

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2748 OF 2006

Pravin Gokul Wani,
Age 28 years, Occupation Business,
R/o Hanuman Chowk, Nijampur
Taluka Sakri Dist. Dhule. .. Petitioner

VS.

- 1) The State of Maharashtra
through Secretary,
Rural Development Department
Mantralaya, Mumbai.
- 2) The Secretary
Revenue Department, Mantralaya,
Mumbai.
- 3) The District Collector,
Dhule Dist. Dhule.
- 4) The Tahsildar,
Taluka Sakri Dist. Dhule.
- 5) The Chief Executive Officer,
Zilla Parishad, Dhule
Dist. Dhule.
- 6) The Block Development Officer,
Panchayat Samiti, Sakri
Dist. Dhule.

- 7) Gram Panchayat, Nijampur
through Village Development
Officer, Nijampur Taluka Sakri
Dist. Dhule.
- 8) National Education Society
through President/ Secretary
Nijampur Taluka Sakri
Dist. Dhule.
- 9) Nijampur- Jaitane Gram Vikas
Pratisthan, through President,
Secretary, Nijampur, Tal. Sakri
Dist. Dhule.
- 10) Nav Yuvak Kreedha Wa Sankrutik
Mandal through Chairman/
President Nijampur Taluka
Sakri Dist. Dhule.
- 11) Jawaharlal Vachanalaya
through Chairman/ President
Nijampur, Taluka Sakri
Dist. Dhule.
- 12) The Head Master,
Zilla Parishad Kanya Marathi
Shala, Nijampur, Taluka Sakri
Dist. Dhule.
- 13) The Head Master,
Zilla Parishad Urdu Shala,
Nijampur Taluka Sakri
Dist. Dhule.
- 14) Chandulal Vasant Jadhav,
Age 45 years, Occupation Business,
Ex-Sarpanch, R/o Brindavan
Colony, Nijampur Dist. Dhule.

- 15) Sitaram Bandu Wani,
Age 65 years, Occupation Business,
R/o Gandhi Chowk, Nijampur
Dist. Dhule. .. Respondents

Mr. K. C. Sant, Advocate for the petitioner.
Mr. S. B. Yawalkar, Additional Government Pleader, for
respondents No.1 to 4 / State.
Mr. A. B. Girase, Advocate holding for Mr. Yogesh Bolkar,
Advocate for respondents No.8 and 9.
Mr. N.L. Choudhari, Advocate for respondents No.10 & 11.
Mr. D. S. Bagul, Advocate for respondents No.5, 6, 12 & 13
Mr. A. S. Savant, Advocate for respondent No.7.
Mr. A. G. Magre, Advocate for respondents No.14 and 15.

**CORAM : R. M. BORDE &
SMT. VIBHA KANKANWADI. JJ.**

DATE : 07-12-2017

ORAL JUDGMENT (Per Smt. Vibha Kankanwadi. J.)

1. Heard counsels representing all the parties.
2. Petitioner was the elected member of Panchayat Samiti Taluka Sakri, District Dhule. He is resident of Nijampur, Taluka Sakri, District Dhule. By invoking the writ jurisdiction of this Court under Article 226 and 227 of the Constitution of India, the petitioner has prayed for quashing and setting aside, the resolutions passed by Nijampur Grampanchayat- respondent No.7 whereby the plots were

allotted to respondents No.8 to 11 and the removal of encroachment and possession of the premises from respondent No.8 to 11. Further by way of amendment, he sought cancellation of sanction accorded by the Chief Executive Officer, Zilla Parishad, Dhule in pursuant to the letter dated 21-02-2006 issued by Block Development Officer.

3. The petitioner has contended that, respondent No.7 Grampanchayat has no authority to transfer any property vested in it by way of sell/ lease or any other mode except with previous sanction of the Chief Executive Officer of the Zilla Parishad. Respondent No.7 has transferred the following properties to respondents No.8 to 11 ;

(i) National Education Society – land Gut No.2/1+2+3, Area : 836 Sq. Meters in Adinath Nagar.

