

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7756 OF 2015

1. Sharad K. Thakare,
2. Dilip Mahadeo Kene,
3. Ananta Ganu Gaikwad,
4. Atmaram Balram Kene,
5. Ananta Kacharu Kene,
6. Balkrishna V. Thakare,
7. Kalpesh Bharat Kene,

All residing at Village Gorasi,
Taluka- Bhiwandi, District- Thane.

... Petitioners.

V/s.

1. The State of Maharashtra,
Through Rural Development and Water
Conservation Department.
2. The Divisional Commissioner,
Konkan Division, Konkan Bhavan,
Navi Mumbai.
3. The District Collector, Thane.
At Thane, District- Thane.

4. The Zilla Parishad Thane
Through Chief Executive Officer,
Thane, District- Thane.
5. The Tahasildar, Bhiwandi,
Taluka- Bhiwandi, District-Bhiwandi.
6. The B.D.O., Bhiwandi,
Taluka- Bhiwandi, District- Bhiwandi.
7. The Administrator,
Village Panchayat, Gorsai, Savande,
Taluka- Bhiwandi, District- Thane.
8. Shri Rajendra Gajanan Patil, Gramsevak,
C/o. Zilla Parishad, District- Thane.
9. Prakash Sadashiv Dadekar, V.D.O.
C/o. Zilla Parishad, District- Thane.
10. Shri Bharat Motiram Bhoir,
Former Sarpanch of Village Gorsaid and
Sawande, Residing at Village Gorasi,
Taluka- Bhiwandi, District- Thane. ... Respondents.

PK.Dhakephalkar, Senior Advocate i/b. Anilkumar Patil
for the petitioners.

Vikas Mali, AGP for respondent Nos.1 to 3 and 5.

Shankar P. Thorat for respondent No.4 and 7 to 9.

PR.Arjunwadkar for respondent No.10.

CORAM : NARESH H. PATIL AND
S.B. SHUKRE, JJ.

RESERVED ON : 3rd December 2015

PRONOUNCED ON : 18th December 2015.

JUDGMENT : (PER S.B.SHUKRE, J.)

Heard.

Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. By this writ petition, the petitioners are challenging the legality and correctness of the government notification dated 28th April 2015, thereby bifurcating Group Grampanchayat of revenue villages of Gorsai and Sawande and declaring these two villages to be independent villages, issued in exercise of powers under Article 243-G of the Constitution of India read with section 4 of the Maharashtra Village Panchayats Act.

3. The Group Grampanchayat of villages Gorsai and Sawande was formed considering their geographical contiguity and other relevant factors. There was also change of face of these villages due to various developmental activities. As a result, the residents of village Sawande started aspiring for separation of their village from the Group Grampanchayat. They made a demand that the Group Grampanchayat be bifurcated and these two villages be constituted into two independent revenue villages. A Gram Sabha was convened on 5th February 2014 to

consider the demand and after duly deliberating the issue, the Gram Sabha passed a resolution for bifurcation of Group Grampanchayat. Accordingly, a proposal was prepared and forwarded to Panchayat Samiti which, in turn, forwarded the same to the Zilla Parishad. The Zilla Parishad sent the said proposal to the State Government. The State Government by following procedure prescribed under law issued the gazetted notification which is impugned herein.

4. It is submitted by the petitioners that after issuance of the notification present Sarpanch of Group Grampanchayat informed respondent No.2 that the Gram Panchayat was intending to oppose the bifurcation. It appears that a member of legislative assembly from Bhiwandi also pleaded with the Government against bifurcation of Group Grampanchayat. The petitioners, too, on their part sent a representation requesting cancellation of the impugned notification. As these entreaties failed to bring desired result, the petitioners have filed the present petition.

5. We have heard Mr.Dhakephalkar, learned senior counsel for the petitioners, Mr.Mali, learned A.G.P for respondent Nos.1 to 3 and 5, Mr.Thorat, learned counsel for respondent Nos.4 and 7 to 9 and Mr.Arjunwadkar for respondent No.10. We have gone through the paper book including the impugned order.

6. The first contention of learned senior counsel for the petitioners is that no Gram Sabha was held on 5th February 2014 as sought to be canvassed on behalf of Sarpanch. He submits that a bare perusal of

the proceeding book of Grampanchayat is enough to infer that the minutes written in the proceeding book are fabricated and falsely created. He submits that Sarpanch himself was absent as his signature does not appear in the attendance column and the minutes in the proceeding book have been subsequently written by respondent No.8- Village Development Officer, who was admittedly not present in the meeting, he being on leave for a long period of time. He further submits that the explanations given by respondent No.10- Sarpanch and respondent No.8- Village Development Officer in their respective affidavits are absurd. He submits that it is very easy for a Sarpanch to say that inadvertently he forgot to affix his signature in the attendance column of the proceeding book and to get away with what he has done in the present case. He further submits that the admissions given by respondent No.8- Village Development Officer in his affidavit show that the minutes of the meeting were not written in the proceeding book immediately after the alleged Gram Sabha was held and that they were written after lapse of substantial time. He also submits that when Mr.Dadekar, respondent No.9 was holding the charge of the post of Village Development Officer on 5th February 2014, there was no reason for Mr.Dadekar to wait for respondent No.8 to resume his duty and ask him to write the minutes of the proceeding in his own hand.

