



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE ALOK AWASTHI

CIVIL REVISION No. 207 of 2024

SMT. NISHA DEVLIIYA

Versus

SMT. NANDINI AND OTHERS

Appearance:

*Shri Piyush Mathur, learned Senior Advocate assisted by
Shri Harshwardhan Sharma, learned counsel for the petitioner.*

*Shri Sunil Kumar Jain - learned Senior Advocate assisted by
Shri Khiladi Lal Gangore, learned counsel for the respondent No. 1
[CAVEAT].*

*Shri Vivek Kumar Markan, learned counsel for the respondent Nos. 2, 3,
4 & 5.*

Shri Kamal Nayan Airen, learned counsel for the respondent Nos. 6 & 7.

WITH

CIVIL REVISION No. 231 of 2024

YUVRAJ SINGH

Versus

SMT. NANDINI AND OTHERS

Appearance:

Shri Pourush Ranka, learned counsel for the petitioner [P-1].

Shri Khiladi Lal Gangore appeared for respondent No. 1.



Shri Ashok Airen, learned counsel for the respondent [R-7].

Shri Mukesh Parwal, learned Govt. Advocate for the respondent Nos. 7 & 8/State.

RESERVED ON : 09.10.2025

PRONOUNCED ON : 19.12.2025

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ORDER

1- Regard being had to the similitude of the questions involved in these Civil Revisions (C.R. No. 207/2024 and C.R. No. 231/2024), with the joint request of the parties, they are analogously heard and being decided by this common order. For the sake of convenience, the facts are being taken from C.R. No. 207/2024.

2- These Civil Revisions have been filed by the applicant under Section 441-F(2) of the M.P. Municipal Corporation Act, 1956 (hereinafter referred to as "the Act, 1956") challenging the validity of the order against the order dated 02.03.2024 passed in the Election Petition No.02/2022 by the XXIInd Additional District Judge, Indore whereby the learned District Judge in the election petition filed by respondent No. 1 - Nandini under Section 441 of the Act, 1956 was allowed and the election of the petitioner / Nisha Dealiya as Councillor of Ward No. 44, Indore Municipal Corporation (in short "IMC") has been set aside and further Election Petitioner/Respondent No. 1 - Nandini being runner up candidate, has been declared as elected Councillor for the Ward No. 44, IMC, Indore.

3- Facts of the case in short, are as under :-



The elections for the posts of Mayor and Councillor of the Municipal Corporation, Indore were held on 17.07.2022, the election results of which were announced in the Madhya Pradesh Gazette (Extraordinary) on 25.07.2022, in which petitioner/Smt. Nisha Devliya W/o Rupesh Devliya (**C.R. No. 207/2024**), was declared elected as Councillor of Ward No. 44, Indore. It is also an admitted fact that total six candidates contested for the post of Councillor in **Ward No. 44 including the petitioner/ Smt. Nisha Devliya and Election Petitioner / Smt. Nandini (respondent No. 1 in both C.R. Nos. 207/2024 & 231/2024)**. It is also an admitted fact that out of the six candidates, petitioner/Mrs. Nisha Devliya, candidate of the Bharatiya Janata Party, received the highest number of votes, i.e., 6,988 and the respondent No. 1/Smt. Nandini, a candidate of the Indian National Congress Party, had secured 5,962 votes and stood second.

4- Further, the requisite facts which are imperative to be stated for the appreciation of challenge by the petitioner are that under Rule 24 (a) of the Act, 1956 and Madhya Pradesh Municipal Corporation Election Rules, 1994 (in short “the Election Rules, 1994”), it is mandatory for every candidate to disclose along with the nomination form the information about pending criminal cases against him/her and his/her criminal background, information about movable and immovable properties of himself/herself, his/her spouse and dependents alongwith their market value.

5- As per Election Petitioner/Nandini, the petitioner/Smt. Nisha has deliberately provided false and incomplete information regarding her properties in the affidavit submitted along with her nomination papers, concealing information regarding the market value and tax payable. The petitioner/Smt. Nisha has concealed essential information regarding her



building/plot No. 104 (old 65), Chhoti Khajrani, Indore, and has shown different areas in various documents related to this building. The sale deed for this building shows the ground floor area as 571 square feet and the first floor area as 571 square feet, totaling 1142 square feet. The affidavit accompanying the nomination papers states a construction area of 1600 square feet. On the other hand, the Municipal Corporation's property tax records show only 200 square feet of construction in the said building, which is also shown as a tin shed or *patre*. In this way, tax has been evaded by concealing information from the Municipal Corporation. The sale deed for the said building was also executed by concealing information about the property tax.

6- The electricity connection of the said building at Chhoti Khajrani, Indore has been shown as commercial in the affidavit attached with the nomination paper, whereas in the records of the electricity distribution company, this electricity connection has been shown as residential, that is, the electricity bill of the commercial connection is not being paid and the electricity distribution company is being caused financial loss by tax evasion. The garbage fee of the said house at Chhoti Khajrani is also being paid for residential purpose, whereas commercial activities are carried out in the house, hence garbage fee is also required to be paid at commercial rate.

7- Similarly, in the affidavit attached with the nomination paper, another building of petitioner/Smt. Nisha, namely 431-A, Jagjivan Ram Nagar, Indore, has been shown as a commercial property with an area of 800 square feet, whereas in the Municipal Corporation records, this property has been shown as residential with an area of 600 sq.ft., which clearly shows that less property tax is being paid to the Municipal Corporation. The NOC has been



obtained from the Municipal Corporation in respect of the said building on false grounds and the NOC obtained has been obtained for building No. 431-B.

8- In like manner, petitioner's husband, Roop Narayan Devaliya, owns a property located at 70/12, Nandanagar, Indore, which is shown as commercial in the affidavit attached with the nomination paper and its area is stated to be 108 square feet, whereas in the property tax records of the Municipal Corporation, the area of the said property is of 117 sq.ft., which clearly shows that false information has been given regarding the said property without NOC. The husband of the petitioner also having a property situated at I-223, LIG, Indore, the area of which is shown as 23.16 sq.metres i.e. 242.25 sq. ft. in the affidavit attached with the direction letter.

9- While the building is actually three stories with an area of 800 sq.ft., less property tax is being paid to the Municipal Corporation due to under-reporting. No “No Objection Certificate (NOC)” has been submitted with the affidavit regarding the property.

