

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7445 OF 2019

Sou. Anita Ramdas Magar
Age 34 years, Occ. Housework,
R/o. Plot No.140, Sangmeshwar
Nagar, Akkalkot Road, Solapur.

...Petitioner

Vs.

1. Sou. Bhagyalaxmi Prakash Mahanta
Age 32, Occ. Housework,
R/o. 349, Jodbhavi Peth, Solapur.

2. Sou. Sunita Gangadhar Bansode
Age 37 years, Occ. Housework,
Kekade Nagar, Vidi Gharkul,
Mulegaon Road, Solapur.

3. Sou. Saraswati Basawraj Patil
Age 40 years, Occ. Housework,
R/o. Rajiv Nagar, Akkalkot Road,
Solapur.

4. Solapur Municipal Corporation
Solapur.

5. Election Returning Officer No.4,
Solapur Municipal Corporation,
Solapur.

6. State Election Commissioner (Deleted)
Maharashtra State.

...Respondents

Mr. Vishwasrao Deokar, Advocate for the Petitioner.
Mr. Ajit V. Alange, Advocate for Respondent No.1.
Mr. Vishwanath Patil a/w. Kewal Ahya, Advocate for Respondent
Nos.4 and 5.

Mamta Kale

CORAM : C.V. BHADANG, J.
DATE : 24th MAY, 2021
(Through Video Conferencing)

JUDGMENT:

. Rule. Rule made returnable forthwith. The learned counsel for the Respondents waive service. Heard finally by consent of the parties.

2. The challenge in this petition is to the Judgment and Order dated 4 August 2018 passed by the learned Civil Judge, Senior Division at Solapur in Election Petition No.63/2017. By the impugned judgment, the election petition filed by the first respondent has been allowed and election of the petitioner, as a Councilor of the Solapur Municipal Corporation, has been set aside.

3. The brief facts are that the general election of the Solapur Municipal Corporation were held in the year 2017. The petitioner and the respondent Nos.1 to 3 were the contesting candidates from Ward No.11(C). It appears that there was no objection to the nomination of any of these candidates. The result of the election was declared on 23 February 2017 in which the petitioner was declared elected having secured the highest number of votes i.e. 4955 votes. The first respondent had secured second highest votes i.e. 3422 votes.

4. The first respondent filed election petition challenging the election of the petitioner inter alia on the ground that the petitioner had three children namely Ganesh Ramdas Magar (Date of Birth – 10 May 2001) Sonali Ramdas Magar (Date of Birth – 20 April 2003) and Poonam Ramdas Magar (Date of Birth – 29 August 2004). It was contended that Sonali and Poonam having born after 1 September 2001, the petitioner was disqualified from contesting the election under Section 10(1)(i) of the Maharashtra Municipal Corporations Act, 1949 ('the Act' for short). It was contended that the petitioner had furnished information which was false to her knowledge to the Returning Officer at the time of filing nomination. The petitioner has also challenged the election on the basis of the alleged bogus voting in the name of a dead person, through Electronic Voting Machine (EVM). The said ground has not been accepted by the Trial Court. Thus, presently, we are only concerned with the ground of the petitioner having more than two children who are born after 1 September 2001. The first respondent has also sought declaration of she being elected from the said ward.

5. The petitioner resisted the election petition. It was denied that the petitioner has three children as alleged. It was contended that Poonam who was born on 29 August 2004 was the daughter of Dattatray Magar and Sunita Magar and not the petitioner. It was contended that a similar objection was raised in the year 2012 by one Hanif Patel challenging the election of Ramdar Magar who is husband of the petitioner, who was then elected as a Councilor from ward No.19(B). It was pointed out

that the Returning Officer by an order dated 1 February 2012 had refused to uphold the objection to the nomination of Ramdas Magar which finding had attained finality. It was thus contended that similar ground cannot be raised based on Section 10(1)(i) of the said Act.

6. It was contended that it was purely out of inadvertence that in the intimation issued from the hospital on the birth of Poonam, the name of her parents was shown as Anita Magar and Ramdas Magar where in fact Poonam was daughter born to Dattatray Magar and Sunita Magar. It is submitted that the necessary correction was carried out in the Birth Certificate No.0047/791 on 7 January 2012, as per order passed by the Registrar, under the Registration of Birth and Deaths Act, 1969 (Act of 1969).

7. On the basis of the rival pleadings, the Trial Court framed in all five issues.

8. The first respondent (the petitioner before the Trial Court) examined herself as P.W.1 alongwith Dr. Shashikant Savale (P.W.2), Nagraj Hiremath (P.W.3) and Mahadev Sherkhane (P.W.4).

9. The petitioner (the respondent No.1 before the Trial Court) examined herself as D.W.1 alongwith Dattatray Magar (D.W.2), Durgadevi Siddam (D.W.3) and Sanjay

Deshmukh (D.W.4). Both the parties produced certain documents.

