

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

WRIT PETITION NO.3711/2017

Shri Anil S/o Pundlik Chafale and others

..Vs..

The Hon'ble Minister, Rural Development, Maharashtra State, Mantralaya,
Mumbai 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 V.G. Dhage, Advocate for the petitioners.
Shri N.H. Joshi, A.G.P. for respondent Nos.1 and 2.
Ms. B.P. Maldhure, Advocate for respondent No.3.
Shri N.L.Jaiswal, Advocate h/f Shri A.M. Ghare, Advocate for respondent
No.4.

CORAM : Z.A. HAQ, J.

DATE : 15.11.2017.

Heard.

The petitioners had filed an application under Section 39(1) of the Maharashtra Village Panchayats Act, 1958 before the Divisional Commissioner complaining that the non-applicants in that application (members and office bearers of the Grampanchayat) incurred disqualification as they acted illegally and to the detriment of the Grampanchayat by passing resolution to the effect that no objection certificate be issued in respect of an agricultural land for being used for non-agricultural purposes, without getting the land in question converted for non-agricultural user. The complaint further stated that area of Grampanchayat got

merged with the Municipal Council, Saoner and notification to this effect was issued on 6th February, 2015 and inspite of being aware of this fact the above referred non-applicants passed the resolution illegally dealing with the land over which the Grampanchayat had lost its control and jurisdiction.

The learned Additional Commissioner called report from the Chief Executive Officer and after the report was submitted, granted opportunity to the parties to prove their case and by the order dated 22nd February, 2017 concluded that the present respondent No.4 (Sarpanch) incurred disqualification. As far as the other members of the Grampanchayat are concerned, the complaint filed by the present petitioners came to be dismissed.

The respondent No.4 filed appeal before the State Government which is allowed by the impugned order.

The learned Advocate for the petitioners has submitted that the Hon'ble Minister has committed an error in setting aside the order passed by the Additional Commissioner. It is submitted that the appeal filed by the petitioners challenging the order passed by the Additional Commissioner dismissing the prayer for disqualification of other members is pending and the Hon'ble Minister should not have decided the appeal filed by the respondent No.4 separately. One of the

challenge in the petition is that the petitioners are not granted hearing before the Hon'ble Minister.

I have examined the documents placed on the record of the writ petition. In paragraph No.8 of the petition it is stated that the notice of hearing was scheduled on 24th April, 2017, however, it was postponed for 28th April, 2017 and the petitioners could not arrange for travelling to Mumbai at short notice. It is stated that the petitioners were not served with copy of appeal memo and stay application because of which they were not in a position to participate at the hearing. By order passed on 8th August, 2017 this Court directed that the respondents should file reply to the averments made by the petitioners in paragraph No.8 of the petition. The respondent No.4 has filed reply and pointed out that the petitioners were aware that the hearing was scheduled on 28th April, 2017 as they were served with the notice to that effect on 25th April, 2017. The Advocate for the respondent No.4 has further argued that though the petitioners have taken spacious plea that it was not possible for them to arrange for travelling at the short notice, the petitioners have not been able to point out what prevented them from requesting for an adjournment on 28th April, 2017 by sending an application. The submission made on behalf of the respondent No.4 is proper and justified.

On merits, I find that except for making grievance about passing of resolution nothing is brought on record to show that any loss is caused to the Grampanchayat. There is nothing on record to show that any complaint is made by villager that he is duped because of the alleged resolution passed by the Grampanchayat permitting the user of land for non-agricultural purposes. The material on record is not sufficient to oust an elected member from the office. I see no reason to interfere with the impugned order. The writ petition is **dismissed**. No costs.

JUDGE

Tambaskar.