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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9878 OF 2011**

1. Ramchandra S. Shirke
2. Prabhakar S. Padave
3. Sanjay R. Padve
4. Sanjay D. Shirke
5. Santosh M. Shirke
6. Santosh G. Amasdkar
7. Mangesh S. Patne
8. Chandrakant D. Shirke
9. Dattaram D. Patne
10. Murlidhar Shirke

All Residing at :
Mukkam Post Mhaisonde,
Post : Kalambat
District : Ratnagiri

... Petitioners

Versus

1. The State of Maharashtra
2. The Chief Executive Officer
3. The Sub-Divisional Officer
& Sub-Divisional Magistrate
4. The Tahsildar, Dapoli
5. The Executive Engineer
6. The Deputy Engineer
7. The Group Gram Panchayat

... Respondents

Shri S.P. Joshi, for the Petitioners.
Mrs. M.P. Thakur, AGP, for Respondent Nos.1, 3 and 4.
Mr. Shashank C. Mangle, for Respondent Nos.2 and 5.

**CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ.**

JUDGMENT RESERVED ON : 24th JUNE, 2015

JUDGMENT PRONOUNCED ON : 24th JULY, 2015

JUDGMENT (PER A.S. OKA, J.):

. The Petitioners are the residents of village Mhaisonde, Taluka - Dapoli, District – Ratnagiri. This Petition under Article 226 of the Constitution of India has been filed complaining about the failure of the Respondents to restore water supply to the village Mhaisonde (for short “the said village”).

2. The case made out in the Petition is that villages Mhaisonde and Waghwe are adjoining villages. Under the earlier water supply scheme, both the villages were receiving water supply from a common source. It is stated that village Mhaisonde and Waghwe are within the jurisdiction of the Group Gram Panchayat of Adkhal. It is stated that in village Mhaisonde, there are 60 dwelling houses and in village Waghwe there are 30 dwelling houses. Under the earlier water supply scheme, water from a common source was being collected by a pipe in a common reservoir having capacity of 5,000 litres through which water was supplied to both the villages. According to the

Petitioners, the capacity of the reservoir was sufficient to cater the need of both the villages.

3. The contention of the Petitioners is that in accordance with the 'Bharat Nirman Yojana', the said village was supposed to receive water supply through a new scheme which provided for construction of a reservoir having capacity of 40,000 litres. It is stated that though the reservoir/water tank having capacity of 40,000 litres has been constructed, supply of water through the reservoir is made only to village Waghwe. It is contended that though under the new scheme water is not supplied to the said village, the supply under the earlier scheme has been discontinued. It is contended that though the Group Gram Panchayat (seventh Respondent) passed a Resolution dated 26th January, 2008 providing for supply of water to both the villages from the new scheme, the said Resolution was tampered with and the name of the said village was deleted and the name of village Waghwe was retained. The contention of the Petitioners is that notwithstanding the legal notice issued by the Petitioners through an Advocate to the Respondents, water supply to the said village has not been restored. It is contended that right to get water supply is a fundamental right of the Petitioners under Article 21 of the Constitution of India.

4. To the legal notice dated 2nd August, 2011 addressed to the Respondents issued by the Advocate for the Petitioners, a reply was sent by the Deputy Engineer of the concerned department of Zilla Parishad of District Ratnagiri. In the said reply, it was contended that initially water supply was made by the Zilla Parishad to both the villages through a common source. Water from the said common source was being taken by gravitational force to a reservoir and the water was supplied to both the villages through stand posts which were connected to the said reservoir. It was contended that the new water supply scheme was only for village Waghwe. It was stated that though the Resolution dated 26th January, 2008 of the Group Gram Panchayat initially provided that the new scheme will be for both the villages, while forwarding the resolution to the Zilla Parishad, the name of the said village has been struck out by the Gram Sevak. It is accepted that as per the new scheme which is already in place, a reservoir having capacity of 40,000 litres has been constructed. It is stated that on the basis of the demand made by the villagers of the said village it was decided to provide the water supply to the said village Mhaisonde through the said reservoir through stand posts. It is stated that funds were sanctioned and work of distribution system including the construction of stand posts has been carried out. It is stated that not only that the villagers of village Waghwe obstructed in the said work, a Civil Suit has been filed in the

Civil Court at Dapoli by Smt. Laxmibai Vajirkar and others. In view of interim order, the work of laying down pipelines has been stopped. It is stated that Zilla Parishad has preferred an Appeal against the interim order. It is stated that the old scheme is in existence but intake pipe from the main water source has been blocked and, therefore, water supply to the said village has been considerably reduced.