10. The learned Trial Court answered the issue Nos.1 & 3 in the affirmative and the issue Nos.2 and 4 in the negative. The learned Trial Court by the impugned judgment and order has set aside the election of the petitioner. However, the relief of declaration of the first respondent being elected was refused.

11. I have heard Mr. Vishwasrao Deokar, learned counsel for the Petitioner and Mr. Ajit Alange, learned counsel for the first respondent. I have also heard Mr. Vishwanath Patil, learned counsel for the respondent Nos.4 and 5. Perused record.

12. The petitioner has also sent written notes of arguments which are taken on record. I have gone through the same.

13. It is submitted by Mr. Deokar, the learned counsel for the petitioner that a similar objection having been negated by the Returning Officer in the year 2012 in respect of the election of the husband of the petitioner, it was not open for the first respondent to raise it again nor it could have been upheld by the Trial Court. It is submitted that in para 38, the Trial Court has noted that it has no jurisdiction in the matter. It is submitted that para 29 of the judgment would show that the Court has not considered the documents which are referred in

para 12 of the judgment which according to the learned counsel was not permissible. It is submitted that there is a valid correction carried out by the Registrar under the Act of 1969 in respect of the birth certificate of Poonam on the basis of which a similar objection was rejected in the year 2012. It is pointed out that the said correction was made in the year 2009-2010 i.e. much prior to the present election of the year 2017 and therefore, it cannot be accepted that the said correction was made intentionally to suit the purpose of the petitioner. It is pointed out that there was no objection raised at the time of the scrutiny of the nominations. It is pointed out that even otherwise the next elections are scheduled after about six months and no case for interference is made out. It is alternatively submitted that the petition may be remitted back, as the Trial Court has not considered the documents referred to in para 12 of the judgment.

14. The learned counsel for the first respondent has supported the impugned order. It is pointed out that in the intimation issued by the concerned hospital, the names of the parents of Poonam were shown as Anita Magar and Ramdas Magar and not Dattatray Magar and Sunita Magar. It is submitted that the certificate was corrected only in the year 2012. The learned counsel has taken exception, to the manner in which the correction was ordered and carried out. It is submitted that there is clear evidence that it was the petitioner who was admitted for delivery, in the concerned hospital, in August 2004 and there is no evidence to show that Sunita

Magar was at any time admitted. The learned counsel submitted that the Registrar has not followed Section 15 of the Act of 1969 and the correction so carried out was merely on the basis of affidavits filed by the parties. It is submitted that the objection taken in the year 2012 was by one Hanif Patel and the Returning Officer has refused to uphold the objection only on the basis of correction carried out in the birth certificate, which itself is illegal.

15. It is submitted that in any event, the first respondent cannot be estopped from raising said ground which has been established on record. It is submitted that the Trial Court is not bound by the decision of the Returning Officer in the year 2012, pertaining to the nomination of the husband of the petitioner.

16. I have carefully considered the rival circumstances and the submissions made.

17. It is also not in dispute that the petitioner has a son Ganesh born on 10 May 2001 and a daughter Sonali born on 20 April 2003. There is also no dispute that Poonam was born on 29 August 2004. The only question is whether Poonam is daughter of the petitioner and Ramdas Magar or she is daughter born to Sunita Magar and her husband Dattatray Magar. Incidentally, Dattatray happens to be the brother of Ramdas.

18. It is also a matter of record that in the year 2012 when the husband of the petitioner had contested the election from Ward No.19(B), an objection was raised to the nomination by Hanif Patel on a similar ground that Ramdas had a third child namely daughter Poonam who was born on 29 August 2004 i.e. after the cut off date 1 September 2001. It is further a matter of record that the Returning Officer by an order dated 1 February 2012 had refused to uphold the objection. A perusal of the said order would show that it is based on the letter dated 19 January 2010 from the incharge Medical Officer of Chatrapati Shivaji Maharaj Hospital, Solapur and the order dated 7 January 2012 passed by the Registrar under Section 12 and 17 of the Act of 1969 and Maharashtra Registration of Birth and Death Rules, 2000. Thus, it appears that initially in the intimation issued by the said hospital in the year 2004 upon birth of Poonam, the name of her parents was shown as Anita i.e. the petitioner and her husband Ramdas and not as Sunita and Dattatray Magar. The said correction was carried out on the basis of the affidavits filed by the parties somewhere in the year 2010/2012 i.e. shortly before the election of the year 2012 which was contested by the husband of the petitioner. Section 15 of the Act of 1969 provides for correction of the entry in the register of births and deaths, if it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register is erroneous in form or substance, or has been fraudulently or improperly made. The correction can be carried out subject to the rules that may be made by the State Government. It appears that the correction in the present case was made only

on the basis of the affidavits filed by the parties. That apart, the said order of the Returning Officer is in respect of a different election of the year 2012 in which the husband of the petitioner was a contestant. The learned counsel for the first respondent is right that the petitioner was neither a contestant nor a party to the said order of the Returning Officer and thus she cannot be estopped from raising the said contention which in my considered view is otherwise established on record.