10- Petitioner/Smt. Nisha has another property located at Building No. 75, Jagjivan Ram Nagar, Indore, in respect of which 1000 sq. ft. construction on 440 sq. ft. has been mentioned in the affidavit attached with the nomination paper, whereas in the property tax records of the Municipal Corporation, 400 sq. ft. in the basement and 400 sq. ft. on the first floor, totaling 800 sq. ft. residential construction has been shown, which clearly shows that less property tax is being paid to the Municipal Corporation. The said building has been shown as residential in the Municipal Corporation, whereas the electricity connection is for commercial purpose, that is, wrong information has been given to the Municipal Corporation. No NOC has been submitted



in respect of the said property also.

11- Thus, by submitting false and incomplete information and concealing crucial information as aforementioned, petitioner/Smt. Nisha has violated the Corporation Act, 1956 and Rule 24(a) of the Election Rules, 1994 (for brevity "the Rules, 1994"), significantly affecting the election.

12- Being aggrieved by the aforesaid the Smt. Nandini filed the Election Petition challenging the election of the petitioner/Nisha solely on the ground enumerated under Section 441 of the Corporation Act, 1956.

Return of the respondent - Smt. Nisha Devaliya

13- In addition to the admitted facts, the remaining contentions raised by the respondent No. 1 have been denied by petitioner by filing written reply asserting that the election petition is not maintainable in law and violates the provisions of the Corporation Act, 1956. It argues that mere non-compliance with rules in the elected candidate's affidavit is insufficient to challenge the election; the documents annexed to the petition were improperly obtained by one Ashish Mishra, giving the petitioner no right to rely on them Any negligence-induced error in the affidavit does not invalidate the election. The petitioner committed no such error warranting challenge and accurately disclosed all required information; no tax evasion occurred regarding properties, including those in her husband's name, and no false information was provided. The petitioner did not improperly influence voters, the respondent No. 1 carries longstanding personal grudge and political rivalry between the petitioner, her husband, and petitioner's family, involving prior false complaints aimed at harassment; and the petition is baseless, filed solely to defame petitioner. Accordingly, dismissal of the petition has been prayed for.



Issues framed in the Election Petition

14- Thereafter, learned District Judge has framed the following issues for adjudication :-

- (i) Whether the respondent No. 1 was not eligible to be elected to the post of councilor of ward no. 44, Indore in the Madhya Pradesh Municipal Corporation election Year 2022 ?
- (ii) Whether the respondent No. 01 has given false, incomplete and untrue information in the affidavit submitted before the election officer for the election for the post of councillor of ward number 44, Municipal Corporation election year 2022 ?
- (iii) Whether the conduct of respondent No. 1 amounted to corrupt practice during the election for the post of councillor of Ward No. 44 in the Madhya Pradesh Municipal Corporation Elections, 2022?
- (iv) Whether the election of respondent No. 1 for the post of councilor of ward no. 44 in Municipal Corporation Indore is void
- (v) Whether the petitioner is entitled to be declared elected to the post of councillor of Ward Number 44 of the Municipal Corporation, Indore.

15- The respondent no. 1 / Election Petitioner recorded the statements of herself as PW/1 Smt. Nandini, Ashish Mishra, husband of Smt. Nandini (PW-2), Shiv Narayan Purohit (PW-3), Vidhansabha Prabhari, Ajay Saini (PW-4), Assistant Engineer, Electricity Department, Laxmi Narayan (PW-5),



Peon, Nagar Palik, Indore, Pankaj (PW-6), Clerk, Nagar Palika, Indore, Pankaj Baitheda (PW-7), LDC, MP Housing Board, Indore Branch were recorded. The respondent no.1 exhibited and duly proved the documents from Ex. P/1 to P/70 and article A/1 to A/7 and petitioner / Smt. Nisha Devalia W/o Roopnarayan Devalia (DW/1). The defendant got exhibited the document from Ex. D/1 to D/242.

16- Learned Trial Court, on appreciation of the evidence and arguments adduced by the parties, pronounced the impugned judgment dated 02.03.2024, finally concluded the case and found the petitioner disqualified. Consequently, Smt. Nandini Mishra, who was the runner-up and the original election petitioner, was declared duly elected to the post of Councilor of Ward No. 44. Therefore, present revision petitions have been filed.

Submissions of petitioner's counsel in C.R. No. 207/2024

17- Shri Piyush Mathur, learned Senior Advocate appearing for the petitioner has argued that learned Trial Court has materially erred in declaring the Election of the Returned Candidate void without appreciating the peculiar facts and circumstances of the case. The impugned judgment passed by the learned Trial Court is contrary to the law as neither the Section 441-B(1)(b) read with 441-H(ii) of the Corporation Act, 1956 attracts in the case nor the Election Petitioner has pleaded and proved the violation of such provisions in any manner.

18- He has also argued that learned Trial Court has misinterpreted the Rule 24-A of the Rules, 1994 which provides for the disclosure of information with regard to the criminal antecedent, assets, liabilities and educational qualifications and it nowhere provides that the candidate is required to disclose the antecedents of the property owned or its consistency



with any Govt. Record. The learned Trial Court has committed grave error not only in exercising jurisdiction not vested in it by holding the Applicant as disqualified to contest and elected as Councillor on the basis of surmises and conjectures but has also failed to exercise jurisdiction vested in it by blindly accepting the allegations of the Election Petitioner as gospel truth.

19- The hypothetical observation of the Ld. Trial Court that “IF” the Municipal Record in respect of the subject properties were updated “THAN” there would have substantial increase in the arrearage of the tax liability. It is also nobody’s case than some enquiry is contemplated in respect of the subject properties and property tax may get revised. Therefore, the impugned judgment cannot be passed merely on the assumption of any hypothetical situation. The Ld. Trial Court while passing the impugned judgment had by passed all the legal principles and brought a new theory of "If things had or have been like this, it would have been like that" in setting aside the election of the petitioner. Apparently, the entire impugned judgment is based upon surmises and conjectures.

20- In absence of any substantial proof or enquiry, learned Trial Court has assumed that the petitioner/Nisha has evaded a huge amount of tax. There is no any cogent evidence which in any manner prove the serious allegation of evasion, the burden of establishing the allegation made in the election petition was on the petitioner/Nisha and the same was not discharged.

21- The burden of proof lies with the Election Petitioner and the onus to counter the same shifts only when the plaintiff discharges its burden. The learned Trial Court completely misunderstood and misinterpreted the deposition of the petitioner herein by mentioning the same as admission whereas the deposition of the petitioner was clarification and not an



admission as the deponent was merely clarifying the details of the erstwhile owner of the property. No Objection Certificate was also issued by the Corporation and there was no occasion for the Court to inferred contrary to the record, in absence of a clear mutation order being passed by the Authority. Therefore, the entire foundation of pleading the non-disclosure or incorrect disclosure to be the foundation falls flat on this ground and no conclusion could have been recorded on this allegation or this admission of fact.

