PETITIONER:
BABY SAMUEL

Vs.

RESPONDENT:
TUKARAM LAXMAN SABLE & ORS.

DATE OF JUDGMENT09/08/1995

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
SEN, S.C. (J)

CITATION:
1995 SCC Supl. (4) 215 JT 1995 (6) 78
1995 SCALE (4)684

ACT:

HEADNOTE:

JUDGMENT:
THE 9TH DAY OF AUGUST,1995
Present
Hon'ble Mr.Justice B.P.Jeevan Reddy
Hon'ble Mr.Justice Suhas C.Sen
Mr.C.S.Vaidyanathan, Sr. Adv. Mr.Shiv Ram, Mr.L.C.Tolat, Mr.S.J.Khatawala and Mr.S.R.Setia, Advs. with him for the Appellant.
Dr.N.M.Ghatate, Sr. Adv. Mr.G.B.Sathe, Mr.S.M.Jadhav, Mr.A.K.Goel, Ms.Sheela Goel,Advs. with him for the Respondents.

J U D G M E N T

The following Judgment of the Court was delivered:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 7059-60 OF 1995
(Arising out of Special Leave Petition (C) Nos.8579-8580 of 1995)

BABY SAMUEL

V.

TUKARAM LAXMAN SABLE & ORS.

J U D G M E N T

B.P.JEEVAN REDDY.J.

Leave granted. Heard counsel for the parties.

The appellant was? elected as a Councillor of the Khopoli Municipal Council in December 1991. The contesting respondent Shri Sable was also elected as a Councillor. On account of a vacancy occurring in the office of the President of Municipality, an election was held to that office wherein the appellant was elected as the President. Prior to becoming the President, the appellant was the Chairman of a Committee in-charge of awarding contracts. On the basis of certain complaints pertaining to the period he was the Chairman of the said Committee, a notice was issued to the appellant by the Collector calling upon him to show cause why he should not be removed from the officer of the

Councillor under Section 44 of the Maharashtra Municipal Corporation Act, 1965. The appellant showed cause, whereafter the Collector removed him from the office of the Councillor by his order dated 4.10.1994. The operative portion of the order reads:

> "Therefore, I, G.T.Bandri, Collector, Raigad-Alibag, hereby, am disqualifying Shri Baby Samuel, present Chairman Khopoli Municipal Council, as member of the Municipal Council, under Sections 44(1) (b) and 44(3) of Maharashtra Municipal Council Act, 1965, and I am declaring that his post as member of the Municipal Council has become vacant from the date 5.10.1994."

Against the said order of removal/disqualification the appellant filed an appeal before the Government under Section 44(5) of the Act alongwith an application for stay. Since no orders were passed on his stay petition, the appellant approached the Bombay High Court by way of Writ Petition (C) No.4465 of 1994. The High Court directed the Government to dispose of the stay petition within one week and the appeal within three months from the date of its order. The order of the High Court was made on October 26, 1994. Inspite of the orders of the High Court, the State Government did not pass any orders on the stay petition.

In view of the vacancy occuring in the office of the President of the Municipality on account of the order disqualifying the appellant, the Collector convened a meeting on November 8, 1994 to elect the President of the Municipality, whereas the respondent Shri Sable was elected as the President.

On January 7, 1995 the Government allowed the appeal filed by the appellant and set aside the order of the Collector dated 4th October, 1994. The operative portion of the Government's Order reads:

> "In exercise of the powers conferred by Section 44(4) in Maharashtra Municipal Councils, Nagar Panchayats and Industrial Towns Act 1965, the Government cancels the Order bearing No.M.A.1/28444/M.No. 41/94, dated 4/10/94 passed by the Collector to disqualify Shri Baby Samuel as the member of the Municipal Council."

Questioning the aforesaid order of the Government, Shri Sable filed Writ Petition (c) No. 675 of 1995 contending mainly that before allowing the appeal he should have been heard and that not doing so vitiates the order. In this writ petition he applied for stay of implementation of the Government order. Simultaneously the appellant filed a writ petition being 1124 of 1995 for a direction to the authorities to reinstate him in the office of the President of the Municipality as a consequence of the Government's order. Both the interlocutory applications in the two writ petitions came up for hearing before a Division Bench on 20th March, 1995. The Division Bench granted stay of the operation of the Government's order dated 7.1.1995 as prayed for by Shri Sable and rejected the application filed by the appellant to reinstate him in the office of the President. The said two orders are questioned in these appeals.

The facts stated above disclose that the appellant was removed from the office of the Councillor and as a consequence he lost the office of the President of the Municipality. The Collector's order reads: "I.....am

disqualifying Shri Baby Samuel, present Chairman Khopoli Municipal council, as member of the Municipal Council." Because the State Government did not pass any orders on the stay petition filed by the appellant in his appeal preferred against the orders of removal/disqualification, the Collector notified and held an election to the office of the President whereat Shri Sable was elected as President. This election was again a consequence of the removal/disqualification of the appellant by the Collector. If so, once the order of removal/disqualification is set aside by the Government, the appellant is entitled to be put back in the same position which he was in before he was removed. In other words not only should he be restored to the Councillorship but also to the office of the President. Shri Sable was elected as the President in the vacancy caused by the removal/disqualification of the appellant and once the said removal/disqualification of the appellant goes, the consequential action cannot stand; it falls to ground alongwith the order of removal. Shri Sable must therefore yield ground to the appellant.

Dr. Ghatate, learned counsel for Shri Sable submitted that since the impugned orders are interlocutory in nature, this Court should not interfere under Article 136 of the Constitution. He suggested that the writ petitions may be directed to be heard expeditiously. To this Shri Vaidyanathan, learned counsel for the appellant demurred stating that the term of the appellant will be coming to an end in the year 1996 (next year) and since there is no real possibility of the aforesaid writ petitions being heard in the near future, denial of relief in this appeal could cause grave prejudice to the appellant. He submitted that the impugned orders in effect amount to dismissal of the appellant's writ petition and to allowing of Shri Sable's writ petition. We are of the opinion that in the facts and circumstances of this case and keeping in mind the respective rights of the parties, this is a proper case where we should interfere under Article 136. It is also admitted that as on today, no fresh or other proceedings have been initiated for removal/disqualification of the appellant for any alleged irregularities. In the circumstances, denying him the office of President would amount to punishing him for no fault of his. It cannot be that he is not guilty and yet he is removed from the offices held by him. Shri Sable's writ petition is yet to be decided. Accordingly the appeals are allowed and the interim orders dated 20.3.1995 made in Writ Petition (C) No. 675 of 1995 and writ Petition (C) No.1124 of 1995 on 20th March, 1995, impugned herein, are set aside. The appellant shall be restored forthwith to the office of the Councillor of Khopoli Municipality as well as to the office of the President of the said Municipality. Shri Sable shall have no right to continue in the said office with effect from this date. There shall be no order as to costs.

The Bombay High Court may consider the expeditious disposal of the aforesaid writ petitions.