(ii) Nijampur-Jaitane Gram Vikas Pratisthan- Land Gut No.3/1+2+3+4, Area : 1748 Sq. Meters, in D.S. Rane Nagar.

(iii) Nav Yuvak Kreedha Wa Sanskrutik Mandal land Gut No.6/1/5, Area : 407 Sq. Meters, in Matoshri Lilayi Rane Nagar.

(iv) Jawaharlal Vachanalay – land Gut No.7/3+7/A-1+7/A-2-1, Area : 816.05 Sq. Meters in J.K.Nagar.

(v) Zilla Parishad Marathi Kanya Shala land Gut No.1,

Area : 1403 Sq. Meters in Vishnu Nagar.

(vi) Zilla Parishad Urdu Shala, Land Gut No.2/1+2+3,
Area : 473.05 Sq. Meters in Adinath Nagar.

(vii) Anglo Urdu High School, land in Gaothan, Area: 100
x 40 feet, on the south bank of the river Rodi.

According to the petitioner, all these allotments have been made by the respondent No.7 by passing resolutions on 25-01-2005, 27-02-2005 and 31-03-1994. According to the petitioner, the said transfer is in violation of Section 55 of the Bombay Village Panchayats Act, 1958 (hereinafter referred to as the, "Village Panchayats Act"). Section 53 of the Village Panchayats Act which provides for removal of unauthorised obstruction or encroachment by the panchayat on any land which is not a private property and if the panchayat fails to remove such obstruction, the Collector can issue directions *suo-moto*. Petitioner had made several representations to respondent No.3- the District Collector, Dhule, for invoking his powers under Sec. 53 of the Village Panchayats Act; however there was no response. The transfer of plots, that has been made by the respondent No.7 in favour of respondents No.8 to 11, is for very meager amount, as compared to the market value of the lands. Now there is no vacant land or open space

available in the entire town, as a result of the said transfer. Respondent No.7 did not stop its activity even after the transfer of the lands, but mutated the names of the private institutions i.e. respondents No.8 to 11 in the ownership column of the revenue records with electric speed. All the representations made by the petitioners have not been addressed by the respective authorities. The illegality that has been committed by respondent No.7 has caused loss to the Grampanchayat. Even the Tahsildar and the Block Development Officer are misleading their higher authorities so as to cover the illegal acts of the Grampanchayat. However, the Chief Executive Officer took serious cognizance in the matter after he had received the complaint dated 05-12-2005 and directed the Block Development Officer to take criminal action against Sarpanch and all other concerned persons. Further during the pendency of the petition amendment has been made stating that surprisingly the Block Development Officer on 21-02-2006 sent the letter to Chief Executive Officer, Zilla Parishad, Dhule to accord sanction to the allotments of the lands to the respondents No.8 to 11 on permanent basis. The said letter has been accepted by the Chief Officer. In his letter dated 28-02-2006, the Chief Officer has mentioned that the sanction is given for allotment of open space only to construct the Urdu and Marathi schools of Zilla Parishad. No legal

sanction is given to the allotment of lands to the respondents No.8 to 11. Since the allotment itself is illegal, the same cannot be regularized, and therefore, the present writ petition has been filed.

4. Respondents No.5, 6, 9, 14, 15, 8, 7, 10 and 11 have filed their affidavits-in-reply opposing the writ petition. It has been submitted that, alternative efficacious remedy under the provisions of Section 142 of the Village Panchayats Act is available to the petitioner, and therefore, the writ petition is not maintainable. The Collector, Dhule who is a competent authority in law by using the powers under Section 154 of the Village Panchayats Act has granted permission to the Grampanchayat to take appropriate decision on its own and its level by his order dated 08-09-2005. Further in respect of sanction that has been accorded, the petitioner has alternate remedy under Section 267 (A) of the Maharashtra Zilla Parishad and Panchayat Samities Act, 1961 before the Commissioner. The present writ petition cannot be entertained as a public interest litigation as the petitioner is not an affected person. The applications for grant of land were placed before the Gramsabha held on 29-11-2004 and the resolutions have been passed. Proposal for necessary permission was forwarded by Circle officer to Tahsildar on 15-03-2005. Further Tahsildar by his