22- There should be any document or record to show how much amount of property tax stands due against the petitioner or it has been brought on the record that recovery proceedings are contemplated or initiated or pending at the instance of the Corporation.

23- The Act of 1956 provides for the determination of property tax and a procedure has been provided by the Legislature in that regard. Until and unless, the Corporation comes to a conclusion that the subject property is constructed contrary to the record and a speaking order had been passed after granting reasonable opportunity of hearing, and procedure as envisaged in Chapter XII, Sections 173 and 174 of the Act, no person can be held or declared a tax evader.

24- Further, it is stated that the Learned Trial Court has also found that the petitioner to be guilty of corrupt practices whereas it is a settled principle of law that “the allegations of corrupt practice are quasi-criminal charges and the proof that would be required in support of such allegations would be as in a criminal charge. Therefore, charges of corrupt practice are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in



criminal trials.

25- It is also submitted that as per catena of judgments of Hon'ble Apex Court as well as of this "the onus of establishing a corrupt practice is undoubtedly on the person who sets it up, and the onus is not discharged on proof of mere preponderance of probability, as in the trial of a civil suit; the corrupt practice must be established beyond reasonable doubt by evidence which is clear and unambiguous." Therefore, the Ld. Trial Court's observed that the Returned Candidate's admission in her deposition is sufficient to satisfy the hypothetical approach is *per se* illegal and contrary to settled principles of law.

26- Section 441-H(ii) of the Act, 1956 has also been considered against the petitioner, herein, by holding that the petitioner by her act of suppressing the precise admeasuring area of the subject properties owned by her from the Municipal Corporation has evaded huge amount of tax and thereby caused corrupt practice, undue influence and has materially affected the elections. The bald allegations without pleading and proving the same cannot be taken into consideration. Respondent No. 1 has to plead and prove, as to How ? When ? Where and in what manner the elections have been materially affected.

27- There is no clause in the affidavit which provides or mandates that a candidate has to disclose the antecedent of the subject property or its precise details as available with the Municipal Corporation or any other statutory authority or any other department. In fact, the affidavit cum nomination form is not required to be furnished based on documents available elsewhere or with some other department but it is required to be declared to be true and correct to the best of the knowledge and belief of the candidate.



28- The judgments relied by the trial Court in the case of **S. Rukmani Madegowda Vs The State Election Commission** reported in **2022 AIR SC 4347** and **Kishan Shankar Kathore Vs Arun Dattatraya Sawant** reported in **2014 14 SCC 162** are on different footings.

29- The Ld. Trial Court has also committed grave error of law by declaring the respondent No. 1/Election Petitioner as returned candidate U/s 441-D of the Act, 1956. The respondent No. 1/Election Petitioner has not discharged his burden that he would have received the majority of votes if the returned candidate would not have fought the election and even otherwise, no such finding has been given by learned Trial Court.

30- To prop up the aforesaid submissions, learned Senior Counsel has placed reliance over the judgments **Vashisht Narayan Sharma Vs. Dev Chandra & Others, (1954) 2 SCC 32, Shiv Charan Singh Vs. Chandra Bhan Singh, (Resurgence India Vs. Election Commission of India and Another, (2014) 14 S1988C 2 SCC 12, Prakash Khandre Vs. Dr. Vijay Kumar Khandre, (2002) 5 SCC 568, Mangali Lal Mandal Vs. Bishnu Deo Bhandari, (2012) 3 SCC 314, Smt. Rekha Choudhary Vs. Smt. Suman Ahirwar & Ors., KLR 2013 MP 2464 and Ajmera Shya Vs. Kova Laxmi and Ors, (2025) SCC OnLine SC 1723.**

SUBMISSIONS OF THE COUNSEL FOR THE PETITIONER IN C.R. No. 231/2024

31- Shri Pourush Ranka, learned counsel for the petitioner/Yuvraj has argued that the learned Trial Court committed grave error by holding that the nomination of the petitioner/Smt. Nisha Devaliya was incorrectly accepted merely on the basis of conjectures and surmises. The learned Trial Court has stretched the scope of election petition by going beyond the details



prescribed in the format of affidavit and has ultimately found the election void. If such an approach is adopted then it will raise hue and cry into the entire society as people mandate will be thrown away on slight technicality. The findings of trial Court regarding disqualification of the petitioner/Smt. Nisha/Returned Candidate is against provision of Section 17(1)(i) of the Act, 1956.

32- It is also stated by learned counsel for the petitioner that the term “any person” was considered by the Full Bench of this Hon’ble Court in the case of *Dilip Kaushal vs. State of M.P., 2008 (3) MPLJ 591* in which it has been categorically held that the locus standi is not restricted to a person affected by the violation complained of, but in encompasses all persons resident within the area to which the Act of 1956 applies. Thus, as per the dictum of this Court only it is clear that there is no dispute with regard to locus standi of the Petitioner to maintain the present revision before this Court.

33- The learned Trial Court further committed error in not appreciating that such alleged non-disclosure of the actual area of the house mentioned in the property tax register in the **Form - 26 affidavit (Ex.P/12)** is not envisaged or provided under the affidavit. In the affidavit, it is only the area of plot and the area of construction made over it is required to be mentioned in Column No. Kha (iii) in which the petitioner/Smt. Nisha Devaliya has correctly disclosed that the house of Chhoti Khajrani is having a plot area of 571 sq. feet over which 1600 sq. feet construction is made and house of Jagjivan Ram Nagar has a plot area of 800 sq. feet over which 800 sq. feet construction is made and hence there is no incorrect disclosure as per the requirement of the aforesaid affidavit. It is pertinent to mention that in the



entire affidavit it is nowhere stipulated from a candidate to disclose as to the area of house on which he/she is allegedly paying property tax.

34- He has also contended that there was no actual outstanding due and payable tax existing in the name of petitioner/Nisha for a period of exceeding one year at the time of filing of nomination. It is further submitted that the learned Trial Court has started examining in the impugned judgment from paragraph No. 70 onwards that whether the corrupt practice of the respondent No. 2 has materially affected the outcome of the election and in paragraph No. 72, the learned trial Court mentions that it is necessary to prove factually that the election was materially affected due to wrongful acceptance of nomination of the respondent No. 2, but in paragraph No. 73 of the impugned judgment the learned Trial Court takes complete contradictory stand by holding that as the Respondent no. 2/returned candidate has found to be disqualified as well as non-suppression of material facts. In the absence of such analysis itself the impugned judgment deserves to be set aside on this count alone.

