

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

WRIT PETITION NO.4663 OF 2014

Dnyaneshwar Krishnaji Koule : Petitioner.
Versus
The Hon'ble Minister for Rural
Development
for the State of Maharashtra and ors. : Respondents.

Mr. Ganesh Bhujbal for the Petitioner.
Mr. Tushar Sonawanne i/by Mr. Prashant S Hagare for the Respondent
No.7.
Mrs.Neha Bhide "B" Panel Counsel for the Respondent Nos.1 and 2.

CORAM : R. M. SAVANT, J.
DATE : 25th March 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 31/12/2013 passed by the State Government i.e. the Hon'ble Minister for Rural Development, Government of Maharashtra by which order the Appeal filed by the Respondent No.7 herein came to be allowed, and resultantly the order dated 30/03/2013 passed by the Divisional Commissioner, Pune Division, Pune came to be set aside.

2 The Petitioner herein was the complainant against the Respondent No.7 who, at the relevant time, was the Sarpanch of village Vadhane, Tal. Baramati, Dist. Pune. The Petitioner had alleged against the Respondent No.7 of certain illegalities committed in the implementation of Gharkul Scheme as

well as in respect of the work relating to Padmavati Percolation Dam. The removal of the Respondent No.7 was sought under Section 39 of the Bombay Village Panchayat Act, 1958 (for brevity sake hereinafter referred to as "the said Act"). In terms of the said Section 39 (1)(i) of the said Act, if a person is to be removed, an inquiry has to be held by the Chief Executive Officer of the Zilla Parishad concerned, who would submit his report to the Divisional Commissioner who has been conferred with the powers under Section 39 of the said Act. In the instant case, the Chief Executive Officer appointed a committee of three persons i.e. the Extension Officer of the Zilla Parishad, Shri S D Jadhav, Shri S D Kamble to inquire into the allegation made by the Petitioner. The said three member committee accordingly submitted its report to the Chief Executive Officer who in turn submitted his report to the Divisional Commissioner on the basis of the report submitted the three member of the committee. The Commissioner having regard to the report submitted by the Chief Executive Officer, Zilla Parishad, Pune by the order dated 30/03/2013, removed the Respondent No.7 as a Sarpanch on the ground that in the report the charges are held to be proved against the Respondent No.7 and also directed the removal of the Respondent No.7 and his wife as members of the GramPanchayat.

3 The Respondent No.7 aggrieved by the order dated 30/3/2013 passed by the Commissioner filed an Appeal under Section 39(3) of the said

Act before the State Government which was heard by the Hon'ble Minister for Rural Development, Government of Maharashtra who by the impugned order dated 31/12/2013 has allowed the said Appeal.

4 In so far as the allegation in respect of Gharkul Scheme is concerned, the Appellate Authority came to the conclusion that there is no double benefit granted to the allottee concerned, and in so far as the 2nd allegation regarding Padmavati Percolation Dam is concerned, the Appellate Authority held that since an FIR has been registered against the Respondent No.7 and since the scope of inquiry under Section 39(1)(i) as also the Criminal Case would overlap, it is not necessary to proceed against the Respondent No.7 under Section 39 of the said Act, and it would be appropriate to await the outcome of the Criminal Case which is pending in the Sessions Court and in which Court the Respondent No.7 has made the deposit of Rs.1,39,500/- which was the amount mentioned in so far as the alleged financial irregularities relating to Padmavati Percolation Dam is concerned. As indicated above, it is the said order dated 31/12/2013 which is taken exception to by way of the above Writ Petition.

5 Having heard the learned counsel for the parties i.e. Shri Ganesh Bhujbal for the Petitioner, Shri Tushar Sonawane for the Respondent No.7 and Mrs. Neha Bhide for the State-Respondent Nos.1 and 2, in my view, in so far as

the finding of the Appellate Authority in respect of the allegation relating to Gharkul Scheme is concerned, the said finding cannot be taken exception to. In so far as the finding of the Appellate Authority on the 2nd charge relating to Padmavati Percolation Dam is concerned, the Appellate Authority in observing that there is no necessity to proceed under Section 39 of the said Act in view of the FIR registered against the Respondent No.7, and since the inquiry under Section 39 and the Criminal Case would overlap, it would be appropriate to await the outcome of the Criminal Case, has thereby virtually refused to exercise powers under Section 39 of the said Act. The Appellate Authority ought to have seen that the Commissioner, apart from removing the Respondent No.7 as a Sarpanch, has also removed him and his wife as members of the GramPanchayat on the ground that the allegations made by the Petitioner herein stand proved against the Respondent No.7 and his wife. The Appellate Authority was therefore required to address the Appeal in the said context, and could not have observed that since an FIR has been registered against the Respondent No.7 it would be appropriate to await the outcome of the Criminal Case. The said course of action propounded by the Appellate Authority would result in turning Section 39 of the said Act redundant. The Appellate Authority may or may not agree with the Commissioner in respect of disqualifying the Respondent No.7 as Sarpanch and thereafter as a member of the GramPanchayat, but ought to have exercised its appellate powers under Section 39(3) of the said Act. In my view, therefore, to the limited extent

relating to the 2nd charge i.e. the alleged irregularities in respect of Padmavati Percolation Dam, the matter would have to be remitted back to the Appellate Authority for a denovo consideration of the Appeal only in so far as the finding in respect of the 2nd charge recorded by the Appellate Court is concerned. The impugned order dated 31/12/2013 in so far as the 2nd charge is concerned and the consequential order passed thereto is therefore quashed and set aside. The matter is remitted back to the Appellate Authority for a denovo consideration of the Appeal only in far as the 2nd charge is concerned which is relating to Padmavati Percolation Dam. The Appellate Authority, on remand, to consider the report of the Chief Executive Officer as also the order passed by the Divisional Commissioner in respect of the said 2nd charge, and thereafter pass appropriate orders in accordance with law in respect of the 2nd charge, and thereafter also pass consequential orders depending on the finding which it arrives at in respect of the 2nd charge. On remand the Appellate Authority to decide the Appeal latest by 31st May 2015. The above Writ Petition is allowed to the aforesaid extent and to accordingly stand disposed of in terms of the above.

[R.M.SAVANT, J]