5. The prayer made in this Petition under Article 226 of the Constitution of India is for issuing a writ of mandamus to restore the water supply to the said village. The second prayer is for connecting the old water pipeline to the new reservoir.

6. There is a reply filed by Shri Rajaram Anant Desai on behalf of the Chief Executive Officer of Ratnagiri Zilla Parishad. He is the Deputy Engineer Incharge of Water Supply of Zilla Parishad. In the reply, reliance has been placed on interim order passed in the Civil Suit filed by Smt.Laxmibai Vajirkar and others and the fact that the Appeal preferred by the Zilla Parishad in the District Court is pending in which interim order has been made appointing Taluka Inspector of Land Records to measure the property claimed by the Plaintiffs in the said Suit.

7. The learned counsel appearing for the Petitioners submitted that right to get water is a fundamental right of the Petitioners and all

the residents of village Mhaisonde. He relied upon the Judgment and Order dated 15th December, 2014 passed by this Court in PIL No.10 of 2012 (Pani Haq Samiti & others Vs. Brihan Mumbai Municipal Corporation and Ors.). He urged that interim order passed in the Regular Civil Suit No.83 of 2010 is confined to the land of the Plaintiffs therein which does not prevent the Zilla Parishad from providing water to the said village through the new scheme.

8. The learned AGP appearing for the State Government relied upon an affidavit-in-reply of Shri Yuvraj Kaluram Bangar. It is stated that though the water supply to the said village from the newly constructed tank having capacity of 40,000 litres has been sanctioned, the villagers of village Waghwe have removed the pipeline laid down to supply water supply to the said village of the Petitioners. Reliance is placed on the interim order passed in the Suit filed by the said Smt. Laxmibai Vajirkar and others. Same are the contentions raised by the learned counsel representing the Ratnagiri Zilla Parishad.

9. We have given careful consideration to the submissions. We have perused the affidavit of Shri Rajaram Anant Desai. The stand of the Zilla Parishad is reflected from paragraph Nos.2 to 6 of his affidavit which read thus :-

“2. I say that the Group Gram Panchayat Waghave is established for the two revenue villages of village

Waghave and Village Mhaisonde. For the said two villages the scheme for the supply of tap water based on gravity was started from the year 1986-87 by the present respondents. The source of water for both the village is one and the same and it is on the upper side of village in the form of the flow from the river. The water from the said source is available throughout the year. The said water is taken through the G I pipes to the 5000 liter capacity tank and from there, it was distributed to both the villages. The said scheme was started on 10-03-1988. I further say that the said scheme has completed 22 to 23 years and the due to passage of time said pipe line is in dilapidated condition as there is leakage at many places and blockage of the said pipe line. Since there is no provision of system like Intake Chamber the problem of blockage of the said pipeline is always posed in between the continuous supply of water. The said scheme proves in-adequate due to the above said problems especially during summer.

3. I further say that as per the Bharat Nirman Scheme a new tank for storage of water having capacity of 40000 liters was proposed to be constructed and through the Intake Well System at the source of water. I say that the said scheme was proposed to be adopted because of the fact that the same would result in prevention of blockage and also provide filtration of the said water on the old scheme. The said scheme was sanctioned by the present respondent on 02-03-2009 and as per the procedure the said scheme is completed and the water supply was started. The total amount of Rs.31,19,861/- has been spent on the said scheme.”

(underline added)

10. In paragraph 7, it is contended that in the Appeal preferred by the Zilla Parishad against the interim order passed in the Civil Suit, TILR has been appointed to measure the property subject matter of the Suit. It will be also necessary to note the stand taken by the Deputy Engineer of the Water Supply Department of Zilla Parishad in his letter

dated 23rd August, 2011 (Exhibit 'C' to the Petition) addressed to the Advocate for the Petitioners. In the said reply, he has accepted that due to the fact that water pipeline which brought water from the source is blocked and has become old, the villagers of the said village are not receiving proper water supply from the old water supply scheme. However, he has stated that necessary repairs can be carried out so that even from the said old scheme, water supply can be made to the said village. From the said reply annexed to the Petition as well as the affidavit of Shri Rajaram Anant Desai, it is apparent that the Zilla Parishad, Ratnagiri is not disputing its obligation to supply water to the said village. It is accepted that there is hardly any water supply to the said village through the old scheme. It is accepted that though there is a sanction granted to supply water through the new scheme to the said village, due to obstruction of the villagers of village Waghwe and due to interim order passed in the Civil Suit filed by Smt. Laxmibai Vajirkar and others, the work of connecting the said village to the new scheme could not be completed. There is an assurance given to supply water through the new scheme to the said village after the dispute is over.