letter dated 21-03-2005 requested the Sub-Divisional Officer, Dhule to grant appropriate permission. The letter was again forwarded to Collector, Dhule and thereupon the Collector had passed the said order dated 08-09-2005. The Grampanchayat has acted within its power and only as per the order passed by Collector. The report was submitted by Tahsildar and thereafter sanction has been duly accorded. It has been further contended that, the petition challenging the resolutions dated 31-03-1994, 25-01-2005 and 27-02-2005 suffers on the ground of delay and laches. All the legal steps have been taken before allotment of the lands. A condition has been put on the respondents that, the 10 % of the construction on the allotted plot should be made with the permission from Sub-Divisional Officer within one year from the date of resolution. Therefore with due application of mind the allotment has been done. All of them have therefore prayed for rejection of the writ petition mainly on the ground of delay and laches as well as locus of the petitioner to challenge the action of the respondent No.7.

5. It has been submitted on behalf of the petitioner that, the entire action on the part of respondent No.7 in allotting the open spaces to respondents No.8 to 11 is illegal as previous sanction has not

been obtained by the Grampanchayat. It has been also pointed out that, the allotment is for very meager amount though at that time the market value of those lands was very much high. The petitioner is resident of the same village, and therefore, definitely he has locus to challenge the arbitrary action of the Grampanchayat, which is against the interest of the panchayat itself. Several representations have been made by the petitioner to the appropriate authorities from time to time, and therefore, it cannot be said that the petition is suffers from delay or latches. All the authorities have hand in gloves and protected each others illegality in order to legalize the illegal allotment.

6. Per contra, it has been argued on behalf of the respondents that, all the procedures have been adhered to, as per the declaration dated 10th June, 1996 issued by Urban Development Department of the Government, when the open spaces were vested in the Grampanchayat prescribed that 10 % of the open space would be made available. By his letter dated 08-09-2005 the Collector had given permission to the Grampanchayat to take decision at its own level, and therefore, by taking a Gramsabha the allotment was done temporarily. Thereafter, as per Section 55 of the Grampanchayat Act, the Grampanchayat forwarded application for permanent allotment of

the open spaces. Nobody had raised objection at that time, and therefore, the sanction has been accorded. With some ulterior motive the petitioner has challenged the said action, and therefore, the writ petition deserves to be dismissed.

7. At the outset we would like to say that, while dealing with this matter, this Court by order dated 03-03-2008 had clarified to the counsel for the petitioner that, being a rural area, this is not a location where allotment of plot, which is reserved for garden and construction thereon can be said to create a health hazard as in the urban area or crowded city. It has been further observed that, since there is no question of any development plan, an argument will not be available to the petitioner that the plot was reserved for any specific purpose and the allotments are in breach of such reservation. Therefore, the dispute as regards present case is concerned is restricted to the allegation that the allotments are illegal or without power.

8. According to the petitioner, the respondent No.7's allotment in favour of respondents No.8 to 11 is in violation of Section 55 of the Village Panchayats Act. Therefore, it is necessary to consider the said provision first. *Section 55* of the 'Act' provides that,

“Every Panchayat shall be competent to lease, sell or

otherwise transfer moveable or immoveable property which may become [vested in (otherwise than under the provisions of sub-section (1) of Section (51)] or be acquired by it and to contract and do all other things necessary for the purposes of this Act.”

The proviso prescribes that,

“No lease of immovable property other than property referred to in sub-section (1) of Section 56 for a term exceeding three years and no sale or other transfer of any such property shall be valid unless such lease, sale or other transfer has been made with the previous sanction of the [Chief Executive Officer].”

Section 56 of the Village Panchayats Act deals with the property of Panchayat.