35- Besides, learned counsel has further argued that the petitioner/Nisha or her spouse are contesting the Councillor election from last 20 years from the same Ward No. 44 and the respondent No. 1/Nandini is opposing her since last 20 years and in the last 4 elections, the respondent No. I could not secure a single win from the peoples mandate and this clarifies that even if there is any non-disclosure or disclosure then it would have no impact on the outcome of the election at all.

36- Now going further, if it is to be assumed that in the property tax register if the correct area would have been disclosed then if some amount of property tax would have got accrued against the name of the Returned



candidate/Smt. Nisha and such amount would remain outstanding in her name for a period of exceeding one year and as a result she would have been disqualified as per Section 17(1)(i) of the Act, 1956. First and foremost if such an amount could have been accrued her name then she would have paid the same amount and has obtained NOC after paying the said amount to the Indore Municipal Corporation as the amount of property tax which is evident from Ex.P/45 and P/66 would have hardly been 15,000-20,000/- rupees and hence any candidate, who is contesting the election would first clear any such outstanding against her name and then only will fill her nomination along with the no due certificate from the Indore Municipal Corporation.

37- Even assuming that the area mentioned in the property tax register was incorrect, the crucial question is whether such discrepancy was caused by petitioner/Smt. Nisha or by the previous owners. It is an admitted fact that petitioner purchased the house at Chhoti Khajrani vide registered sale deed dated 09.10.2019 (Ex.P/57) and the house at 431A, Jagjivan Ram Nagar vide registered sale deed dated 22.01.2020 (Ex.P/59). Soon after these purchases, the Covid-19 lockdown commenced, preventing her from getting her name mutated in the revenue records. Consequently, she submitted a No-Dues Certificate (Ex.P/9) in the name of the previous owner, Praveen Singh, and another (Ex.P/6) in her own name. The Election Petitioner/respondent No. 1 has adduced no evidence to show that the incorrect area entry in the Indore Municipal Corporation's property tax register was made at the instance of petitioner. On the contrary, her evidence establishes that the area has been recorded as such in the revenue records for the last 25 years. In these circumstances, no fault can be attributed to petitioner for the



discrepancy in the municipal property tax register.

38- At this juncture, Section 173, 148, 149 of the Act, 1956 is to be considered in respect of presentation of bill for taxes and other demands.

39- The authority is Municipal Commissioner to decide the actual accrual of tax and its appeal is before District Court, hence, in election petition the authority cannot be usurped by the learned Trial Court as it require to be exclusively dealt as per the Act, 1959 provisions and any intervention by any other authority is restricted under Section 189 of Act, 1956. He has drawn attention of this Court in the case of **Smt. Rekha Choudhary Vs. Smt. Suman Ahirward** reported in **ILR 2013 MP 2464** and **Ajmera Sham vs. Koa Laxmi** reported in **2025 SCC Online SC 1723**.

40- There is no evidence on record to substantiate that any such alleged non-disclosure has resulted into materially affecting the outcome of the election substantially.

41- So far as the letter of M.P. Housing Board, Indore Ex.P/70 is concerned, the learned trial Court has already dealt the aforesaid outstanding of Housing Board dues of the petitioner by finding the said dues has not proved in paragraph No. 49, 50 & 51. Therefore, the Election Petition was incorrectly allowed by the learned Trial Court by acting contrary to law and usurping and exercising the jurisdiction not vested in it and hence the impugned judgment may kindly be set aside in the interest of justice by allowing the present petition.

Submissions of respondent's counsel in C.R. No. 207/2024 & C.R. No. 231/2024.

42- On the other hand, Shri Sunil Kumar Jain, learned Senior Counsel has



submitted that the petitioner / Smt. Nisha Devaliya, is a clear attempt to challenge the well-reasoned and legally sound judgment dated 02.03.2024 passed by the Learned XXII District Judge, Indore, which rightly declared her election void. The learned trial Court's findings of corrupt practice and disqualification were based on a thorough examination of documentary evidence and admissions made by the petitioner herself. The Revision is legally untenable as it seeks to re-appreciate findings of fact in a revisional jurisdiction, which is impermissible.

43- The core issue of this revision is whether the Trial Court acted without jurisdiction or committed a grave error of law, not whether its findings of fact were correct. The High Court's revisional power is supervisory, not appellate. It does not permit the re-appreciation of evidence or the substitution of the trial court's findings with its own.

44- The Trial Court's judgment is based on "sufficient and cogent reasons" and not on "surmises and conjectures" as alleged by the petitioner. It is a judgment grounded in the evidence submitted by both parties. The Trial Court findings are a matter of record and based on admissions and documentary evidence. Thus, there is no scope for interference under Section 115 CPC.

45- Being aggrieved by the election result dated 25.07.2022, the Election Petitioner/respondent No. 1 Smt. Nandini Mishra filed an Election Petition within the statutory period of thirty days, on the grounds that candidate Nisha Devaliya had provided false, incomplete, and untrue information in her nomination form and affidavit.

46- The respondent no.1 Smt. Nandini Mishra, in her Election Petition, submitted representation and concealment of facts by the petitioner/Nisha



Devliya, which are summarised as under:-

47- Description of the properties owned by respondent No. 1 at Chhoti Khajrani:-

48- Respondent No. 1 is the registered owner of the House No. new 104 and old 65 Chhoti Khajrani Indore. The affidavit stated the property was a commercial building of 1600 square feet, but the registry showed it was a residential building of 1142 square feet. The property tax statement from the Municipal Corporation showed the house was not in the respondent's name but was registered to one Mr. Praveen Singh, and the construction was only 200 square feet. Additionally, while the affidavit claimed no outstanding tax, a Municipal Corporation report shows Rs. 2,527.02 was outstanding till October, 2019. The affidavit shows a commercial electricity connection, but an Assistant Engineer's report stated it was a residential connection. Garbage fees were paid for a residential house, but the affidavit declared the property as commercial.

49- Property at 431A Jagjivan Ram Nagar: (Nisha Devaliya)

50- Respondent no. I is the registered owner of the House No. 431-A Jagjeevanram Nagar, Indore. In the affidavit submitted along with the nomination form, this building has been described as a commercial house of 800 square feet, whereas in the property tax records of the Municipal Corporation, it has been shown as a residential house of 600 square feet, which means property tax of less area is being paid. NOC of house no. 431-B in place of house no. 431-A has been attached. A total of Rs 1,750/- was outstanding on this house from Madhya Pradesh Housing Board from the month of July 2018 to 25.07.2023.



51- Property at 70/12 Nanda Nagar: (owned by Husband of Nisha Devaliya)-the respondent No. 1's husband Rupnarayan Devaliya is the registered owner of the 77/12' Nanda Nagar Indore. In the affidavit attached with the nomination form, the area of this shop has been shown as 108 square feet commercial, whereas in the property tax records of the Municipal Corporation it has been shown as 117 square feet. Property tax was due on this shop in the year 2021-22. No NOC of this shop has also been filed in the election office.