11. In Judgment and Order dated 15th December, 2014 in PIL No.10 of 2012, this Court has held that right to life guaranteed in any civilized society implies right to food, water, decent environment, education, shelter, etc. This Court proceeded to hold that the right to

life guaranteed under Article 21 of the Constitution of India includes right to food and water. It was held that the State cannot deny water supply to a citizen on the ground that he is occupying an illegal structure. Therefore, in the facts of the present case, there is no difficulty in holding that the Zilla Parishad of Ratnagiri is under an obligation to supply water to the said village. As stated earlier, the Deputy Engineer of the Water Supply Department of the Zilla Parishad has stated that even the old scheme can be repaired. We have perused the pleadings and interim order in Regular Civil Suit No.83 of 2010 filed by Smt. Laxmibai Vajirkar and others. The Suit is confined to the land bearing Survey No.16 Hissa No.12 of village Waghwe claimed by the Plaintiffs therein. The injunction granted is confined to the said land. The injunction restrains the Zilla Parishad from taking over the land claimed by the Plaintiffs without initiating legal procedure for acquisition. In fact, in the Appeal preferred by the Zilla Parishad against the interim order, appointment of TILR has been made under order dated 14th November, 2011 with a view to demarcate boundaries of the suit land to enable the Zilla Parishad to lay down the pipeline outside the said land.

12. Considering the peculiar fact that the villagers are without water supply for a considerably long time, by way of exception, we propose to direct the District Court to decide the Appeal within a time

bound schedule. Even if interim order is confirmed in Appeal, the same does not prevent the Zilla Parishad from connecting reservoir constructed under the new scheme to the stand posts in the said village by laying down pipeline through any land which is not covered by the interim order in the Civil Court.

13. We, therefore, propose to direct the Zilla Parishad to immediately repair the water pipeline of the old scheme as an interim measure and to make arrangements for supply of water through the new scheme as a permanent measure within the time stipulated under this Judgment and Order.

14. In fact, the Zilla Parishad ought to have carried out immediate repairs of the pipeline of the old scheme and ought not to have driven the Petitioners to the Court. The Zilla Parishad has infringed the fundamental right of the Petitioners to get water. We, therefore, propose to award costs quantified at Rs.25,000/- to the Petitioners.

15. Therefore, we dispose of the Petition by passing the following order :-

ORDER

- (i) We direct the second, fifth and sixth Respondents to take immediate steps for carrying out repairs to the old

water supply scheme. The said Respondents shall ensure that all necessary repairs are carried out within a period of one month from today and adequate water supply is restored to village Mhaisonde;

- (ii) We direct the second, fifth and sixth Respondents to take steps for completion of the work of laying down the pipeline of new water supply scheme for connecting the stand posts in village Mhaisonde and to commence the water supply through the new scheme. The said action shall be completed by the said Respondents within a period of two months from the date on which the Civil Miscellaneous Appeal No.16 of 2011 is disposed of. We make it clear that the work shall be completed irrespective of the result of the Appeal;
- (iii) Even if the said Appeal is decided against the Zilla Parishad, an arrangement shall be made for laying down the pipeline through the land other than the land subject matter of the Suit;
- (iv) Considering the peculiar facts of the case, we direct the learned District Judge-I, Khed, District Ratnagiri to give priority to the final hearing of the Miscellaneous Civil Appeal No.16 of 2011 and to dispose of the same on or

before 31st December, 2015;

- (v) We direct the second Respondent to produce an authenticated copy of this Judgment and Order before the learned District Judge-I at Khed within a period of two weeks from the date on which this Judgment and Order is uploaded;
- (vi) The Registry shall communicate the aforesaid direction regarding the disposal of Appeal to the Court of the learned District Judge-I at Khed, District Ratnagiri;
- (vii) We direct the fifth and sixth Respondents/Zilla Parishad of District Ratnagiri to pay costs of this Petition quantified at Rs.25,000/- to the Petitioners. The amount of costs shall be deposited in this Court within a period of six weeks from today. On deposit of the said amount, the Registry shall permit the Petitioners to withdraw the said amount;
- (viii) Rule is made absolute on above terms.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)