9. Here in this case, there is no dispute that the immoveable property that has been transferred in favour of respondents No.8 to 11 is the Grampanchayat property. Therefore, the fact only remains whether as per the proviso of Section 55 of the Village Panchayats Act, the prior permission has been obtained or not. The documents on record show that, an application was made on 01-03-2005 by the Secretary, Gramvikas Pratisthan Mandal, Nijampur which was forwarded by the Sarpanch Grampanchayat, Nijampur to Collector, Dhule for according sanction to the allotments of the plots. By his

letter dated 08-09-2005 the Collector, Dhule gave reference to the declaration of the Urban Development Department of the Government dated 10th June, 1996 that 10 % of the open space should be made available from the sanctioned plan, however as regards rural area there is no rule, and therefore, he directed the Grampanchayat to take action as its own level. That means, a step to obtain permission as contemplated under the proviso to Section 55 of the Village Panchayats Act was taken by the Gramapanchayat. Further as regards other respondents also there appears that by communication dated 15-03-2005 steps were taken. Further it appears that, only temporary allotment was given to respondents No.8 to 11 but thereafter on 21-02-2006 a sanction was accorded by the Chief Officer, Zilla Parishad, Dhule for permanent allotment of the open spaces for which the Gramsabha had resolved. After the said order dated 21-02-2006 only the mutations have been completed. That means, all the legal requirements have been fulfilled before permanent transfer in respect of open spaces has been made. In other words, the stipulations made in the proviso Section 55 of the Village Panchayats Act has been adhered to.

10. It is also to be noted that, the petitioner was challenging

the resolutions dated 31-03-1994, 25-01-2005 and 27-02-2005 by filing this petition on 04-03-2006. Especially when he was challenging the resolution dated 31-03-1994 it can be definitely said that, his action suffers from delay and laches, when he has filed present petition in 2006.

11. Section 142 (1) of the Village Panchayats Act provides that,

“If, in the opinion of the [Standing Committee], the execution of any order or resolution of a Panchayat or the doing of anything which is about to be done, or is being done by or on behalf of a Panchayat, is causing or is likely to cause injury or annoyance to the public, or to lead a breach of peace, or [is, in the public interest, unlawful] [it] may by order in writing suspend the execution or prohibit the doing thereof.”

On the basis of this provision it was tried to be submit on behalf of the respondents that, it gives alternate efficacious remedy to the petitioner. However, it is to be noted that, representations have been made by the petitioner to Collector and other authorities, They could have been treated the same and forwarded it as per Section 142 of the Village Panchayats Act to the appropriate authority for its consideration.

Therefore, merely because a separate specific complaint has not been made to the standing committee by the petitioner that does not mean that alternative efficacious remedy was available to the petitioner. Same is the case as regards Section 267 (A) of the Maharashtra Zilla Parishad and Panchayat Samities Act, 1961.

12. Now it is to be noted that, the respondents No.8 to 11 are carrying out public activities such as running schools in the open space by making construction, and therefore, it cannot be stated that the action taken by the respondent No.7 in allotting part of the open spaces to them was against “public interest”. If at all there was any kind of irregularity at the initial stage of the allotment of the open spaces to those respondents, that can be said to have been regularized when the Chief Officer has granted sanction on 21-02-2006. Further it is also to be noted that while passing the said order, the Chief Officer, Zilla Parishad, Dhule has kept the ownership of the open space with the Grampanchayat and only the use of the land has been transferred to the respondents. That means, in the record of rights the name of the Gramapanchayat will appear in the ownership column and the name of the respondents No.8 to 11 would appear in the occupiers column. Therefore, the interest of the Grampanchayat is also secured

when the said order dated 21-02-2006 has been passed. Under such circumstance, we do not find any illegality is committed by the respondents. It appears that, the dispute was politically motivated since the petitioner was also an elected member of the Panchayat Samiti. When the acts are done in the public interest, the elected member ought not to have objected the actions. Under such circumstance the writ petition is devoid of merits, and therefore, deserves to be dismissed. Rule is discharged.

13. The amount that has been deposited by the petitioner by virtue of order of this Court dated 03-03-2008, be credited to the High Court Legal Services Special Committee At Aurangabad.

[SMT. VIBHA KANKANWADI]
JUDGE

[R. M. BORDE]
JUDGE

vjg/-.