52- Property at LIG as I-223: The respondent No. 1's husband Rupnarayan Devaliya is the registered owner of the 1-223 LIG Indore. In the affidavit attached with the nomination form, the area of this building has been shown as 23.16 square meters, i.e. 242 square feet. In the property tax records of the Municipal Corporation, the area is shown as 350 square feet whereas in reality this building has three storied and its area is 800 square feet.

53- Property tax was payable on this building in the year 2021-22.

54- Property at 75 Jagjivan Ram Nagar: (Husband of Nisha Devaliva)

55- Respondent no. 1's husband Rupnarayan Devaliya is the registered owner of the 75 Jagjeevanram Nagar Indore. The area of this building has been shown to be a total of 1000 square feet in the affidavit attached with the nomination form, whereas in the property tax records of the Municipal Corporation, the total residential construction has been shown to be 800 square feet. i.e. 1000 square feet space but the property tax is being paid on 800 square feet. The building has been shown as residential in the Municipal Corporation while it has a commercial electricity connection. No NOC of this building has been submitted to the election office.



56- A total of Rs 1,000/- was outstanding on this building from Madhya Pradesh Housing Board from 10.06.2017 to 26.04.2023. The respondent No. 1 also failed to provide NOC of various properties and the cost of house No.431-A, Jagjivanram Nagar was incorrect.

57- The petitioner has violated rules of the Corporation Act, 1956 as well as Rule 24 (a) of the Election Rules, 1994

58- By submitting a written reply on behalf of respondent No.04 and 05, the petitioner's petition has been opposed in essence.

59- The petitioner Smt. Nisha Devalia, in paragraph 6 of her written statement, has herself admitted that minor clerical errors in the affidavit filed by the candidate, which do not materially affect the election result, cannot form the basis of challenging the election. This amounts to an acknowledgment that mistakes have indeed occurred on her part.

60- Throughout her reply, she has consistently contended that no proceedings have been initiated against her for revenue evasion; however, the basis of this petition is not non-payment of revenue but rather her failure to pay the lawful amount of municipal tax on the properties constructed by her. Instead of paying the correct tax as per law, she furnished false and misleading information in her affidavit and contradicted the documents on record. Moreover, during cross-examination, she has admitted that errors were committed. The statements of witnesses PW-2 Ashish Mishra, PW-3 Shivnarayan Purohit, PW-4 Ajay Saini, PW-5 Lakshminarayan Bandwal, PW-6 Pankaj, and PW-7 Pankaj Betheda-clearly demonstrate that the respondent no.1 has successfully proved that the returned candidate, Nisha Devalia, furnished false, untrue, and misleading particulars in her affidavit, thereby paying lesser tax than what was legally due, which, if correctly paid,



would have amounted to a substantial liability towards the Municipal Corporation. While the applicant's primary defense is that no tax arrears are pending and that whatever tax has been deposited is correct, the respondent no.1 specifically relies upon the two properties standing in the name of Nisha Devalia to establish the falsity of her disclosures.

61- The present revision petition is without merit and liable to be dismissed with costs. The applicant has not been able to demonstrate any jurisdictional error on the part of the Trial Court. The judgment is based on a proper appreciation of facts and law. The present petition is a vexatious attempt to prolong the litigation and delay the lawful outcome of the election. The respondent, Smt. Nandini Mishra, has been deprived of her rightful claim for remaining period due to the applicant's fraudulent conduct. Therefore, the present revision petition should be dismissed with heavy costs.

62- Shri Vivek Kumar Markan, learned counsel for the respondent Nos. 2, 3, 4 & 5 (C.R. No. 207/2024) supports the impugned order and prays for dismissal of the petition.

63- Shri Kamal Nayan Airen, learned counsel for the respondent Nos. 6 & 7 (C.R. No. 207/2024) has opposed impugned order by submitting that the election as well as acceptance of nomination was in accordance with law.

64- Shri Kamal Nayan Airen, learned counsel for the respondent No. 7 (C.R. No. 231/2024) has supported impugned order.

65- Shri Mukesh Porwal, learned Govt. Advocate has also opposed the impugned order passed by the Trial Court.

66- Heard learned counsel for both parties in C.R. No.207/2024 and No. 231/2024.



67- Having considered the rival submissions of the parties, I have perused the record available. In view of above contentions, determination of the issues involved in this petition, is as to whether the learned Trial Court has erred in passing the judgment while deciding the issue Nos. 1, 2, 3, 4 against the petitioner and No. 5 in favour of Election Petitioner/respondent No. 1/Nandini is correct or not ?

68- At the outset, since the questions are interrelated, they should be determined simultaneously in light of the facts and arguments advanced by counsel for the parties.

69- To determine the question relating to the entitlement of respondent No.1 to be elected to the post of councillor of ward No. 44, Indore in the Madhya Pradesh Municipal Corporation election Year 2022 is concerned, on the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls. The relevant statutory provisions which would clinch the singular issue surviving for decision in this revisioin are extracted from the and reproduced hereunder :-

70- Section 441-B of the Act, 1956 - Grounds for declaring elections or nomination to be void :-

(1) Subject to the provisions of sub-section (2), if the Court is of the opinion :-

(a) that on the date of his election or nomination a returned candidate was not qualified or was disqualified, to be chosen as a Mayor or a Councillor; or

(b) that any corrupt practice has been committed by a returned candidate or his agent; or



- (c) that any nomination paper has been improperly rejected; or*
- (d) that the result of the election, or nomination in so far as it concerns a returned candidate has been materially affected-*

(i) by the improper acceptance of any nomination; or

(ii) by a corrupt practice having been committed in the interest of the returned candidate by a person other than that candidate or his agent or a person acting with the consent of such candidate or agent; or

(iii) by the improper acceptance or refusal of any vote or rejection of any vote which is void; or

(iv) by the non-compliance with the provisions of this Act or of any rules or orders-made there under save the rules framed under section 14 in so far as they relate to preparation and revision of list of voters; the Court shall declare the election of the returned candidate to be void.

(2) If the opinion of the Court a returned candidate has been guilty by an agent of any corrupt practice, but the Court is satisfied-

(a) that no such corrupt practice was committed at the election or nomination by the candidate, and every such corrupt practice was committed contrary to the instructions, and without the consent of the candidate;

(b) that the candidate took all reasonable means for preventing the commission of corrupt practices at the election or nomination; and

(c) that in all other respect the election or nomination was free from any corrupt practice on the part of the candidate or any of his agents; then, the Court may decide that the election or nomination or the returned candidate is not void.