19. It has come on record that Poonam was a student of the Corporation Marathi School for Girls till 7th standard and thereafter was studying in SVS High School and in both these schools the name of the parents of Poonam was shown as Anita and Ramdas Magar. The two children of petitioner namely Ganesh and Sonali were also taking education in the SVS High School. It is necessary to note that the petitioner or her husband did not make any attempt to get the record corrected till the year 2010/ 2011. It has come in the evidence of the petitioner that the necessary formalities for admission of the children including Poonam were completed by her husband. She has stated that her husband Ramdas is educated upto 10th standard. It has further come in her evidence that the family of Dattatray has a separate ration card and the ration card of Dattatray and Sunita was having the names of Nagnath and Navnath who are the sons of Dattatray and Sunita. She also stated that her husband had undergone medical examination to show the paternity of Poonam and she is ready to produce the said report. However, the said report was never produced, on

account of which, the Trial Court has drawn adverse interference against the petitioner.

20. A perusal of the evidence of Dattatray (D.W.2) would show that he has admitted application (Exh.66) which was made for admission of Poonam in SVS High School. Dattatray admitted that application (Exh.66) bears his signature. However, significantly even in the application (Exh.66) the name of Poonam was mentioned as Poonam Ramdas Magar. He further admitted that till the year 2016 i.e. till Poonam attained 12 years of age, the name of her parents in the record was mentioned as Anita Magar and Ramdas Magar. He stated that he has not undergone any medical examination to show that he is not the biological father of Poonam. He has stated that the correction in the school record of SVS High School was made in the year 2018. He also admitted that till the year 2012 in his ration card the names of the children were only shown as Nagnath and Navnath and it was only after 2012 when the name of Poonam was included in the ration card.

21. The witness Durgadevi Siddham (D.W.3) was working as a Shikshan Sevika in the Corporation School and has stated about an application (Exh.85) which was made for correction of the school record in respect of Poonam. She has also stated that guardian of Poonam was shown as Anita i.e. the mother of Poonam.

22. Sanjay Deshmukh (D.W.4) was working as a Clerk with the Chatrapati Shivaji Maharaj Hospital. It has come in the evidence of Sanjay Deshmukh that the intimation (Exh.55) which was sent by the hospital was on the basis of the information given by Sunita Magar and Exh.55 bears the signature of Sunita Magar. It can thus be seen that even the said intimation was issued on the basis of the information given by Sunita Magar, in which the names of parents were shown as Anita and Ramdas Magar.

23. Dr. Shashikant Savale (P.W.2) has produced the copy of extract of registered entry No.519 (Exh.52) which shows that Anita Ramdas Magar had given birth to a girl child at 9.20 p.m. and accordingly a birth intimation No.040403 was issued. In the said intimation, the names of the parents were shown as Ramdas and Anita Magar. There is no evidence that Sunita Magar was at any time admitted in the said hospital in August 2004 for delivery.

24. Considering the over all circumstances, the Trial Court is right in refusing to accept the contention that Poonam was the daughter of Sunita and Dattatray Magar. There is sufficient evidence on record to show that she was the daughter born to the petitioner and her husband.

25. Although, in para 29 of the impugned judgment, the Trial Court has observed that the documents described in para 12 are not discussed in view of the availability of the oral

evidence on record, in fact, the Trial Court has considered the effect of the said documents and the subsequent correction. What the Trial Court has essentially observed is that as the controversy was limited, it was not necessary to discuss all the documents in details.

26. Even so far as observations in para 38 is concerned, they are pertaining to relief of declaration sought by the first respondent that she stands elected. Thus, there is nothing in para 38 by which the Trial Court has observed that it has no jurisdiction to entertain the petition. What is essentially observed in para 37 is in the context of decision of this Court in the case of **Geeta Kisan Gore Vs. State of Maharashtra & Ors.**¹ which was the decision rendered in the context of Section 9 and 33 of the Mumbai Municipal Corporation Act which has rightly been held to be not applicable in this case.

27. In the result, the Petition is dismissed. Rule is discharged with no order as to costs.

28. At this stage, Mr. Deokar, the learned counsel for the petitioner sought extension of the interim relief by four weeks which is opposed by the learned counsel for the first respondent as well as the learned counsel for the respondent Nos.4 and 5. Considering the fact that interim relief was operating from 2 November 2018, the same shall continue for a

¹2003(4) Mh.L.J. 287

Mamta Kale

period of four weeks from today. No further extension shall be granted.

C.V. BHADANG, J.