

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

WRIT PETITION NO.6440/2019

Sau. Kiran w/o Chetan Guhe Vs. The Divisional Commissioner, Amravati Divn and ors.

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

Court's or Judge's Orders.

Shri R.D.Karode, Advocate for petitioner.
Shri A.M.Kadukar, Assistant Government Pleader for respondent no.1.
Shri S.D.Chopde, Advocate for respondent no.5.

CORAM : A.S.CHANDURKAR, J.
DATED : September 27, 2019

The challenge raised in the present writ petition is to an order passed by the Divisional Commissioner, Amravati Division, Amravati under Section 39 (1) of the Maharashtra Village Panchayat Act, 1959 (for short, 'the said Act').

On behalf of the respondent no.5 an objection is raised that the remedy of preferring an appeal under Section 39(3) of the said Act is available and the same has not been availed by the petitioner.

On behalf of the petitioner, it is submitted that as the order passed by the Divisional Commissioner is in-contravention of the law as laid down by this Court coupled with the fact that there is a civil suit filed by the respondent no.5 which is pending, this Court should entertain the writ petition.

On hearing the learned counsel for the parties on that aspect, it is found that the present is not a fit case to permit the petitioner to bypass the statutory remedy available under Section 39(3) of the said Act. Certain factual aspects require adjudication and hence I am inclined to permit the petitioner to avail that remedy.

Accordingly, the petitioner is permitted to file an appeal under Section 39(3) of the said Act within a period of three weeks from today. If such appeal is filed within a period of three weeks from today, the same shall be entertained on merits without going into the question of delay. The interim order passed on 20.09.2019 shall continue to operate for a period of four weeks from today after which the petitioner is at liberty to seek appropriate interim relief before the Appellate Authority. All the points raised in this petition are kept open.

The writ petition is disposed of accordingly. No orders as to costs.

JUDGE

Andurkar.