71- Section 441D - Decision of Election Petition.-

(1) At the conclusion of the trial of an election petition, the Court shall make an order-

(a) dismissing the election petition; or

(b) declaring the election or nomination of all or any of the



returned candidates to be void; or

(c) declaring the election or nomination of all or any of the returned candidates to be void and the petitioner and any other candidate to have duly elected or nominated.

(2) If any person who has filed an election petition has, in addition to calling in question the election or nomination of the returned candidate, claimed declaration, that he himself or any other candidate has been duly elected or nominated and the Court is of opinion-

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate the petitioner or such other candidate would have obtained a majority of the valid votes; the Court shall, after declaring the election or nomination of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be , to have been duly elected or nominated.

(3) At the time of making an order under this section, the Court shall also make an order-

(a) where any charge is made in the petition of any corrupt practice having been committed at the election or nomination recording-

(i) a finding whether any corrupt practice has or has not been proved to have been committed at the election or nomination and the nature of that corrupt practice; and

(ii) the name of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

(b) fixing the total amount of costs payable, and specifying the person by and to whom costs shall be paid:

Provided that a person who is not an party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless-

(a) he has been given notice to appear before the Court and show cause why he should not be so named ; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been



examined by the Court and has given evidence against him, of calling evidence in his defence and of being heard.

72- Section 441-H. Corrupt practices.-

The following shall be deemed to be corrupt practices for the purposes of this Act:-

(i) Bribery as defined in clause (1) of section 123 of the Representation of the People Act, 1951 (43 of 1951).

(ii) Undue influence as defined in clause (2) of the said section.

(iii) The systematic appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent, to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious symbols or, the use of, or appeal to national symbols such as the national flag or the national emblem for the furtherance of the prospects of that candidate's election.

(iv) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any statement of fact which is false, and which he either believes to be false, or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(v) The hiring or procuring whether on payment or otherwise of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent for the conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided in accordance with the rules made under this Act:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the



purpose of conveying him or them to or from any such polling station shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tram car or railway carriage by an elector at his own cost for purpose of going to or coming for any such polling station shall not be deemed to be a corrupt practice under this clause.

Explanation.- *In this clause the expression ‘vehicle’ means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.*

(vi) The holding of any meeting in which intoxicating liquors are served.

(vii) The issuing of any circular, play card or poster having a reference to the election which does not bear the name and address of the printer and publisher thereof.

(vii-a) The incurring or authorizing of election expenditure in excess of the amount prescribed under section 14-A. (viii) Any other practice which the State Government may prescribe by rules to be corrupt practice.”

73- On this aspect, the Apex Court in the case of **Shiv Charan Singh S/o Angad Singh v/s Chandra Bhan Singh S/o Mahavir Singh & Others** reported in **(1988) 2 SCC 12** has held as under:-

“Many times electors cast their vote on consideration of friendship, party affiliation, local affiliation, caste, religion, personal relationship and many other imponderable considerations. Casting of votes by electors depends upon several factors and it is not possible to forecast or guess as to how and in what



manner the voters would have exercised their choice in the absence of the improperly nominated candidate. No inference on the basis of circumstances can successfully be drawn. While in a suit of proceedings it may be possible for the Court to draw inferences or proceed on probabilities with regard to the conduct of parties to the suit or proceedings, it is not possible to proceed on probabilities or draw inferences regarding the conduct of thousands of voters, who may have voted for the improperly nominated candidate."

74- In the said judgment and relevant provisions of law, it is found that the Election Petitioners failed to prove that the result was "materially affected" by the improper acceptance of another candidate's nomination and in the case at hand, the nomination of the petitioner/Nisha / Returned Candidate was correctly accepted, only on the basis of conjectures and surmises and by drawing unwarranted presumptions in the light that if the correct area of plot construction would have been disclosed by the petitioner/Nisha/Returned Candidate, naturally the properties tax could not have been accrued and if there would have been any accrual then that accrual for exceeding for more than one year would have made the petitioner/Nisha/returned candidate disqualified for contesting the election. Relevant **Section 17(1)(i) of the Act, 1956** is reiterated hereunder:-

“17. General disqualification for becoming a Councillor or Mayor-

(1) No person shall be a Councillor or Mayor, who-

(i) has any tax or dues, payable to the Corporation, standing against his name for a period exceeding one year, or"

75- It is crystal clear from the aforesaid provision that the candidate against whose name a bill is due and payable for period exceeding one year will only be disqualified for contesting the election, whereas in the present



case there was no outstanding bill due and payable for exceeding one year in the name of petitioner/Nisha/Returned Candidate. Apart this, in para 53 of the impugned judgment, learned Trial Court has also given its finding that there is no dues against the petitioner/Nisha/returned candidate at the time of filing nomination form (Annexure-P/2). Hence, it leads no iota of doubt that the finding with regard to holding the acceptance of nomination of the petitioner/Nisha/Returned Candidate as improper as per Section 17 Sub-section (1) (i) is perverse and illegal.

76- As far as the question of furnishing such false information in the affidavit with the nomination form by the petitioner/returned candidate/Nisha, comes under the definition of “corrupt practice” and question relating to conduct of petitioner during M.P. Municipal Corporation Election, 2022 for the Councillor of Ward No. 44, Indore and also question of the election of petitioner for Councillor from Ward No. 44 is void, are concerned, on this issue, learned Trial Court has heavily relied upon the judgment of **S. Rukmani Madegowda Vs The State Election Commission** reported in **2022 AIR SC 4347** whereas it has been viewed that “38. *In our considered view, a false declaration with regard to the assets of a candidate, his/her spouse or dependents, constitutes corrupt practice irrespective of the impact of such a false declaration on the election of the candidate. It may be presumed that a false declaration impacts the election*” the said case is completely on different footings as compare to the present case. Whereas, in the present case, the Ld. Trial Court itself has admitted and acknowledged that the returned candidate has not made any false statement in the affidavit.

In Para 75 of the impugned judgment, the Ld. Trial Court observes that “यह



वर्तमान मामला शपथ पत्र में गलत तथ्यों के उल्लेख का नहीं है, बल्कि महत्वपूर्ण सारवान तथ्यों के छिपाव का है". Also Trial Court has placed reliance upon the judgment of **Kisan Shankar Kathore Vs. Arun Dattatray Sawant and others, (2014) 14 SCC 162** with the same issue. In the said judgment, on facts and grounds as compare to the present case, are completely distinguishable. In the said case there was no disclosure of assets as well as non-disclosure of dues to Maharashtra State Electricity Board in respect of two service connections held by returned candidate amounting to Rs.79,200/- and Rs.66,250/-. In the present case, the Ld. Trial-Court itself has acknowledged that on the date of filing of nomination form, there was no outstanding tax liabilities accrued to the petitioner.

