TALLE SHUBHAM ASHOKRAO
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9981 OF 2024

Charushila Bira Shriram]
Age : 30 years, Occ- Homemaker]
Residing at Bhavdi, Tal-Haveli,]
District Pune.] **...Petitioner.**

Versus

1. The State of Maharashtra]
Through the District Collector, Pune]
District, Collector Office, Pune.]
2. The Tahsildar Haveli, Haveli, Pune]
3. Gram Sevak, Grampanchayat Bhavdi, Tal – Haveli, District – Pune.]
4. Bapu Chandrakant Handgar]
Age : 36 years, Occ- Agriculture]
Residing at Bhavdi, Tal – Haveli, District Pune.]
5. Kisan Chandrakant Tambe]
Age : 43 years, Occ- Agriculture]
Residing at Bhavid, Tal – Haveli, District Pune.]
6. Poonam Mahesh Kadam]
Age : 30 years, Occ- Homemaker]
Residing at Bhavdi, Tal- Haveli,]
District Pune.]
7. Sudhir Phulchand Kardale]
Age : 42 years, Occ-Agriculture]
Residing at Bhavdi, Tal- Haveli,]
District Pune.]
8. Ashabai Namdev Tambe]
Age:55 years, Occ- Homemaker]
Residing at Bhavdi, Tal-Haveli, District Pune.]
9. Rajni Somnath Tambe]
Age : 33 years, Occ-Homemaker]

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Residing at Bhavdi, Tal- Haveli, District Pune.]

10. Tarabai Sambhaji Handgar]
Age : 54 years, Occ- Homemaker]
Residing at Bhavdi, Tal- Haveli, District Pune.]

11. Ramdas Maruti Dhage]
Age: 37 years, Occ- Transport]
Residing at Bhavdi, Tal- Haveli, District Pune.] **...Respondents.**

Mr. P. S. Dani, Senior Advocate i/by Mr. Veerdhaval Kakade for the Petitioner.

Mr. R. S. Pawar AGP for the Respondent Nos. 1 and 2-State.

Mr. A. V. Anturkar Senior Advocate, a/w Mr. Prathamesh Bhargude and Mr. Harshavardhan B. Suryawanshi for the Respondent Nos. 5, 7, 8, 9 and 11.

Coram : **Sharmila U. Deshmukh, J.**
Reserved on: **December 11, 2024.**
Pronounced on : **January 3, 2025.**

JUDGMENT :

1. ***Rule.*** With consent, Rule made returnable forthwith and taken up for final hearing.

2. The question which arises for consideration is the meaning which should be given to the words "date of election of Sarpanch or Upa-Sarpanch" occurring in the 4th proviso to sub Section 3 of Section 35 of the Maharashtra Village Panchayats Act, 1958 (***Village Panchayats Act***) for the purpose of computing period of two years of immunity. The dispute is whether the immunity of two years against No Confidence Motion is to be computed from the date of election of the

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first Sarpanch or from the date when the new Sarpanch is elected by filling the vacancy occurred in the manner provided under Section 43 of Village Panchayats Act.

3. The undisputed facts are that on 15th January 2021 elections were held for Village Panchayat Bhavdi, Taluka Haveli District Pune. On 9th February 2021, the Respondent No. 8 was elected as Sarpanch. On 29th November, 2021 the Respondent No. 8 resigned from the post of Sarpanch and on 27th December 2021 the Petitioner was elected unopposed as the Sarpanch of the Village Panchayat. On 13th December, 2023 Respondent Nos. 4, 5 and 7 to 11 moved No Confidence Motion against the Petitioner. On 13th December, 2023 notice was issued by the Respondent No. 2-Tehsildar for convening the special Meeting and on 19th December 2023, the motion of no confidence was carried against the Petitioner.

4. Heard Mr. Dani, learned Senior Advocate appearing for the Petitioner, Mr. Anturkar, learned Senior Advocate appearing for the Respondent Nos. 5, 7, 8, 9 and 11 and Mr. Pawar, AGP appearing for the Respondent-State.