7. According to Mr.Mali, Mr.Thorat and Mr.Arjunwadkar, there is no substance in the allegation that no meeting was ever held on 5th February 2014. They submit that perusal of the copies of the relevant pages of the proceeding book filed on record would show that the meeting was indeed held on 5th February 2014. They further submit

that proper explanations have been given by respondent Nos.8 and 10 and there is no reason to suspect their intentions.

8. On going through the copies of the relevant pages of the proceeding book showing the recording of the proceedings of Gram Sabha meeting dated 5th February 2014, which are available on record, one can see that respondent No.10- the Sarpanch of Group Grampanchayat has not affixed his signature in the attendance column. It can be further seen that the Sarpanch has, however, affixed his signature at the end of the recording of the proceeding of Gram Sabha meeting. It may be that the proceedings were recorded later on, but the fact remains that all the resolutions passed in Gram Sabha dated 5th February 2014 were confirmed in the subsequent meeting of Gram Sabha held on 31st May 2014. In this subsequent meeting two of the villagers, namely, Smt.Pranali Prakash Gaikwad and Smt.Manisha Mangesh Bhoir were also present and it is seen that they too joined in the chorus for confirming the previous resolutions including the resolution for bifurcation of Group Grampanchayat passed in the previous Gram Sabha meeting held on 5th February 2014. Besides, the proceeding book of Gram Sabha dated 5th February 2014 shows that 14 persons including Sarpanch had attended the Gram Sabha and barring signature of Sarpanch, signatures of the remaining persons do appear in the attendance column. The petitioners could not show to us that these signatures including one thumb impression were forged. Therefore, it is not possible for us to accept the contention that no Gram Sabha meeting was ever held on 5th February 2014.

9. The next contention of learned senior counsel for the petitioners is that no proper procedure was followed and the Standing Committee of the Zilla Parishad was not consulted, which consultation is a must under section 4(2) of the Maharashtra Village Panchayats Act. According to learned A.G.P. and learned counsel for the respondents, this is not true, and in support they have taken us through the notice dated 17th January 2014 informing all the villagers of convening of Gram Sabha on 21st June 2014; Panchanama of publication of notice by beat of drum; copies of relevant pages of Dawandi Register; government resolution dated 12th February 2004 and other relevant documents.

10. It is seen from the documents which have been referred to in the earlier paragraph that adequate notice of Gram Sabha to be convened on 26th January 2014 with its agenda was given to the villagers by displaying it on prominent places and also through beat of drum. As there was no sufficient coram to hold the meeting on 26th January 2014, the meeting was adjourned to 5th February 2014. On that day in all 14 persons were present in the meeting and the subjects on the agenda were discussed, one of which was regarding bifurcation of Group Grampanchayat, and thereafter the resolutions were passed. These facts persuade us to reject the contention that no proper procedure was followed.

11. As regards contention regarding absence of consultation with the Standing Committee, we must say it here that in the present case there being no existence of Zilla Parishad duly constituted, the Chief Executive Officer was appointed as its Administrator. That was the reason why the

Administrator sent his letter of administrative recommendation dated 14th November 2014 to the State Government. This was in compliance with the administrative instructions issued by the Government vide government resolution dated 12th February 2004. According to these instructions, if the Standing Committee is not in existence, the recommendation made by the Administrator has to be considered. Therefore, on this count also we find no flaw in the procedure adopted by the Government in bifurcating the Group Grampanchayat.

12. Learned senior counsel appearing for the petitioners further points out that most important criterion for formation of independent revenue village is per capita income and, according to him, the data submitted to the Government by the Group Grampanchayat in relation to this criterion contains inflated figures of income and, therefore, the whole process of bifurcation has been rendered vitiated. In support, he has invited our attention to letter dated 27th October 2015 sent by the Chief Executive Officer of Thane to the State Government wherein a clear-cut admission regarding sending of inflated figures of income has been given.

13. According to learned A.G.P. and learned counsel for the respondents, even if it is accepted, just for the sake of arguments, that the figure of income that was sent to the Government was higher than what actually it was, still the per capita income criterion, which is Rs.30/-, is fulfilled by both the villages. They also submit that the figure of income at Rs.8,29,698/- of Gorsai village sent to the Government was inclusive of recovery made on account of arrears of taxes and that it was not done deliberately with a view to draw some undue advantage.

14. The letter dated 27th October 2015 sent by the Chief Executive Officer of Zilla Parishad, Thane to the State Government does show that annual income of village Gorsai for the year 2014-15 is not Rs.8,29,698/- but Rs.1,81,498/-. It also shows that the figure of Rs.8,29,698/- was sent to the Government by taking into consideration of arrears of taxes recovered during the year 2014-15. This letter further shows that if the annual income of Rs.1,81,498/- of village Gorsai having population of 2,276 is considered, the per capita income would be Rs.79/- which is more than double the per capita income required at its minimum for formation of an independent revenue village. Apart from the income criteria, there are also other criteria as delineated in the government resolution dated 12th February 2014 which we find have been duly considered by the Government.

15. In these circumstances, we are of the view that this is not a case wherein there has been blatant misuse of powers or arbitrary exercise of powers. So, there is no scope for making any interference with the impugned notification.

16. The petition stands dismissed. Rule is discharged. No order as to costs.

(S.B. SHUKRE, J.)

(NARESH H. PATIL, J.)