest land and

unauthorised construction. It is petitioner's case that, nomination paper presented by the returned candidate was objected by her on the ground, that, she was not qualified to be elected as a councillor. However, the Election Officer overruled the objection vide order dated 8th May, 2017. Whereafter, petitioner filed Election Petition for seeking order and direction to set aside the order dated 8th May, 2017 passed by the Election Officer and declaration that the election of the respondent-returned candidate from Ward No.23-B was illegal. To be precise, the prayers in the Election Petition were as under:

"a. The Hon'ble Court be pleased to pass the order and or direction to cancel the order dated 08.05.2017 passed by the Election Officer No.4 for ward No.21,22,23 at Bhiwandi i.e. Respondent No.2.

(emphasis supplied)

b. The Hon'ble Court be pleased to pass the order and or direction to hold the election of the Respondent No.1 illegal of the ward no.23-B.

c. The Hon'ble Court be pleased to pass the order and or direction to disqualify the chancellorship of the Respondent No.1 and hold the Petitioner to be the winning candidate.

d. The Hon'ble Court be pleased to grant interim/ad-interim relief as per prayer clause (a), (b) and (c) till pending hearing of the petition for final disposal.

e. The Hon'ble Court be pleased to pass any other order and or direction deems to be fit and just in favour of the Petitioner in interest of justice."

2 Roznama in Election Petition, shows that Advocate H.P.Patil caused his appearance on 31st July, 2021 on behalf of the Returned Candidate and sought time to file reply. Yet, throughout the proceedings, the returned candidate chose to remain absent and as such, did not contest the petition.

3 As a result, in view of the evidence, led by the Petitioner, but for its rebuttal, the learned Court, returned the finding that since Returned Candidate's husband made unauthorised construction on the forest land, she disqualified for being elected as a Councillor of the Bhiwandi Nizampur Municipal Corporation. That for recording this finding, the learned trial Court relied on, (i) Pleadings in the plaint in Regular Civil Suit No. 433 of 2021, (ii) Pleadings in Application for temporary injunction, (iii) Copy of 7/12 extract of the land Survey No.192/1 (Forest land) and (iv) Copy of the First Information Report. However, in spite of recording above finding, election petition was dismissed by the learned trial Court for non-compliance of mandate of Section 403(1) of the Maharashtra Municipal Corporation Act. To appreciate the case

of the petitioner, Section 403(1) of the said Act, is re-produced; thus;

“403(1) If an application is made under section 16 for a declaration that any particular candidate shall be deemed to have been elected, the applicant shall make parties to his application all the candidates who were duly nominated for the seat or seats in the ward in question, whether or not the said candidates have been declared elected, and shall proceed against the candidate or candidates declared elected.”

Plain reading of this section suggests, that while seeking declaration in a application under Section 16 of the said Act, all the candidates, who were duly nominated for the seat in the ward in question, whether or not the said candidates have been declared elected, the applicant in application under Section 16 shall make all such candidates parties to his application. In the case at hand, the Returned Candidate was elected from Ward No.23B. This fact is not in dispute. However, it appears, Mr. Nandkumar Koshti, who overruled the objection of the petitioner to the nomination paper of the Returned Candidate, was appointed as Election Officer for three wards, i.e., Ward Nos.21,22 and 23. The first prayer in the Election Petition (re-produced above) seeks to cancel, the order dated 8th May, 2017 passed by Mr. Koshti, Election Officer, for ward no.21, 22 and

23. It appears, learned Judge, was of the view, that the petitioner ought to have impleaded all duly nominated candidates from all three wards, as parties to Election Petition. However, having not impleaded them as parties, the learned Judge held that the petition was not maintainable, in terms of Section 403(1) of the Maharashtra Municipal Corporation Act.

4 This finding is erroneous. Reasons being, petitioner and the Returned Candidate just two of them had contested the election from Ward No.23B. To put it differently, except the petitioner and the Returned Candidate, no other candidates were nominated, for the seat from Ward No.23B. In view of this fact, Petitioners had complied with mandate of Section 403(1) of the Act. As such, although the, first prayer in the Election Petition refers to ward no.21 and 22, it was in relation to Mr. Koshti's appointment as Election Officer for those Wards. For all these reasons, I hold, the learned Judge misconstrued provisions of Section 403(1) of the said Act and therefore, finding in paragraph 18 of the judgment being erroneous, it is quashed and set aside.