5. Mr. Dani, would submit that the 4th proviso to Section 35 (3) of the Village Panchayats Act makes clear reference to the "date of election of Sarpanch or Upa-Sarpanch and the same implies that it is referable to the person and not to the post. He submits that the

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definition of Sarpanch contained in Section 3 (17) of the Village Panchayats Act includes directly elected Sarpanch as well as Sarpanch elected under Section 43. He submits that Section 43 of the Village Panchayats Act refers to the term of office of the Sarpanch i.e. remainder period of the term of the Panchayat whereas the 4th proviso to Section 35(3) refers to the grant of immunity and date of election which will not relate back to the date of the first meeting held for election of Sarpanch. He would submit that in case of directly elected Sarpanch the first proviso to Section 35(1A) provides that motion of no confidence shall not be brought within a period of two years from the date of election of Sarpanch and would submit that in case there is change in Sarpanch the next Sarpanch will get immunity from the no confidence motion which will be counted from the date of his election and the same meaning has to be given to the 4th proviso to Section 35 (3). He would submit that the immunity is available to the person elected on the said post and not the post. He submits that what is crucial is the date of entering office and it cannot be assumed that the date of election would be the date of election of the first Sarpanch. He submits that the legislative intent is that there should be stability in democratic set up as a Grampanchayat and therefore the meaning which is required to be ascribed must be the one which furthers the intention of the legislature i.e. two years from the date the Sarpanch

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enters the office. He draws support from the decision of Madhya Pradesh High Court in the case of ***Rajaram Patil vs. State of M.P.***[1]

6. *Per contra,* Mr. Anturkar, learned Senior Advocate appearing for the Respondent Nos. 5, 7, 8, 9 and 11 would submit that the immunity which is granted by the 4th proviso to Section 35(3) is only for a period of two years from the date of first election. He would submit that acceptance of Petitioner's interpretation would render the statutory provisions meaningless as in that eventuality the second Sarpanch will enjoy the immunity and before the expiry of two years can again resign and third person can occupy his place and immunity will be continued. He submits that while interpreting the words "date of election of Sarpanch or Upa-Sarpanch", Section 43 assumes importance as it speaks of filling up of vacancy and the Sarpanch who is elected under Section 43 steps into the shoes of the first Sarpanch and therefore enjoys the same immunity available to the first Sarpanch for a period of two years from date of election of first Sarpanch. He submits that accepting the interpretation of the Petitioner would enable the second Sarpanch who has lost the support of majority of Grampanchayat to rule by enjoying the immunity which would be contrary to the legislative intention. He would submit that a full bench decision of this Court in the case of ***Tatyasaheb Ramchandra Kale vs.***

1 [(2002) (5) M.P.L.J. 513]

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Navnath Tukaram kakade[2] has stressed the importance of the executive power of the Panchayat which vests in the Sarpanch and has held that Sarpanch who has lost the mandate of the house, if continued would result in acting against very tenants of democracy.

7. Rival contentions now fall for determination.

8. The quest of this discussion is to ascertain whether the immunity of two years granted by the 4th proviso to Sub Section (3) of Section 35 is *qua* the post or *qua* the person by interpreting the words "date of election".

9. The election of Sarpanch takes place in the first meeting held after every general election as provided in Sub Section (2) of Section 30 of Village Panchayats Act unless directly elected under Section 30A-IA of Village Panchayats Act. A Sarpanch may be removed by mandate of majority by passing of No Confidence Motion and the procedure governing the passing of No Confidence Motion finds place in Section 35 of Village Panchayats Act and reads thus:

> *"35. (1) A motion of no confidence may be moved by not less than two third of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat against the Sarpanch or the Upa-Sarpanch after giving such notice thereof to the Tahsildar as may be prescribed. Such notice once given shall not be withdrawn.*
> *(2) Within seven days from the date of receipt by him of the notice under sub- section (1), the Tahasildar,*

2 2014 (6) Bom. C. R. 737.

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shall convene a special meeting of the panchayat at a time to be appointed by him and he shall preside over such meeting. At such special meeting, the Sarpanch or the Upa-Sarpanch against whom the motion of no confidence is moved shall have a right to speak or otherwise to take part in the proceedings at the meeting including the right to vote.

