IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3174 OF 2016

Sau. Shubhangi Sharad Gondhali]
Age : 49 years, Occ. : Agriculture]
Residing at Revdanda, Taluka Alibaug]
District Raigad.]..... Petitioner.

Versus

1] Smt. Sonali Santosh More,]
Age : 38 years, Occ. : Housewife]
Residing at Revdanda, Taluka Alibaug]
District Raigad.]
]
2] The Revdanda Grampanchayat,]
Revdanda, Taluka Alibaug]
District Raigad.]
]
3] The Collector,]
Alibaug]
]
4] The Divisional Commissioner]
Konkan Division, 1st Floor,]
Konkan Bhavan, Navi Mumbai-400 614]
]
5] The Minister,]
Rural Development Department]
Mantralaya, Mumbai.]
]
6] The Tahasildar,]
Alibaug, District Raigad.]
]
7] The State of Maharashtra]..... Respondents.

Mr. S S Kulkarni i/by Mr. Sachin Chavan for the Petitioner.
Mr. C G Gavnekar i/by Mr. P P Raul for the Respondent No.1
Mrs. S S Bhende, AGP, for the Respondent Nos. 3 to 7

CORAM : R. M. SAVANT, J.
DATE : 16th March 2016

ORAL JUDGMENT :-

1 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 09/03/2016 passed by the Hon'ble Minister, Rural Development, by which order the Appeal filed by the Petitioner being V.P.M.-2016/Case No.18/PR-6 came to be dismissed and resultantly the order dated 01/02/2016 passed by the Divisional Commissioner, Konkan Division, came to be confirmed.

3 The facts giving rise to the above Petition in brief can be stated thus :-

The Petitioner was elected as a member of the Grampanchayat, Revdanda, Tal. Alibag, Dist. Raigad in the elections which were held to the said Grampanchayat in June 2013. Thereafter the elections to the post of Sarpanch were held and the Petitioner was elected as a Sarpanch on 27/07/2013. The Petitioner has been discharging the duties of Sarpanch ever since then. The Respondent No.1 herein who is also a member of the Grampanchayat complained against the Petitioner and requested for an action to be initiated against the Petitioner under Section 39 of the Bombay Village Panchayat Act (now the Maharashtra Village Panchayat Act) 1958 (for short the said Act) for

the reasons mentioned in the said complaint dated 21/08/2015. The said letter triggered of the proceedings against the Petitioner. The gravamen of the allegations against the Petitioner was that the Petitioner had issued a certificate that the property belonging to one Sunil Kieshav Naik was in the gaonthan; that the Petitioner had made an entry in the assessment by taking cognizance of the sale deed executed in favour of one Hemakshi Patil, and the third allegation was to the effect that the Petitioner had granted a No Objection Certificate for the construction of 1+3 storeyed building to one Prasad Sharad Gondhali and Santosh Pukhraj Jain.

4 In terms of the procedure that is required to be followed, the Commissioner, Konkan Division, directed the Chief Executive Officer, Zilla Parishad, Raigad to submit a report in respect of the allegations levelled against the Petitioner.. The Chief Execution Officer after following the procedure submitted his report dated 16/11/2015 to the Divisional Commissioner, Konkan Division. In the said report the Chief Executive Officer has dealt with each of the allegations made against the Petitioner. The Petitioner was given a copy of the said report of the Chief Executive Officer and the Petitioner was also given a personal hearing by the Divisional Commissioner. The Divisional Commissioner by his order dated 01/02/2016 allowed the said application filed under Section 39(1) of the said Act. The Divisional Commissioner by the said order dated 01/02/2016 has allowed the

said application and held that the first two allegations levelled against the Petitioner were proved and the same amounted to a misconduct within the meaning of Section 39 of the said Act, and therefore, removed the Petitioner as a Sarpanch as also from being a member of the Grampanchayat, Revdanda.

5 The said order dated 01/02/2016 passed by the Divisional Commissioner was taken exception to by the Petitioner by filing an Appeal before the State Government under Section 39(3) of the said Act. The Appellate Authority i.e. the Hon'ble Minister, Rural Development referred to the material which was placed on record which inter-alia included the report of the Chief Executive Officer, Zilla Parishad, Raigad and thereafter held that the charges levelled against the Petitioner were proved, and that the order passed by the Divisional Commissioner, Konkan Division holding that the said two charges were proved against the Petitioner and therefore the Petitioner was required to be disqualified did not merit any interference in the appellate jurisdiction. The Appellate Authority accordingly by the impugned order dated 09/03/2016 has dismissed the said Appeal. As indicated above it is the said order dated 09/03/2016 which is taken exception to by way of the above Petition.

