

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

WRIT PETITION NO. 12559 OF 2022

Anita Suresh Arne and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri P. R. Katneshwarkar, Advocate for the Petitioners.

Shri S. G. Sangle, A.G.P. for the Respondent Nos. 1 to 3.

Shri A. V. Hon, Advocate for the Respondent No. 4.

Shri Ajit B. Kadethankar, Advocate for the Respondent No. 5.

**CORAM : NITIN W. SAMBRE AND
S. G. CHAPALGAONKAR, JJ.
DATE : 31ST MARCH, 2023.**

FINAL ORDER :

. Heard.

2. The respondent No. 4/Municipal Council was constituted vide Government notification dated 21st February, 2022 before which it was a Nagar Panchayat.

3. The petitioners were elected members of said nagar panchayat.

4. According to Mr. Katneshwarkar, once the nagar panchayat was converted into Municipal area, the provisions of Sub Section 24 of Section 2 of the Maharashtra Municipal

Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short “Act of 1965”) shall be attracted. Since the change only is in relation to the nomenclature, the petitioners seat as elected members of the Nagar Panchayat will have to be considered as that of elected members of the respondent No. 4/Municipal Council. So as to substantiate aforesaid contention, he has drawn support from the definition of municipal council under Sub Section 24 of Section 2 of the Act of 1965.

5. As against above, Mr. Sangle, learned Assistant Government Pleader for the respondent Nos. 1 to 3 would oppose the prayer. According to him even if nagar panchayat is converted to that of municipal council, under the said Act, the existence of the municipal council i. e. respondent No. 4 is that of independent juristic person. According to him merely because municipal area comprise of the same are, that itself will not save the position of the petitioners as that of the members of the Municipal Council.

6. We have appreciated the said submissions.

7. It is an admitted position on record that whole area of Nagar Panchayat Shirdi was converted in the respondent No. 4 i. e. the Shirdi Municipal Council and as such council is constituted by virtue of notification dated 21st May, 2022. Admittedly, the petitioners were elected members of the Nagar Panchayat.

8. In the aforesaid background, the fact remains entire municipal area as defined under Sub Section 24 of Section 2 of the Act of 1965 becomes the municipal area of the respondent No. 4/Municipal Council by virtue of above legal provision.

9. However, in absence of saving clause, the position of the petitioners of they becoming members of the respondent No. 4 Municipal Council by virtue of their status as that of elected members of the Nagar Panchayat cannot be accepted, merely because panchayat was changed into the council. Same will not create any statutory right in absence of express provision to have status of the Municipal Councilors. That being so in absence of any statutory provision, the substantial claim of the petitioners of becoming members of the respondent No. 4/Municipal Council cannot be accepted. We do not see any reason to cause interference in the writ jurisdiction under Article 226 of the Constitution of India. The writ petition sans merit and same is dismissed.

[S. G. CHAPALGAONKAR, J.]

[NITIN W. SAMBRE , J.]

bsb/March 23