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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8037 OF 2017

Mrs. Rajashri Rajesh Kokate

.....Petitioner

V/s.

Mr. Rajendra Chandu Vagheshwar
and others

.....Respondents

Advocate Ganesh Koli i/b Aruna Koli for the Petitioner
Mr. S. S. Panchpor AGP for the State

CORAM : NITIN W. SAMBRE, J.

DATE : JULY 10, 2019.

P.C.

Heard the learned counsel for the petitioner and the learned
AGP.

2 The petitioner came to be disqualified by the order impugned dated 17/01/2017 passed by the Divisional Commissioner, Konkan Division, Konkan confirmed by the State Government in exercise of powers under Section 39 Sub Clause 3 of the Maharashtra Village Panchayat Act ('the Act' for short) on the grounds:

(i) That the petitioner has failed to discharge her statutory obligation under Sub-Section 5 of Section 52 of the Act thereby not issuing notice to a person residing in village panchayat who has carried out illegal construction and;

(ii) Such illegal construction was subjected to tax assessment.

3 Both these orders are questioned by the petitioner on the ground that the complainant in the aforesaid disqualification proceedings filed Regular Civil Suit No. 80 of 2015 on the file of Civil Judge, Junior Division, Karjat, District: Raigad and since the issue as regards illegal construction was subjudiced before the competent Civil Court, the petitioner thought it fit not to proceed against the person who has carried out illegal construction. He would then urge that the issue of assessing such illegal structure for payment of property tax is already reversed by passing an appropriate resolution. The learned counsel as such submits that since the petitioner was unaware about his statutory right, irregularity occurred which may not be considered to the detriment of the

interest of the petitioner. As such, submission is, both the orders impugned are liable to be quashed and set aside.

4 The learned AGP while relying upon Sub-Section 5 of Section 52 of the Act submits that once it is demonstrated that the petitioner has failed to discharge the mandatory statutory obligation, orders impugned are very much justifiable in law. As such, dismissal of the petition is sought.

5 The scheme of Sub-Section 5 of Section 52 of the Act if appreciated, which reads thus:

“(5) Without prejudice to the penalty prescribed in sub-section (4) the *Panchayat* may,

- (a) direct that the erection or re-erection be stopped;
- (b) by written notice required such erection or re-erection be altered or demolished as it may deem necessary;

and if the requirement under clause (b) is not complied with within the time fixed in the notice [9such time being not less than thirty days)], the *Panchayat* may cause the alteration or demolition to be carried out by its officers and servants and all the expenses incurred by the *Panchayat* therefor, shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter IX”.

It casts mandatory obligation on the panchayat to issue directions to stop erection or re-erection of illegal structure and further issue a notice of demolition.

6 Admittedly in the case in hand, the petitioner has failed to discharge such obligation by issuing directions or notice as contemplated under clause (a) & (b) of sub-section 5 of Section 52 of the Act.

7 The excuse put forward by the petitioner in not discharging the aforesaid obligation on the alleged theory of ignorance of law cannot be accepted as the petitioner was manning a Statutory post having been elected as a Sarpanch and the Statute obligates the petitioner to perform and discharge his duty in accordance with the provisions of the act. As such, ignorance of law cannot be an excuse for not discharging Statutory duties.

8 There is one more facet to the matter that even if the Civil Suit

is pending which was later on withdrawn by the plaintiff/complainant. The fact remains that the petitioner has taken action of revoking order of assessment to the tax of illegal structure in question. That being so, the fact that the petitioner was having knowledge about her Statutory duties under the Act to be discharged can be well founded. That being so, no case for interference is made out.

9 Petition fails, dismissed.

[NITIN W. SAMBRE, J.]