6 Heard the learned counsel for the parties. The learned counsel for the Petitioner Shri S S Kulkarni would assail the impugned order on the ground

that having regard to the explanation given by the Petitioner in respect of each of the allegations which were made against the Petitioner it could not be said that the misconduct has been proved against the Petitioner. In so far as the certificate issued by the Petitioner which is the part of the first allegation is concerned, it was the submission of the learned counsel for the Petitioner that in the year 2009 the Grampanchayat has resolved to approach the State Government to include the land where there is encroachment by about 292 structures constructed by the villagers so as to seek extension of the gaonthan to encompass the land occupied by the said structures. It was the submission of the learned counsel for the Petitioner that it is in view of the said resolution that the Petitioner had issued the certificate that the structure is within the gaonthan. In so far as the entry in the assessment made in favour of the said Hemakshi Patil is concerned, it was the submission of the learned counsel that the structure purchased by the said Hemakshi Patil was the structure which was already in existence and was assessed by the Grampanchayat and what has been done by the Petitioner is only to change the assessment to the name of the said Hemakshi Patil. It was the submission of the learned counsel for the Petitioner that having regard to the definition of misconduct the allegations made against the Petitioner would not amount to a misconduct within the meaning of Section 39 of the said Act so as to disqualify the Petitioner both as a Sarpanch and from being a member of the Grampanchayat. In support of the said contention, the learned counsel for the Petitioner placed reliance on the

judgment of a learned Single Judge of this Court reported in ***2009(4) Mh. L.J. 436*** in the matter of ***Ramdas Bhimkaji Darade v/s. Hon'ble Minister of State, Ministry of Urban Development, Mumbai and others***, the judgment of another learned Single Judge of this Court reported in ***2008(3) Mh.L.J. 747*** in the matter of ***Umesh Dattatray Naik v/s. The Hon'ble Minister of State Ministry of Urban Development and others*** and judgment of a Division Bench of this Court reported in ***(2006) 2 Bom. C.R. 157*** in the matter of ***Ramesh Gangadhar Korde v/s. State of Maharashtra and others***.

7 Per contra, the learned counsel appearing for the Respondent No.1 Shri Gavnekar would support the impugned orders. It was the submission of the learned counsel for the Respondent No.1 that the structures in question i.e. the structure in respect of which a certificate was issued, and the structure in respect of which the name of the assessee was changed, were on the land belonging to the State Government and it was given as gurcharan land to the Grampanchayat, and therefore the Petitioner ought not to have issued the certificate and changed the name in the assessment. It was the submission of the learned counsel for the Respondent No.1 that the Petitioner was having knowledge of the said fact and inspite of the same has issued the certificate and changed the name in assessment. It was the submission of the learned counsel for the Respondent No.1 that the reliance on the resolution passed in the year 2009 seeking to encompass the land which was encroached upon by

292 structures as part of extension of the gaonthan is misconceived in view of the fact that as yet no order has been passed by the State Government allotting the land to the Grampanchayat for extension of the gaonthan. In so far the issue as to whether the conduct of the Petitioner amounts to a misconduct within the meaning of Section 39 of the said Act is concerned, the learned counsel placed reliance on the judgment of a learned Single Judge of the Gujarat High Court reported in ***AIR 1995 Guj. 118*** in the matter of ***Anishbhai Ishabhai Patel v/s. State of Gujarat and ors*** wherein a learned Single Judge of the Gujarat High Court has interpreted what is meant by the word "misconduct" as appearing in a *pari materia* provision. It was the submission of the learned counsel for the Respondent No.1 that having regard to the fact that this Court was exercising the jurisdiction under Article 227 of the Constitution of India, the orders impugned may not be interfered in the facts and circumstances of the present case.

8 Having heard the learned counsel for the parties, I have considered the rival contentions. As indicated above though three allegations were made against the Petitioner, the Chief Executive Officer, Zilla Parishad, Raigad in his report opined that the first two allegations stand proved against the Petitioner, and in so far as the the third allegation is concerned, the Petitioner has been exonerated on the ground that since the Petitioner has granted No Objection Certificate conditionally, the said allegation would not

stand to scrutiny. The question therefore that arises in the present proceedings is whether the conduct of the Petitioner as a Sarpanch is such so as to attract the provisions of Section 39 of the said Act.

9 Before proceeding further it would be necessary to refer to Section 39(1)(i) which is the relevant provision, the same is reproduced hereinunder for the sake of ready reference :-

> "**39. Removal from office**. - (1) The Commissioner may ---
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> (i) remove from office any member or any Sarpanch or Upa-Sarpanch who has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or of neglect of or incapacity to perform his duty, or is persistently remiss in the discharge thereof. A Sarpanch or Upa-Sarpanch so removed may at the discretion of the Commissioner also be removed from the panchayat, or …
>
> (ii) ….."

It is on the touchstone of the aforesaid provision that it would have to be seen whether the Petitioner has committed any misconduct.