77- Moreover, the observation of Hon'ble Apex Court in the case of **Ajmera Shyam Vs. Kova Laxmi and Others** reported in **2025 SCC OnLine SC 1723**, is worth to be quoted here :-

“Further, whether the non-disclosure of assets is of a substantial character or not, must be determined by the court based on the specific facts of each case, as observed by this Court in **Karikho Kri v. Nuney Tayang & Anr., 2024 SCC Online SC 519** as follows:

“40. Having considered the issue, we are of the firm view that every defect in the nomination cannot straightaway be termed to be of such character as to render its acceptance improper and each case would have to turn on its own individual facts, in so far as that aspect is concerned. The case law on the subject also manifests that this Court has always drawn a distinction between non-disclosure of substantial issues as opposed to insubstantial issues, which may not impact one's candidature or the result of



an election.

44. Though it has been strenuously contended before us that the voter's 'right to know' is absolute and a candidate contesting the election must be forthright about all his particulars, we are not inclined to accept the blanket proposition that a candidate is required to lay his life out threadbare for examination by the electorate. His 'right to privacy' would still survive as regards matters which are of no concern to the voter or are irrelevant to his candidature for public office."

78- Alongwith this, Section 173 - Presentation of bill for taxes and other demands, of the Act, 1956, reads as under :-

(1) When any amount declared by or under the provisions of this Act to be recoverable in the manner provided in this chapter, or payable on account of any tax imposed within the limits of the city shall have become due, the Commissioner shall, with the least practicable delay cause to be presented to any person liable for the payment thereof a bill for the sum claimed as due.

(2) Contents of bill.---Every such bill shall specify-

(a) the period for which: and

(b) the property, occupation or thing in respect of which the sum is claimed, and shall also give notice of-

(i) the liability incurred in default of payment; and

(ii) the time within which an objection may be preferred as against such claim.

79- Likewise, Section 148 - Investigation of objections by Commissioner, is mentioned as follows :-



1. All such objection, shall entered in a register to be maintained for the purpose and, on receipt of any objection, the Commissioner shall give a notice in writing to the objector of the time and place at which his objection will be investigated.

(2) At the time and place so fixed the Commissioner shall hear the objection in the presence of the objector or his authorized agent if he appears, or may, for reasonable cause, adjourn the investigation.

(3) When the objection has been determined, the order passed on such objection shall be recorded in the said register and, if necessary, an amendment made inn the assessment list in accordance with the result of the objection.

80- At the same time, this Court has also held that the mere failure to disclose assets in the affidavit, if it does not constitute a material defect and is not of a substantial character, will not make the acceptance of the nomination improper, thus invalidating the election. Further, whether the non-disclosure of assets is of a substantial character or not, must be determined by the court based on the specific facts of each case, as observed in the case of **Karikho Kri (supra)**. Every case would have to turn on its own peculiarities and there can be no hard and fast or straitjacketed rule as to when the nondisclosure of a particular movable asset by a candidate would amount to a defect of a substantial character.

81- On examination of several individual defects in the nomination of the returned candidate and found that some of them were actually insubstantial in character. This Court noted that two facets required consideration – Whether there is substantial compliance in disclosing requisite information in the affidavits filed along with the nomination and whether non- disclosure of information on identified aspects materially affected the result of the



election. This Court observed, on facts, that non- disclosure of the electricity dues in that case was not a serious lapse, despite the fact that there were dues outstanding, as there was a bonafide dispute about the same. Similar observation in relation to non-disclosure of municipal dues, where there was a genuine dispute as to re-valuation and re-assessment for the purpose of tax assessment.

82- Earlier, in the case of **Sambhu Prasad Sharma vs. Charandas Mahant [2012] 6 SCR 356**, this Court observed that the form of the nomination paper is not considered sacrosanct and what is to be seen is whether there is substantial compliance with the requirement as to form and every departure from the prescribed format cannot, therefore, be made a ground for the rejection of the nomination paper. Owing to formal or clerical irregularities in the affidavit format, without any substantive non-compliance or evidence that the result was affected, are not sufficient grounds to reject a nomination paper or challenge an election outcome. At the conclusion, these questions do not carry any substance.

83- So far as the determination of issue with regard to eligibility of the respondent No. 1/Nandini to be elected as Concillor of the Ward No. 44, Nagar Palika Nigam, Indore is concerned, the provisions of the Act, 1956 relating to declaration of a candidate other than returned candidate to be elected as mentioned in Section 441-D(2) of the Act, 1956, may be perused, which are as under :-

Section 441-D. Decision of Election Petition.-

(1) At the conclusion of the trial of an election petition, the Court shall make an order-



- (a) dismissing the election petition; or*
- (b) declaring the election or nomination of all or any of the returned candidates to be void; or*
- (c) declaring the election or nomination of all or any of the returned candidates to be void and the petitioner and any other candidate to have duly elected or nominated.*

(2) If any person who has filed an election petition has, in addition to calling in question the election or nomination of the returned candidate, claimed declaration, that he himself or any other candidate has been duly elected or nominated and the Court is of opinion-

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate the petitioner or such other candidate would have obtained a majority of the valid votes; the Court shall, after declaring the election or nomination of the returned candidate to be void , declare the petitioner or such other candidate, as the case may be , to have been duly elected or nominated.

(3) At the time of making an order under this section, the Court shall also make an order-

(a) where any charge is made in the petition of any corrupt practice having been committed at the election or nomination recording-

(i) a finding whether any corrupt practice has or has not been proved to have been committed at the election or nomination and the nature of that corrupt practice; and

(ii) the name of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

(b) fixing the total amount of costs payable, and specifying the person by and to whom costs shall be paid: Provided that a person who is not an party to the petition shall not be named in the order under sub-clause



(ii) of clause (a) unless- (a) he has been given notice to appear before the Court and show cause why he should not be so named ; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of crossexamining any witness who has already been examined by the Court and has given evidence against him, of calling evidence in his defence and of being heard.

84- By the language of the aforesaid provisions, it is apparent that any declaration regarding the election of returned candidate to be void does not include the declaration of the next candidate as elected candidate. It is nowhere mentioned in both the Acts that the runner up candidate shall be declared elected. On the contrary, it is provided that it is to be established by the person who claims to be elected that he would have received majority of such valid votes those were received by the returned candidate if the returned candidate would not have fought the election.

