

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10625 OF 2015

Jayashree @ Shantabai w/o Dadabhau Bide
and others

...Petitioners

versus

Gram Panchayat, Dhawalpur,
Tq. Parner, District Ahmednagar and others

...Respondents

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Mrs. C.S. Deshmukh, advocate h/f Mr. Vishal S. Badakh, advocate for the
petitioners

Mr. N.B. Suryawanshi, advocate for respondent Nos. 1, 2 and 4.

Mr. S.T. Shelke, advocate for respondent No. 3.

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CORAM : V. K. JADHAV, J.

DATED: 11th FEBRUARY, 2016

PER COURT :-

1. Heard finally with consent of the parties.
2. The petitioner No.1 was elected a member of respondent No.1 Gram Panchayat for a term of five years from 2007 to 2012. The petitioner No.2 is husband of petitioner No.1. Petitioner No.3 is father in law and petitioner No.4 is brother in law of petitioner No.1. Respondent No.2 was Up-Sarpanch of said Gram Panchayat. He was serving as primary teacher, thus it was incumbent upon him to seek permission from the management before contesting the

elections of Gram Panchayat. Since he has failed to obtain such permission, at the behest of petitioner No.2, a proceedings were initiated against him under Section 14 of Maharashtra Village Panchayat Act, 1958 for his disqualification. Accordingly, the Collector, Ahmednagar disqualified respondent No.2 by order dated 25.4.2014. Respondent No.2, the then Up-sarpanch, made a complaint to the Chief Executive Officer, Zilla Parishad, alleging that petitioner No.1, by taking undue advantage of her status as a member of Gram Panchayat, got allotted a plot and shops in favour of her family members, illegally and also got sanctioned the benefit of the scheme introduced by the Government of digging well, in favour of her family members. Pursuant to the complaint of respondent No.2, as directed by the Chief Executive Officer, the Extension Officer, Panchayat Samiti, Parner had conducted a preliminary enquiry into the matter and submitted a report to the Chief Executive Officer, thereby holding the Gramsevak and the office bearers of Gram Panchayat responsible. Respondent No.1 Gram Panchayat passed a resolution on 10.8.2014 for initiating proceedings against petitioners and further filed writ petition No. 8654 of 2014 before this Court seeking enquiry of allotment of shops and plot to the family members of the petitioners.

3. The Division Bench of this Court by order dated 27.10.2014

granted liberty to village Panchayat to tender an application to the Collector within contemplation of Section 59(1) of the Maharashtra Village Act and further directed the Collector that in the event of tendering application by the petitioner, to deal with the application and pass suitable order in accordance with law, after extending an opportunity of hearing to all parties concerned, as expeditiously as possible, preferably within a period of four months from the date of receipt of such application.

4. The Collector, Ahmednagar after receipt of representation dated 25.11.2014 from respondent No.1, delegated the power to the Sub Divisional Officer, Parner to conduct enquiry into the matter. The petitioners pursuant to the notice appeared before the Enquiry Officer raising preliminary objection with regard to the scope of enquiry under Section 59 etc. The Sub Divisional Officer by order dated 22.4.2015 allowed the application of respondent and cancelled the benefits of well, shops and plots and further directed the Chief Executive Officer, Zilla Parishad to take steps to get back the possession of the properties of Gram Panchayat from the petitioners. Hence, this writ petition.

5. Learned counsel for the petitioners submits that in the year 2011-12 respondent No.1 Gram Panchayat had decided to construct

shopping complex in the village and accordingly necessary resolution to that effect was passed. Learned counsel submits that pursuant to the said resolution, shops were constructed by obtaining requisite permission from Zilla Parishad. Learned counsel submits that after getting proper valuation of the shops from concerned department of Zilla Parishad, the petitioners were directed to deposit the amount towards the shop and accordingly the petitioners have deposited an amount of Rs.4,86,000/- with respondent No.1 Gram Panchayat, as a deposit for allotment of shops. Learned counsel further submits that there is no substance in the allegations that the petitioners have illegally taken benefits of the scheme for digging well. Learned counsel submits that the concerned Officer and the sanctioning authority after taking into account the entitlement of the petitioners, has extended the benefit of the scheme of digging of well.

Learned counsel submits that petitioner No.3 since 2000 is regularly paying rent to respondent No.1 Gram Panchayat and accordingly receipts have been issued in his favour from time to time by respondent No.1 Gram Panchayat. Learned counsel submits that Enquiry Officer, has not entertained the objection raised by the petitioners, including the preliminary objection about maintainability of enquiry. Learned counsel submits that after following due procedure and securing substantial deposits, the shops in question

have been allotted to the petitioners and as such, there is no illegality committed in the said allotment, as alleged by respondent No.2. Learned counsel submits that so far as the issue of construction of shops is concerned, the same was discussed in the meeting of respondent No.1 village Panchayat, wherein taking into account financial difficulties of the village Panchayat, it was decided to construct the shops by collecting contribution from interested and needy persons. Accordingly, resolution was passed to accept the amount of deposits from such persons and further respondent No.1 Gram Panchayat has undertaken to lease out the shops to such persons who have contributed for construction of shops.

Learned counsel submits that petitioner Nos. 2 to 4 alongwith other villagers, responded to the scheme and deposited the substantial amount with respondent No.1 Gram Panchayat. Learned counsel submits that Enquiry Officer without taking into account the defence set up by the petitioners, blindly relied upon the say submitted by respondent No.3 Block Development Officer and concluded enquiry against the petitioners by impugned order dated 22.4.2015. Learned counsel submits that the impugned order thus calls for interference and the same is liable to be quashed and set aside by allowing this writ petition.

