

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

CRIMINAL WRIT PETITION NO.145 OF 2017

[Vitthal s/o Pandhari Chikte .vs. The Collector, Washim and others]

WITH

CRIMINAL WRIT PETITION NO.146 OF 2017

[Eknath s/o Ukarda Chikte .vs. The Collector, Washim and others]

WITH

CRIMINAL WRIT PETITION NO.147 OF 2017

[Ashok s/o Shripatrao Sathe .vs. The Collector, Washim and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri K.V. Deshmukh, Advocate for the Petitioners,
Shri M.J. Khan, A.P.P. for the Respondents.

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CORAM : B.R. GAVAI AND
KUM. INDIRA JAIN, JJ.

DATED : FEBRUARY 22, 2017.

The petitioners have approached this court challenging the warrant of arrest issued against the petitioners by respondent no.1 under the provisions of sub-section 2 of Section 179 of the Maharashtra Village Panchayats Act, 1959.

2. Shri Deshmukh, the learned counsel for petitioners contends that communication dated 6.12.2016 is only a notice and not an order as contemplated under the provisions of sub-section 1 of Section 179 of the said Act. It is, therefore, submitted that since no order under sub-section 1 is passed by the Collector, the Collector is not empowered to issue an arrest warrant under sub-section 2 of Section 179 of the said Act. Learned counsel also relies on sub-section 4 of Section 179 of the Act to contend that a

reasonable opportunity is required to be given to a person before an action could be taken against him.

3. We find that the contentions raised by the learned counsel for the petitioners are of total misreading of the provisions of Section 179 of the said Act. It will be appropriate to refer Section 179 of the said Act, which reads thus :

179. Power of Collector to recover record and money . - (1) *Where on an application of a Panchayat or otherwise, the Collector is of the opinion that any person, who is his capacity, as a Sarpanch, Upa-Sarpanch, member, officer, servant or Secretary of a Panchayat had in his custody any record or money belonging to the Panchayat is on his vacating or ceasing to hold, his office for any reason whatsoever or suspension from office, as the case may be, not likely to deliver such record or pay such money, the Collector may by a written order require that the record or money so detained be delivered or paid to the Panchayat forthwith.*

(2) *If any such person as aforesaid shall not deliver the record or pay the money as directed, the Collector may cause him to be apprehended and may send him with a warrant in such form as may be prescribed, to be confined in a civil jail till he delivers up the record or pays the money :*

Provided that no such person shall be so detained in confinement for a period longer than one calendar month.

(3) *It shall be lawful for the Collector*

(a) for recovering any such money to direct that such money be

recovered as an arrear of land revenue and on such direction being given, such money shall be recoverable as an arrear of land revenue from such person;

(b) for recovering any such record to issue a search warrant and to exercise all such powers with respect thereto as may lawfully be exercised by a Magistrate under the provisions of Chapter VII of the Code of Criminal Procedure, 1898.

(4) No action under sub-section (1), (2) or (3) shall be taken unless reasonable opportunity has been given to the person concerned to show cause why such action should not be taken against him”.

4. It could thus be seen that the scheme of the Act is that when any officer, servant or Secretary of a Panchayat has in his custody any record or money belonging to the Panchayat and in the opinion of the Collector is not likely to deliver such record or pay such money, the Collector may, by a written order require that the record or money so detained be delivered or paid to the Panchayat forthwith. Sub-section 2 of Section 179 provides that when a person does not comply with the direction issued under sub-section 1 of Section 179 of the said Act, the Collector is empowered to apprehend him and send him a warrant in such form to be confined in a civil jail till he delivers up the record or pays the money. Sub-section 4 provides that before taking any action under sub-section (1), (2) or (3), a reasonable opportunity is required to be given to a person concerned.

5. The learned Additional Public Prosecutor has placed on record the original file before us. The communication is addressed by the Collector dated 6.12.2016 to the petitioners herein. The perusal of the record would reveal that, vide said communication, petitioners have been specifically informed that they have kept the record of the Gram Panchayat and, therefore, they have been called upon to show cause as to why an action should not be taken against them under the provisions of Section 179 of the Act. The perusal of the record would reveal that on 15.12.2016 that is on the due date, petitioners have appeared. On the said date, the petitioners have been directed to hand over the record to the Block Development Officer, Malegaon prior to the next date. When the matter is listed on 23.12.2016 before the Collector, the Collector has been informed that the petitioners have not yet handed over the record to the Block Development Officer. Again the matter is listed on 27.12.2016. On the said date, petitioners are present. The present Gram Panchayat informed the Collector that in spite of directions issued by the Collector, the record is not yet handed over. In these background, the action is taken by the Collector under the provisions of sub-section 2 of Section 179 of the Act.

6. It can thus be clearly seen that in spite of the petitioners being specifically informed by the Collector and in spite of they being directed by the Collector as provided under sub-section 1 of Section

179 of the said Act to hand over the record and in spite of giving two more opportunities to the petitioners, they have not handed over the record to the Block Development Officer. As such, the Collector has passed an order under sub-section 2 of Section 179 of the Act.

7. We find that there is sufficient compliance with the provisions of Section 1 of Section 179 of the Act before the coercive steps is taken by the Collector under sub-section 2 of Section 179 of the Act. The perusal of the record would reveal that in spite of grant of reasonable opportunity to return the record, the petitioners have not complied with the same. In the circumstances, the Collector had no other option than to pass the order under sub-section 2 of Section 179 of the Act.

8. The petitions are wholly without merit and as such are dismissed.

JUDGE

JUDGE

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