85- On this aspect, the law endorsed by Hon'ble Apex Court in the case **Prakash Khandre Vs. Dr. Vijaya Kumar Khandre and Others** reported in **AIR 2002 SC 2345**, is worth to be reproduced here :-

“From the aforesaid discussion, it is apparent that there was no contract subsisting between the appellant and the State Government so as to apply the provisions of Section 9-A of the Act and to hold that appellant was disqualified to contest the elections. As stated above, the order passed by the High Court declaring Dr. Vijay Kumar Khandre-respondent No.1 as elected is, on the face of it, illegal.

In the result, Civil Appeal Nos. 2-3 of 2002 filed by Prakash Khandre are allowed, the impugned order passed by the High Court declaring election of Prakash Khandre, the returned candidate, as void and declaring Dr. Vijaykumar Khandre who had polled the



next highest number of valid votes as elected from No.2 Bhalki Legislative Assembly constituency to the Eleventh Karnataka Legislative Assembly is quashed and set aside.”

86- Likewise, the law laid down by Hon'ble Apex Court in the case of **Manohar Nathurao Samarth Vs. Marotrao and Others**, reported in **AIR 1979 SC 1084**, is poignant to point out here :-

“32. Turning to the election-petitioner's appeal (C.A. No. 356 of 1978) I am in complete agreement with the view expressed by the High Court that the declaration granted to him by the learned Assistant Judge under Section 428 (2) of the Corporation Act, 1948 should never have been granted. It is true that the election-petitioner secured the next highest number of votes but that by itself would not entitle him to get a declaration in his favour that he be deemed to have been duly elected as a Councillor from Ward No. 34. I may point out that Section 428(2) is not that absolute as was suggested by counsel for the election-petitioner, for, the relevant part of Sub-section (2) provides that if the election of the returned candidate is either declared to be null and void or is set aside the District Court "shall direct that the candidate, if any, in whose favour next highest number of valid votes is recorded after the said person or after all the persons who have returned at the said election and against whose election no cause or objection is found shall be deemed to have been elected." The underlined words give jurisdiction to the District Court to deny the declaration to the candidate who has secured the next best votes. The High Court has rightly taken the view that there was no material on record to show how the voters, who had voted for the returned candidate, would have cast their votes had they known about the disqualification. Therefore, this appeal also deserves to be dismissed.”

87- According to these judgment, the respondent No. 1 could not be declared elected only because she was in a runner up position. While



interpreting Section 441-B of the Act, 1956, this Court in the case of **Rekha Choudhary (Smt.) v/s Smt. Suman Ahirwar & Others** reported in **I.L.R. (2013) M.P. 2464** has held as under:-

“On the basis of the aforesaid discussion, the civil revisions filed by the applicants are allowed. The portion of the impugned judgment dated 9.12.2011 passed by the learned District Judge, Sagar, by which the respondent No.1 Smt. Suman Ahirwar was declared to be elected to the post of “Mahapaur” is hereby set aside. It is directed that since the election of the returned candidate Kamla Kinnar was already declared void, and no other candidate can be declared elected, then it is for the Returning Officer to arrange for fresh election.

88- In view of the aforesaid judgments, it is settled position of law that the election of a returned candidate, upon being declared void, does not *ipso facto* entail the declaration of the runner-up as the elected candidate. Neither the Representation of the People Act, 1951, nor any cognate statutory provision contains any express mandate that the runner-up shall be declared elected in such circumstances. On the contrary, the law imposes a positive burden upon the claimant seeking such a declaration: it must be affirmatively established by evidence that, had the returned candidate not contested the election, the claimant would have secured a majority of the valid votes that were in fact cast in favour of the returned candidate.

89- To decide an Election Petition, it is of paramount importance to consider each and every aspect of the case. Each fact having its own value, so that sanctity and purity of electoral process in the country can be maintained. The election of a duly returned candidate cannot be set at naught on the basis of interested or partisan evidence which is not backed by cogent



circumstances or unimpeachable documents.

90- In a judgment reported as **Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and others, (1995) 5 SCC 347**, the Supreme Court again reiterated that the election of a successful candidate is not to be interfered lightly and that one of the essentials of the election law is to safeguard the purity of the election process and to see that people do not get elected by flagrant breaches of the law. The relevant extract reads as under :-

“13. Though the election of a successful candidate is not to be interfered with lightly and the verdict of the electorate upset, this Court has emphasised in more than one case that one of the essentials of the election law is to safeguard the purity of the election process and to see that people do not get elected by flagrant breaches of the law or by committing corrupt practices. It must be remembered that an election petition is not a matter in which the only persons interested are the candidates who fought the election against each other. The public is also substantially interested in it and it is so because election is an essential part of a democratic process. It is equally well settled by this Court and necessary to bear in mind that a charge of corrupt practice is in the nature of a quasi-criminal charge, as its consequence is not only to render the election of the returned candidate void but in some cases even to impose



upon his a disqualification fro contesting even the next election.....”

91- Even after going through the relevant evidence as well as para No. 53 of the impugned judgment, it is found that Nagar Nigam, Indore has issued No Dues Certificate in respect of two houses owned and possessed by petitioner/returned candidate. This is sufficiently enough to answer this issue as negative.

92- Based on settled principles of law, particularly in the context of election petitions, the arguments submitted before the Trial Court should be well-supported. The core issues revolve around (i) the impermissibility of basing judicial decisions on hypothetical assumptions, surmises, or conjectures, and (ii) the strict burden of proof resting on the election petitioner to substantiate allegations, such as tax evasion, with cogent evidence. The judicial findings must be grounded in concrete evidence rather than speculative "if-then" scenarios or presumptions. A judgment relying on hypothetical situations such as assuming increased tax arrears upon potential updating of municipal records without any ongoing enquiry or revision, is liable to be set aside as perverse or unsustainable.

93- In upshot of the settled proposition of law and having examined the facts and circumstances of the case in these revisions, this Court is of the considered opinion that findings rendered by the learned trial Court declaring nomination paper of the petitioner/Smt. Nisha W/o Roopnarayan Devaliya as null & void and declaring the election of returning candidate of the Ward No. 44, Indore Smt. Nisha Devaliya as null and void, cannot withstand judicial scrutiny, deserves to be set aside. The findings with regard



to declare the respondent No. 1/ Nandini Mishra W/o Ashish Mishra as Councillor of Ward No. 44 of Nagar Palik Nigam, Indore, is also not found in accordance with law, it cannot be affirmed, is also set aside. Therefore, the impugned order dated 02.03.2024 (Annexure-P/1) passed in Election Petition No. 02/2024 by learned XXII District Judge, Indore deserves to be and is hereby set aside.

94- Consequently, present revisions stand allowed.

95- There shall be no order as to costs.

(ALOK AWASTHI)
JUDGE

Vindesh