6. Learned counsel for respondent Nos. 1, 2 and 4 submits that it is because of influence of petitioner No.1, who was then member of village Panchayat, the shops were allotted to her close relatives. Learned counsel submits that the petitioners have taken possession of said shops since 2012 when the petitioner No.1 was member of village Panchayat. Learned counsel submits that the misuse of power by petitioner No.1 is writ-large on the basis of record, in as much as open plot was obtained in the name of minor son of petitioner No.1 viz. Swapnil Bide. On the said open plot, a house measuring 20 x 12 sq. ft. is constructed illegally by the petitioner without obtaining permission from Gram Panchayat.

Learned counsel submits that respondent No.1 village Panchayat has not passed any resolution in favour of petitioners directing them to deposit the amount towards allotment of shops. Learned counsel further points out that para-wise reply was submitted by the Block Development Officer, Panchayat Samiti, Parner to Sub Divisional Officer, Parner District Ahmednagar. So far as the permission of digging of well under the said scheme is concerned, it has brought to the notice of Extension Officer that even though petitioner No.1 was member of Gram Panchayat and her husband Dadabhau was serving as peon in Government granted school, the benefit of scheme was obtained by showing less income.

It is reported by the Block Development Officer to the Enquiry Officer that the said benefit of digging well under the scheme can be availed only by the person, who works as labourer on daily wages and he must possess job card for that purpose. It is further alleged that the petitioner No.1 while preparing job card has deliberately avoided to mention the name of her husband and accordingly availed the benefit of the said scheme.

Learned counsel points out that chart prepared by the Block Development Officer, clearly mentions that the benefit of well under the scheme is availed by the petitioner. The allotment of shops is made in favour of husband, father-in-law and brother-in-law of petitioner No.1 and also an open plot of Gram Panchayat got allotted in the name of minor son of petitioner No.1. Learned counsel submits that the writ petition devoid of any merits and the same is liable to be dismissed. Learned counsel admits that the petitioners have deposited an amount of Rs.4,86,000/-, the respondent village Panchayat is ready to refund the said amount to the petitioners.

7. I have also heard Mr. Shelke, learned counsel for respondent No.3.

8. In view of order dated 27.10.2014, passed by the Division

Bench of this Court in writ petition No. 8654 of 2014, the Collector has delegated powers to Sub Divisional Officer, Parner for conducting enquiry into the matter and for taking appropriate decision pursuant to the result of said enquiry. It appears that the petitioners have filed their detail say in the said enquiry No. 38 of 2014 and denied all allegations made against them. Even the Block Development Officer who has conducted preliminary enquiry had also submitted his detail say before the Sub Divisional Officer, Parner, District Ahmednagar. The petitioners had also submitted their written arguments in the enquiry proceedings.

9. In view of provisions of Section 55 of the Maharashtra Village Panchayat Act 1958, no lease of immovable property exceeding three years and no sell or otherwise transfer of any such property of village Panchayat shall be valid unless such lease or sale or other transfer has been made of the previous sanction of Chief Executive Officer. The Sub Divisional Officer has observed in the impugned order that the provisions of Sections 55 and 56 of the Maharashtra Village Panchayat Act are not complied with. It appears from the record that only technical sanction is given to the village Panchayat for carrying out construction. It is true that by way of resolution No.9, it was resolved to accept the deposits from willing persons and village Panchayat may proceed with the construction of shops. It was

also resolved that after completion of construction, the shops to be allotted to those persons, who have deposited the amount. In the said meeting, resolution No. 9(2) refers the administrative approval to the said scheme, however, the said is technical approval given by the Executive Engineer and there is no approval given to the said proposal by the Chief Executive Officer.

10. Apart from this, it appears that the shops were allotted to petitioner No.2, who happened to be husband, petitioner No.3, who happened to be father-in-law and petitioner No.4 who happened to be brother- in-law of petitioner No.1. The petitioner No.1 was elected member of Gram Panchayat at that time. Sub Divisional Officer has rightly come to the conclusion that there is no transparency in allotment of shops and property of the Gram Panchayat cannot be used by the village Panchayat members for their personal use. It is also observed by the Sub Divisional Officer that the said shops were allotted without following process of auction. It is pertinent to note that out of 5 shops constructed by village Panchayat, 4 shops are allotted to the family of the petitioner No.1 without following due procedure, prescribed under law. There is no resolution passed by the Gram Panchayat about allotment of said shops to the petitioners. Thus, the only inference could be drawn that the allotment of shops in favour of petitioners is due to influence of petitioner No.1 and the

same is done without following any procedure.

11. It appears from the record that the benefit of scheme for digging well was not admissible to petitioner No.1. However, by suppressing material facts, petitioner No.1 got allotted the well under the said scheme, illegally. Further, the allotment of open plot to the minor son of petitioner No.1 for construction of house is also improper and illegal. So far as the shop already in possession of one of the petitioner is concerned, the learned counsel for respondent Mr. Suryawanshi, has pointed out that there were few kiosks earlier to the constructions of shops and they were removed in due course for carrying out construction of shops. In any case, the petition is devoid of merits. However, since, the respondent village Panchayat has shown its willingness to refund the amount of Rs.4,86,000/-, deposited by the petitioners, the petitioners are entitled for the same without any interest. Hence, the following order:-

O R D E R

- I. Writ petition is hereby dismissed.
- II. The petitioners are entitled for amount of Rs.4,86,000/- (Rupees four lacs eighty six thousand only), deposited by

them without interest and respondent No.1 Village Panchayat is hereby directed to refund the said amount to the petitioners within four weeks from today.

III. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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