

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 928 OF 2016

Smt.Vidya W/o Sharad Bante and others

-vs-

State of Maharashtra, thr.its Secretary, Ministry of Rural Development &
 Water Conservation Department and others

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders.

 Mr.P.U.Ghare, counsel for the petitioners.
 Mrs.Kalyani Deshpande, AGP for the respondents.

CORAM : SMT. VASANTI A. NAIK &
V. M. DESHPANDE, JJ.

DATE : 31.03.2016.

By this petition, the petitioners seek a direction to the Collector, District Bhandara not to conduct the election for electing members of the newly constituted Gram Panchayat of Bhojapur. The petitioners seek a declaration that the petitioners would continue to work as Gram Panchayat Members of Bhojapur till the expiry of their term of five years, on 11/11/2017.

The petitioners are the elected members of Gram Panchayat Bhojapur since 2012. Admittedly, there is a division of Gram Panchayat Bhojapur in 2014 and village Bhojapur is divided into two villages, i.e. Kesalwada and Bhojapur by the notification issued under Section 4 of the Maharashtra Village Panchayats Act. By the impugned communication, dated 13/07/2015, the Divisional Commissioner, Nagpur appointed an Administrator on village panchayat Bhojapur. The petitioners have challenged the said order in the instant petition and have sought their continuation as members of village panchayat Bhojapur. It is stated that since the order is passed under the provisions of Section 146 of the Maharashtra Village Panchayats Act, the same is liable to be set aside.

The relief sought by the petitioners cannot be granted in the circumstances of the case. Admittedly, there is a division of village

Bhojapur and as a result of the division, two different villages have emerged namely Kesalwada and Bhojapur. In view of the provisions of Section 160(1)(a) of the Act, on a division of the village into two or more villages, the panchayat constituting such local area shall be deemed to have been dissolved and shall cease to exist and all the members of the panchayat shall vacate office. It is clear from a reading of the provisions of Section 160(1)(a) that on the division of village Bhojapur into two villages, the panchayat of village Bhojapur stands dissolved and all the members of Bhojapur Gram Panchayat i.e. the petitioners shall vacate office. Under sub-section (1)(b) of Section 160 of the Act, until the panchayats are constituted for new villages the State Government is empowered to appoint an Administrator to exercise the powers and perform the functions of the panchayat for each of the new villages. The impugned order appears to have been passed by the Divisional Commissioner by taking recourse to Section 160 of the Act, though a wrongful reference is made in the impugned order to the provisions of Section 146. The impugned order cannot be said to be bad only because a reference is made to the provisions of Section 146 in the same. It is well settled that an order cannot be held to be vulnerable merely because a wrongful reference is made to the provision under which the power is said to have been exercised when the power could be validly exercised under some other provision. Since the Divisional Commissioner is entitled to appoint an Administrator on Gram Panchayat Bhojapur, under Section 160 of the Act, we do not find any illegality in the impugned order. Since Gram Panchayat of village Bhojapur stood dissolved on the division of the village, the petitioners are not entitled to a declaration that they would continue as members of the Gram Panchayat till the expiry of the term of office i.e. 11/11/2017.

The petition being devoid of merits, the same is dismissed with no order as to costs.

JUDGE

JUDGE