

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

1000 WRIT PETITION NO.11904 OF 2023

**CHANDRAKANT SHAMRAO KAYGUDE & ANOTHER
VERSUS
THE STATE OF MAHARASHTRA & OTHERS**

...

Advocate for the petitioners : Mr.R.R.Karpe
AGP for Respondent-State : Mr.K.B.Jadhavar
Advocate for Respondent no.2 : Mr.Ajit Kadethankar
Advocate for the respondent nos. 7 and 8 : Mr.D.R.Markad

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 10.10.2023

P.C. :

- 1] Heard the learned counsel for the parties.
- 2] The petitioners are challenging the impugned order dated 24.08.2023 passed by the respondent no. 5 - Tahsildar thereby allowed the objection filed by the respondent nos. 7 and 8.
- 3] The learned counsel for the petitioners submits that in terms of Section 12 of the Maharashtra Village Panchayats Act, the electoral roll of the Maharashtra Legislative Assembly prepared under the provisions of the

Representation of the People Act, 1950 and in force on such day as the State Election Commissioner may by order, notify in this behalf for such part of the constituency of the Assembly as is included in a ward or a village shall be the list of voters of such ward or village. The learned counsel further submits that the Tahsildar has no authority to shift the voters from one ward to another ward.

4] The State Election Commission has also filed affidavit and it is stated at para no.9 of the said affidavit as under :

(9) So far as the present case is concerned, Clause 4 (A) (1) & (2) of the Order dtd.30-01-2023 come into play. It is clarified that "Transposition of (names which are mistakenly placed in a Ward), into a correctward where they should have been" can be done only on objection by the concerned voter only. In no case any name (s) could be transposed from one ward to another ward on an objection/application of a third party, without giving a hearing to the concerned voter (s) whose names are proposed to be transposed from one ward to another.

The affidavit in reply filed by the Election Commission is taken on record and marked 'X' for identification.

5] The State Election Commission has also submitted that bye elections and elections to the post of Sarpanch was declared on 27.07.2023. The provisional voters list was published on 10.08.2023 and objections were invited from 10.08.2023 to 21.08.2023 and final electoral roll was published on 25.08.2023. The election process has commenced and that this Court should not be entertained the present Writ Petition as the election process has almost commenced.

6] The learned counsel for the Election Commission submits that alternate remedy of filing an election petition is available with the petitioners, in view of the various judgments of this Court, the remedy of election petition is always available to the petitioners.

7] The learned counsel for the State Election Commissioner also submitted that the date 03.10.2023 is the date of publication of the election from which the election process commenced.

8] The present Writ Petition should not be entertained as the election process is declared on 03.10.2023. Nomination would be started from 16.10.2023.

9] Since the election process has commenced, the present Writ Petition is disposed of with liberty to the petitioners to avail remedy available in law.

[ARUN R. PEDNEKER]
JUDGE

DDC