10 The first allegation as indicated above is that the Petitioner has issued a certificate to one Sunil Keshav Naik that his structure falls within gaonthan. There is no dispute about the fact that in Survey No.122/1/1A/1A/1 there is an encroachment in the form of about 292 structures. There is no dispute about the fact that the said land belongs to the

State Government and was given to the Grampanchayat as gurcharan. No doubt, on record there is the resolution passed by the Grampanchayat in the year 2009 to approach the State Government by way of proposal to get the said land allotted and make it the part of extension of the gaonthan so as to regularize the said structures. However, what is significant to know is that the allotment from the State Government has still not come about, and the said land continues to be a government land and the structures on the said land are therefore an encroachment on the government land. The Petitioner being a Sarpanch of the Grampanchayat is obviously expected to know about the said fact especially when there is an encroachment of about 292 structures and it is an issue which the Grampanchayat might be concerned with on a day-to-day basis. However, in spite of the said knowledge the Petitioner has chosen to issue the certificate in favour of the said Sunil Keshav Naik which certificate is to the effect that the said structure falls within the gaonthan. Such a certificate would obviously have consequences which can now be gathered from the fact that after the said certificate was issued on 21/06/2014, the said Naik has executed a sale deed on 01/07/2014 in favour of one Nilesh Sham Nanche. The said fact finds a mention in the report of the Chief Executive Officer. Hence the issuance of the said certificate has obviously had the effect of facilitating the sale between the said Sunil Naik and the said purchaser Nilesh Sham Nanche. The end effect of the issuance of the said certificate is that the land in respect of which the Grampanchayat does not have any right and on which

encroachment is carried out, a transaction of sale has taken place on account of the certificate issued by the Petitioner. Hence the certificate can be said to have facilitated the transaction of sale. By issuing the said certificate, the Petitioner has in fact perpetuated an illegality. . The Petitioner as Sarpanch was expected not only to protect the property of the Grampanchayat but also to see to it that the government property is not put in jeopardy. In my view, therefore in so far as the first allegation is concerned, the conclusion drawn by the Authorities below cannot be faulted with.

11 Now coming to the second allegation. It is required to be noted that the change of assessment in the name of Hemakshi Patil is also in respect of the structure which is an encroachment on the said Survey No.122/1/1A/1A/1. The defence of the Petitioner is that there was already an assessment in the name of the earlier occupant and what the Petitioner is done is merely change in the name of the assessee. In the said context it is required to be noted that the issue was kept in the meeting of the Grampanchayat to be held on 24/10/2013, however, no decision was taken and in fact the Gram Vikas Adhikari has noted his objection and had cautioned the Petitioner from changing the name in the assessment. However, notwithstanding the same the Petitioner has proceeded to change the assessment to the name of the said Hemakshi Patil. The fact that the structure in question though an encroachment was already assessed cannot give license to the Petitioner to

carry out a change in the name of the assessee when the same has not been backed by any resolution of the Grampanchayat and when the Gram Vikas Adhikari had cautioned the Petitioner from doing so on the ground that the structure is on gurcharan land. Hence in so far as the second allegation is concerned, the findings recorded by the Authorities below on the said allegation also cannot be found fault with.

12 Since the Petitioner is not disqualified on the ground of third allegation and since the Petitioner has in fact been exonerated in the report of the Chief Execution Officer it is not necessary to go into the said aspect.

13 In so far as the judgments (supra) in ***Ramdas Bhimkaji Darade's*** case, ***Umesh Dattatray Naik's*** case and ***Ramesh Gangadhar Korde's*** case are concerned, they are an exposition on the interpretation of the word "misconduct". It is in the facts of the cases that are before the learned Single Judges and the Division Bench of this Court that the said Courts held whether the misconduct in the said cases was proved or not. However, what can be culled out from the said judgments is the word "misconduct" has to be understood as to mean to behave improperly, to mismanage, improper conduct, bad behaviour or wrongful intention and not a mere error of judgment.

In so far as the judgment in ***Anishbhai Ishabhai Patel's*** case (supra) is concerned, the learned Single Judge of the Gujarat High Court by

adverting to the dictionary meaning has interpreted the word “misconduct” to mean a person, knowing what he is doing, also being conversant with the consequences, if does something which is wrong, bad, illegal or causing loss or damages, his conduct obviously would tantamount to misconduct.

14 In the instant case since the allegations levelled against the Petitioner have been proved, hence applying the meaning of the word “misconduct” as held in the judgments (supra), the Petitioner can be said to have committed a misconduct within the meaning of Section 39 of the said Act.

15 In the instant case, since the Petitioner was the Sarpanch, a higher standard of probity was required on the part of the Petitioner. The Petitioner cannot take refuge behind some resolution or some earlier transaction to justify what she has done. In my view, since the allegations, which stand proved, amount to a misconduct within the meaning of Section 39 of the said Act, the orders removing the Petitioner as a Sarpanch as also from being a member of the Grampanchayat, Revdanda cannot be faulted with. The orders passed by the Authorities below therefore do not merit any interference at the hands of this Court in its writ jurisdiction under Article 227 of the Constitution of India. The above Writ Petition is accordingly dismissed. Rule discharged.

16 At this stage the learned counsel for the Petitioner Shri S S

Kulkarni prays for staying the election to the post of Sarpanch which is to be held tomorrow i.e. on 17/03/2016 on the ground that the Petitioner seeks to approach the Apex Court against the instant order. In my view, the democratic process cannot be interfered with at the last minute. Hence the said prayer is rejected.

[R.M.SAVANT, J]