5 Thus, in view of the finding returned by the learned trial Court, that the Returned Candidate was not qualified to be elected as a Councillor, the Election Petition ought to have been allowed.

6 It may be stated that the elections of Councillors were held in the year 2017. The term of the office of the councillor under Section 6A of the Act is co-terminus with the duration of the Corporation. In terms of Section 6(1) of the said Act, every Corporation, unless sooner dissolved, shall continue for a period of five years from the date appointed from its first general meeting and no longer. Herein, the Returned Candidate was declared elected and notified in the Gazette Notification on 26th May, 2017. Therefore, term of the office of the councillors held by the Returned Candidate has come to an end in May, 2022, itself.

7 Be that as it may, Sau. Asmita Rajesh Chaudhary Returned Candidate, has also filed Writ Petition No.10169 of 2022, impugning the finding, that she was not qualified to be elected as Councillor. Mr. Damle, learned Senior Counsel

appearing for the petitioner, would contend that, although the election petition was instituted in the Court of Civil Judge, Senior Division (Link Court) of Bhiwandi, however, the said Court discharges judicial functions during last two weeks of every month at Bhiwandi and for the rest of the days at District Head Quarter at 'Thane'. Mr. Damle submitted, that only in extreme urgency, the said Court entertains applications or petitions at Thane pertaining to Bhivandi jurisdiction. Mr. Damle submitted, that although the said Court was supposed to discharge judicial duties at Bhiwandi, yet, in the subject Petition, multiple orders were passed by the said Court at Thane. Mr. Damle, therefore, submitted the trial Court has committed, procedural irregularity and had not adhered to procedural safeguards. To fortify these submissions, Mr. Damle has invited my attention to roznama in Election Petition. Thus, submitted irregularity vitiates proceedings.

8 I have perused the roznama and orders passed therein. It appears, that proceedings in the Election Petition on some occasions were held at Thane, however, the fact remains, that, Returned Candidate though caused appearance on 31st

July, 2021 in the Election Petition, through advocate Mr. H.P. Patil, she did not bother to enquire into proceedings, till the petition was disposed of. Thus, even though, a few orders were passed by the learned trial Court while occupying the seat at District Head Quarter at, Thane, that in itself will not render the proceedings illegal, as sought to be suggested by Mr. Damle and would not vitiate the proceedings. Therefore, contention of the Returned Candidate that procedural irregularity vitiated the proceedings requires no consideration and accordingly, rejected.

9 In so far as the findings returned by the learned Judge that Returned Candidate was not qualified to be elected as a Councillor, Mr. Damle submitted that these finding, may have far-reaching serious consequences and may have an effect on the political career of the Returned Candidate. Mr. Damle is right in his submission, however, the fact remains that the trial Court has returned this finding by relying on the averments in the plaint and the affidavit of husband of the Returned Candidate filed in the suit. Wherefrom it appears that, the husband of the Returned Candidate admitted that they have

constructed the house on the forest land. Moreover, husband of the Returned Candidate has admitted, that regularisation of unauthorised construction then sought was declined by Tehsildar in the year 2004. The learned trial Court while recording the finding against the Returned Candidate, had taken into consideration the pleadings in the suit and as such findings were founded on the, admitted fact that husband of the Returned Candidate and his family members had encroached over the forest land and constructed house therein. In that view of the matter, finding rendered by the learned trial Court cannot be faulted with. For these reasons, no interference is called for in the said findings, as sought by the Returned Candidate.

10 In the result, Writ petition No.10169 of 2022, filed by the Returned Candidate is dismissed; whereas Writ Petition 1266 of 2022 filed by, Sau. Neha Ketan Patil against the Returned Candidate challenging the judgment and order dated 4th January, 2022 in Election Petition/06/2021 is allowed. In the consequence, finding recorded as on issue no.1 is upheld; whereas findings recorded on issue nos.2,3 and 4 are set aside. Therefore, the Election Petition/06/2021 is allowed. Accordingly,

Writ Petition No.1266 of 2022 is allowed and Writ Petition No.10169 of 2022 is dismissed.

(SANDEEP K. SHINDE, J.)

11 Request to stay the operation of the order is rejected.

(SANDEEP K. SHINDE, J.)