(3) (a) If the motion is carried by a majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat or the Upa-Sarpanch, as the case may be, shall forthwith stop exercising all the powers and perform all the functions and duties of the office and thereupon such powers, functions and duties shall vest in the Upa-Sarpanch in case the motion is carried out against the Sarpanch; and in case the motion is carried out against both the Sarpanch and Upa-Sarpanch, in such officer, not below the rank of Extension Officer, as maybe authorised by the Block Development Officer, till the dispute, if any, referred to under sub-section (3B) is decided:

Provided that, if the dispute so referred is decided in favour of the Sarpanch or, as the case may be, Upa-Sarpanch, thereby setting aside such motion, the powers, functions and duties of the Sarpanch or Upa-Sarpanch shall forthwith stand restored, and if the dispute is decided confirming the motion, the office of the Sarpanch or, as the case may be, Upa-Sarpanch shall be deemed to have fallen vacant from the date of the decision of the dispute, unless the incumbent has resigned earlier :

Provided further that, in cases where the offices of both the Sarpanch and Upa-Sarpanch become vacant simultaneously, the officer authorised under this sub-section shall, pending the election of the Sarpanch, exercise all the powers and perform all the functions and duties of the Sarpanch but shall not have the right

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to vote in any meetings of the panchayat:
Provided also that, where the office of the Sarpanch being reserved for a woman, is held by a woman Sarpanch, such motion of no-confidence shall be carried only by a majority of not less than three-fourth of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat :

Provided also that, no such motion of no-confidence shall be moved within a period of two years from the date of election of Sarpanch or Upa-Sarpanch and before six months preceding the date on which the term of Panchayat expires:

(Emphasis supplied)

Provided also that, if the no-confidence motion fails, then no motion shall be moved within next two years from the date of failure of no-confidence motion.

(b) After the motion of no-confidence against the directly elected Sarpanch is carried by a majority of not less than three-fourth of the total number of the members, who are for the time being entitled to sit and vote at any meeting of the Panchayat, then the same shall be ratified by the Gramsabha, in a special meeting convened, within 15 days from passing of such motion, by an officer appointed by a Collector in this behalf, in the presence and under the chairmanship of such officer, by simple majority by the method of counting of heads. After such ratification of motion by the Gramsabha, the Sarpanch shall forthwith stop, exercising all powers and performing all the function and duties of the office and thereupon, such powers, functions and duties shall vest in the Upa-Sarpanch, and in case the motion is carried out against both the Sarpanch and Upa-Sarpanch, in such officer, not below the rank of Extension Officer, as

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may be authorized by the Block Development Officer, till the dispute, if any, refereed to under sub Section (3B) is decided:

(3A) If the motion is not moved or is not carried by a majority of not less than or, as the case may be, three-fourth, of the total number of the members who are for the time being entitled to sit and vote at any meeting of the panchayat, no such fresh motion shall be moved against the Sarpanch or, as the case may be, the Upa-Sarpanch within a period of one year from the date of such special meeting.

(3B) If the Sarpanch or, as the case may be, the Upa-Sarpanch desires to dispute the validity of the motion carried under sub-section (3), he shall, within seven days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it, as far as possible, within thirty days from the date on which it was received by him and his decision shall be final."

10. By reason of the post of Sarpanch falling vacant due to disablement, death, resignation, disqualification etc, the vacancy is required to be filled in the manner prescribed under Section 43 of Village Panchayats Act which reads thus:

*"**43. Filling up of vacancies:***
(1) Any vacancy of which notice has been given to the Collector in the prescribed manner due to the disablement, death, resignation, disqualification, confirmation of no confidence motion, absence without leave or removal of a Sarpanch or Upa-Sarpanch, shall be filled, by the election of a Sarpanch or Upa-Sarpanch, who shall hold office so long only as

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Sarpanch or Upa-Sarpanch in whose place he has been elected would have held office if the vacancy had not occurred:

Provided that, the post of the Sarpanch or Upa-Sarpanch, as the case may be, fallen vacant under this sub-section shall be filled in within thirty days from the date of such vacancy.

Provided further that, if the post of the directly elected Sarpanch fallen vacant under this sub-section, then it shall be filled in by election in the manner laid down in section 30A-1A within six months from the date of such vacancy.

(2) The meeting for the election of a Sarpanch under sub-section (1) shall be convened by Collector in the manner described in sub-section (1) of section 33."

