



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

WRIT PETITION NO. 962 OF 2024

Balaji s/o. Shripati Pawar,
Age 46 years, Occu. Business,
R/o. Dharur, Tq. and Dist. Osmanabad .. Petitioner

Versus

1. Sambhaji Tanaji Palangle (Patange),
Age 33 years, Occu. Agriculture,
R/o. Dharur, Tq. and Dist. Osmanabad
2. Election Adjudicating Officer,
General Election, Dharur,
Tq. and Dist. Osmanabad
Gram Panchayat - 2022
Tahasil Office, Osmanabad
3. Ganesh Dnyandev Jagtap,
Age 32 years, Occu. Agriculture,
R/o. Dharur, Tq. and Dist. Osmanabad
4. Umesh Subhash Pawar,
Age 30 years, Occu. Agriculture,
R/o. Dharur, Tq. and Dist. Osmanabad
5. Gram Panchayat Office,
Through Gram Sevak,
R/o. Dharur, Tq. and Dist. Osmanabad

Mr. V. D. Salunke, Advocate for the Petitioner;

Mr. D. J. Ghodke, Advocate holding for Mr. Amol T. Jagtap, Advocate
for Respondent No.1;

Mr. A. B. Kadethankar, Advocate for Respondent No.2

CORAM : S. G. MEHARE, J.

DATE : 23-01-2024

PER COURT :-

1. Heard the learned counsels for the appearing parties.
2. Issue notice to the respondents.
3. Mr. Kadethankar, learned counsel waives service of notice for respondent No.2.
4. Respondent No.1 is already on record by caveat. He is the contesting respondent. Other respondents, No.3 to 5, are formal parties.
5. Considering the issue involved in the case, by consent of the parties, the matter is heard finally.
6. A short question that arises for consideration is whether the proposed amendment to the written statement of the petitioner could be allowed in view of Section 15(4) of the Maharashtra Village Panchayats Act, 1959 (for short, "**the Act**").
7. The history of the litigation shows that the present petitioner has been elected as a direct Sarpanch. He was not prompt in attending the proceedings. He consumed time as much as possible. He did not file a written statement in time. However, in the interest of justice, the Court allowed him to file a written statement by setting aside the no W.S. (written statement) order.

8. The no W.S. order was set aside after the petitioner was examined. In the meantime, the petitioner moved an application for amendment to the written statement. The proposed amendments to the written statement was as follows;

“In Paragraph No.5, line No.4, after the word “Para No.” and before the word and figure “08 and” is remained to be typed.”

The petitioner wants to add the above portion in paragraph No.5.

9. The above part of the amendment has been allowed. However, the next proposed amendment reads thus;

“5A) That, the properties shown and described in Para No.07 and 10 does not belong to non-applicant No.02 at the time of filing declaration. The plot No.101 out of city Sy.No.838/2 is sold to Babaji Kashinath Bandgar already and area out of Gat No.75 was given in oral partition in the name of Arun Shripati Pawar on 15/02/2022 and there is memorandum between brothers,thus the non-applicant No.02 left no right and concern with the property claimed by petitioner to be of non-applicant No.02. Furthermore, in alternative without admitting case of petitioner, it is submitted that, there is no any effect on voter due to non-disclosure of property.”

10. It was also submitted that the proposed amendment does not change the nature of the proceeding nor it causes prejudice to the right of the respondent.

11. The application was strongly opposed. It has been contended that the proposed amendment is not *bona fide*. On the contrary, in his written statement, the petitioner admitted the title of plot No.101 and Gat No.75. The petitioner, by way of amendment, wanted to withdraw the admission, which is going to change the nature of the suit as well as his defence.

12. It has also been contended that the application is not *bona fide*. There is no utterance of a *bona fide* mistake in the application for the proposed amendment. Hence, the application is not tenable in view of sub-section (4) of Section 15 of the M.V.P Act.

13. Heard learned counsel for the petitioner. He submits that the application is *bona fide* since it was not collusive as provided under sub-section 4 of section 15 of the Act, and it should be understood that it was a *bona fide* application. Petitioner wanted to bring the correct fact to the notice of the Court, which does not cause any prejudice to the rights of the respondent. He also argued that the disclosure and non-disclosure of the property in the declaration does not affect the voters and does not influence the voters. He contended that sub-section (4) of Section 15 of the Act has been worded distinctly for the purposes of amendment. He has argued that as far as the prayer of alteration of the amendment is concerned, unless it is collusive, it cannot be said that it is not *bona fide*. He also argued that if the proposed

amendment is allowed, there would be no change in the nature of the dispute. On the contrary, it would be helpful to the Court to arrive at a proper and correct conclusion. He prayed to allow the petition.

14. Per contra, the learned counsel for contesting respondent No.1 has vehemently argued that the proposed amendment is nothing but withdrawal of the admission which petitioner has given in his written statement. The typographical mistakes, as proposed, were improbable. He has pointed out the conduct of the petitioner. He argued that the written statement was filed belatedly and with due care. He admitted the description of the property that he mentioned in the declaration. The impugned order is legal, correct and proper. The application was not *bona fide*.

15. In reply, the learned counsel for the petitioner argued that the learned counsel for respondent No.1 had answered the written statement only the description was brought before the Court.

16. Sub-section (4) of Section 15 of the Act provides that for the alteration or amendment of a petition, such application should be *bona fide* and not collusive. Unless the Court is satisfied that such application is *bona fide*, the Court could not entertain the application for alteration or application for amendment to the written statement.

17. The learned counsel for respondent No.1 has correctly pointed out that the petitioner has admitted the title of the properties. The petitioner has taken sufficient time to file the written statement. Even after the matter proceeded up to the examination in chief of the petitioner, a fair opportunity was granted to file the written statement. On reading the statement of the petitioner and the proposed amendment, there appears to be substance in the submission of the learned counsel for respondent No.1 that it is an attempt to withdraw the admission. Further, reading these two documents together, it is difficult to accept that the application was *bona fide*. That apart, the Court of the first instance kept the contention of the present petitioner open. Learned Court of first instance has correctly exercised the power under Section 15(4) of the Act after considering the various provisions to deal with the application as provided therein.

18. Section 15(4) of the M.V.P.Act is clear that the Judge shall not permit (a) any application to be compromised or withdrawn or (b) any person to alter or amend by pleading unless he is satisfied that such application for compromise or withdrawal or the application for such alteration or amendment is *bona fide* and not collusive.

19. There appears no substance in the arguments of the learned counsel for the petitioner. Since the application is not collusive, it can not be presumed that it is *bona fide*.

20. For the above reasons, the writ petition is dismissed at admission stage.

(S. G. MEHARE)
JUDGE

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