

**(2012) 01 BOM CK 0017**  
**In the Bombay High Court**  
**Case No : W. P. No. 2013 of 2011**

Jyoti Bhagwat Thane

APPELLANT

Vs

Meerabai Suresh Dhawale and others

RESPONDENT

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**Date of Decision :** 24-01-2012

**Acts Referred:**

**Citation :** (2012) 3 MhLj 221

**Hon'ble Judges :** R.K. Deshpande, J

**Bench :** Single Bench

**Advocate :** R.M. Ahirrao, for the Appellant; A.R. Wagh For respondent No. 1 and Mrs. Kalyani Deshpande, AGP For respondent Nos. 9 and 10, for the Respondent

**Final Decision :** Dismissed

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## Judgement

R.K. Deshpande, J.—Rule made returnable forthwith. Heard Shri R.M. Ahirrao, the learned Counsel appearing for the petitioner, Shri A.R. Wagh, the learned Counsel appearing for the respondent No. 1 and Mrs. Kalyani Deshpande, the learned AGP appearing for the respondent Nos. 9 and 10. Notice for final disposal of the matter was issued by this Court on 27-4-2011. None appears for the other respondents, though they are served. This Court had passed an interim order, as a result of which the order impugned in this petition has been stayed.

2. In view of the fact, that this Court has already issued notice for final disposal of the matter. Now, it is not necessary to issue fresh notices to the respondents, who have failed to attend this Court, in spite of service of notice for final disposal.

3. The challenge in this petition, is to the judgment and order dated 19-3-2011, passed by the learned Civil Judge, Junior Division, Ner, District Yavatmal, in Election Petition No. 02 of 2007. By this impugned judgment and order, the Election of the petitioner to a seat reserved for the women in the Election of Gram Panchayat, Satephal, Taluka Ner, District Yavatmal, is declared as illegal and the same is set aside. The Court has granted further declaration, that the respondent No. 1 herein, is declared to have been elected in the Election of Gram

Panchayat, Satephal, from Ward No. 1, Taluka Ner, District Yavatmal, in the seat reserved for women.

4. An undisputed factual position, is narrated below -

The post of a Member of a Gram Panchayat, Satephal, Taluka Ner, District Yavatmal, from Ward No. 1, was reserved for the category of women. The petitioner and the respondent No. 1 herein, contested the said Election. Both of them secured equal votes i.e. 227 votes. Hence, after drawing "Ishwar Chitthi", the petitioner herein was declared to be elected. The respondent No. 1 Sau. Meerabai Suresh Dhawale filed Election Petition No. 02 of 2007, challenging the election of the petitioner, on the ground that the respondent Nos. 3 and 4 namely Bhimpal Satashiv Sonone and Sau. Ganga Bhimpal Sonone, cast their votes simultaneously in the Election of Gram Panchayat, Satephal, Taluka Ner and also at Mozar, Gram Panchayat Pimpri (Bu), Taluka Mangrulpir, on 7-10-2007 and hence, the votes cast by them in the Election of Gram Panchayat, Satephal, Taluka Ner, District Yavatmal, be declared as illegal.

5. The learned Civil Judge, Junior Division, Ner, District Yavatmal, dealing with the Election Petition No. 02 of 2007, has recorded the finding that the respondent Nos. 3 and 4 herein, have cast their votes simultaneously in the Election of Gram Panchayat, Satephal, Taluka Ner and at Mozar of Gat Gram Panchayat, Pimpri (Bu), Taluka Mangrulpir, held on 7-10-2007. Further the finding is recorded that the petitioner would have received two votes less than the respondent No. 1 if the respondent Nos. 3 and 4 were not allowed to cast their votes in the Election of Gram Panchayat, Satephal. On the basis of this, finding the Election of the petitioner has been declared to be illegal and it has been set aside. Further declaration is granted that the respondent No. 1 stands elected from Ward No. 1 of Gram Panchayat, Satephal, Taluka Ner, District Yavatmal, in the seat reserved for women category.

6. Though, in the Election Petition, it is not necessary to join the voters as a party-respondents, the respondent Nos. 3 and 4 are the voters against whom the allegations were made, that they have voted simultaneously in the Election of two Gram Panchayat one at Satephal, Taluka Ner, District Yavamal and the other at Pimpri (Bu), Taluka Mangrulpir, District Washim, on 7-10-2007. The respondent Nos. 3 and 4, both have filed their written statements in response to the Election Petition, in which they have taken a specific stand, that they have voted in favour of the respondent No. 1, who is the "defeated candidate". There is no finding recorded by the learned Judge in the judgment and order impugned, that the respondent Nos. 3 and 4 have cast their votes in favour of the petitioner. There is no evidence brought on record by the respondent No. 1 upon whom the burden of proof lies to establish, that the respondent Nos. 3 and 4 voted in favour of the petitioner. In the absence of any such enquiry, evidence and the finding, the trial Court could not have held that the Election of the petitioner was vitiated, on the ground of voting by the respondent Nos. 3 and 4 simultaneously at two places for the seat of a Member of a Gram Panchayat, on 7-10-2007. In

view of this, none of the findings recorded by the trial Court, can be sustained. The judgment and order impugned in this writ petition is liable to be set aside and the Election Petition No. 02 of 2007 is required to be dismissed. In the result, this writ petition is allowed. The judgment and order dated 19-3-2011, passed by the learned Civil Judge, Junior Division, Ner, District Yavatmal, in Election Petition No. 02 of 2007, is hereby quashed and set aside. The Election Petition No. 02 of 2007, is dismissed. There shall be no order as to costs.