11. In present case, the vacancy occurred by reason of resignation of first elected Sarpanch. The first Sarpanch was elected on 9th February, 2021 and the period of two years if counted from election of first Sarpanch would expire on 9th February, 2023, whereas if calculated from the date of election of Petitioner would expire on 27th December, 2023. The motion was moved on 13th December, 2023 i.e. after expiry of period of two years from election of first Sarpanch and before expiry of period of two years from date of election of Petitioner. The 4th proviso to Sub Section (3) of Section 35 uses the group of words "no such motion of no-confidence shall be moved within a period of two years from the date of election of Sarpanch". It

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is well settled cannon of interpretation that the statute must receive its literal meaning when the words and language are clear and unambiguous. Viewing the provision, the words “date of election” indicates that the words are situation specific and not person specific. For the words to be person specific, as and by way of illustration the reference would be to “his/her election” or “the date he/she assumes office” or “the date when he/she takes charge”. The statute if worded as “Provided also, that no such motion of no confidence shall be moved within a period of two years from the *date he assumes charge* as Sarpanch or Upa Sarpanch and before six months preceding the date on which the term of Panchayat expires”, would have left no manner of doubt that person avails immunity for two years from the date he enters office. Contrast this with the present words of the statute makes it evident that the same is situation specific and is *qua* the post and not *qua* the person. The absence of the person specific words, in my opinion, makes it evident that the immunity is co-terminus with the post and not the person and that being so, the date of election would mean date of first election to that post.

12. The interpretation discussed above receives support from Section 43 which provides for the new Sarpanch to hold office so long as the first Sarpanch would have held office if the vacancy had not occurred. The election of subsequent Sarpanch under Section 43 on

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the happening of certain exigencies mentioned therein has no impact on the term of the office and the fresh incumbent continues as if the vacancy has not occurred. Section 43 is not a provision prescribing the term of office, which has been prescribed by Section 27 and Section 28 of the Village Panchayats Act, but provides for filling the vacancy by treating the incumbent as continuation of the earlier Sarpanch in place and stead of the erstwhile Sarpanch as if the vacancy had not occurred. Section 43 makes it clear that the last elected Sarpanch steps in the shoes of the erstwhile Sarpanch. The term remaining unchanged and the last elected Sarpanch simply taking over the baton from the erstwhile Sarpanch for remainder of term, interpreting the period of two years from date of his election would amount to giving the filling of vacancy the colour of fresh election and grant of fresh immunity, when the statute is clearly to the contrary.

13. If the contention of Mr. Dani is accepted then the bar envisaged under the 4th proviso to Sub Section (3) of Section 35 would come into play from the date of election of every subsequent Sarpanch. The contention though would appear at the first blush to be correct literal interpretation, however, the application of such an interpretation to the filling of vacancy under Section 43 would render the words “date of election” person specific when the statute intends it to be situation specific and the inevitable conclusion is that it refers

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to the post and not the person and when reference is made to the post, the date of election would mean the date of first election to the post. Accepting Mr. Dani's submission would amount to reading words in the statute when none exists by referring to the date of election as date of *his* election and making it person specific and would render the 4th proviso to Sub Section (3) of Section 35 meaningless where the remainder of term is less then two years and the last elected Sarpanch would continue to avail the immunity though he has lost the confidence of the majority of the members.

14. Mr. Dani would rely on the definition of Sarpanch under Section 3(17) which includes a directly elected Sarpanch and Sarpanch elected under Section 43 to canvass a submission that in case of directly elected Sarpanch, the next Sarpanch will get immunity for two years from date of his election and a same meaning has to be given to Sarpanch elected under Section 30(2). In my view, the direct election of Sarpanch to the Gram Panchayat will not make any difference as even in case of directly elected Sarpanch, the manner of filling vacancy is under Section 43 and even the directly elected Sarpanch continues as if the vacancy had not occurred.

15. To digress a little, the Village Panchayats Act underwent considerable amendments *qua* the directly elected Sarpanch. By Amendment Act 54 of 2018 Section 30A-IA was inserted in Village

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Panchayat Act providing for direct election of Sarpanch. By the same amendment Section 1A was introduced in Section 35 and 4th proviso to Section 35(3) was substituted to provide for immunity of two years from date of election of Sarpanch, whereas the period of immunity for Sarpanch elected by the elected members was for six months. Section 43 was amended to provide for the vacancy to be filled in by election in manner laid down in Section 30A-IA.

16. By the Amendment Act No. 2 of 2020, Section 30A-IB was inserted providing for non application of Section 30A-IA to the general elections and by-elections and every Panchayat to have a Sarpanch elected under Section 30 by the elected members of the Panchayat. The 4th proviso to Sub Section (3) of Section 35 was amended to increase the period of immunity of Sarpanch elected under Section 30 from six months to two years. The second proviso to Sub Section (1) of Section 43 was substituted by providing that in case of vacancy in the post of the directly elected Sarpanch, the vacancy shall be filled by election from amongst the members of Panchayat themselves. The filling up of vacancy in case of directly elected Sarpanch was thus brought on par with Section 30 of Village Panchayats Act.

17. By the Amendment Act 42 of 2022, Section 30A-IB came to be deleted paving the way for the direct elections of the Sarpanch and restoring the 2018 position. Section 35(1A) came to be deleted and the

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provisions of Section 35 were brought in par with sub sections of Section 35(1A). The second proviso to Section 43 was substituted by providing for filling of vacancy as per Section 30A-IA.

18. The reference to the above amendments was for the purpose that the position does not differ by reason of directly elected Sarpanch. Section 43 applies to a directly elected Sarpanch and the last elected Sarpanch continues for the remainder of the term. The filling of vacancy cannot commence a fresh period of immunity for the last elected Sarpanch as he continues for remainder of the term. The manner of election, whether directly or by the elected members of the Panchayat will not result in interpreting the date of election to be person specific.

19. The trigger point for the period of two years is the date of election. In my view, Section 35 and Section 43 will have to be read conjointly and when so read, the words “date of election” occurring in 4th proviso to Section 35(3) is referable to the date of the election of the first Sarpanch. The interpretation also serves the purposive interpretation as although the statutory longevity by grant of immunity of period of two years is prescribed for infusing stability but at the same time the observation of the Full Bench in ***Tatyasaheb Ramchandra Kale vs Navnath Tukaram Kakade (supra)*** though rendered in the context of mandatory nature of the Panchayat Rules

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notes as under:

> *"The issue has to be looked at from one more perspective. In terms of Section 38 of BVP Act, the executive power of the Panchayat is vested in the Sarpanch and it is the Sarpanch who is made responsible for the acts of the Panchayat. Hence if an interpretation which results in Sarpanch being continued, which Sarpanch has lost the mandate of the house, the same would result in acting against the very tenets of democracy. It is required to be borne in mind that the very essence of democracy and fundamental to it, is that a person who has lost the mandate cannot be allowed to continue. …..". (Emphasis supplied)*

20. As far as the decision of the Madhya Pradesh High Court in the case of ***Rajaram Patil vs. State of M.P (supra)*****,** the decision considered the provisions of M.P. Panchayat Raj Adhiniyam, 1993. Section 21 of the said Act is clearly distinguishable as it refers to grant of immunity for a period of one year from the date on which Sarpanch *enter their respective office.* In the context of the words used in that statute, it was held that as far as entering office is concerned, the effective date is when he actually assumes the charge. The provisions of Section 38 of that Act which was relied upon is materially different from Section 43 of Village Panchayats Act as it does not contain the words "would have held office if vacancy had not occurred." The interpretation placed in the said judgment was based on the words

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used in that statute and does not assist the case of the Petitioner.

21. Before this Court, the submissions were confined to the commencement point of period of two years for grant of immunity. In light of the discussion above, the words "date of election" occurring in the 4th proviso to Sub Section (3) of Section 35 being situation specific and not person specific, the immunity granted is *qua* the post and not *qua* the person and would therefore mean the date of election of first Sarpanch and not the date of election of last elected Sarpanch. The period of two years would therefore have to be reckoned from date of election of first Sarpanch.

22. Resultantly, Petition fails and is dismissed. Rule is discharged.

[Sharmila U. Deshmukh, J.]

23. At this stage, a request is made for extension of the interim relief which has been operating in favour of the Petitioner for a period of six weeks. The interim relief is extended for a period of six weeks from the date of uploading of this order.

[Sharmila U. Deshmukh, J.]

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