

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 335/2018

(SAVITA AJAY DHODHARE & ANOTHER **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

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

Court's or Judge's orders

Shri Y.B. Mandpe, counsel for petitioners.
 Ms A.R. Kulkarni, A.G.P. for R-1 & 2.
 Shri B.B. Mehadia, counsel for R-3 & 4.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 04, 2019.

The challenge raised in the present writ petition is to the order passed by the Additional Commissioner, Nagpur Division, Nagpur disqualifying the petitioners under Sections 39(1) of the Maharashtra Village Panchayats Act, 1958 (for short, 'the said Act') which order has been confirmed by the Hon'ble Minister of State for Rural Development in exercise of appellate powers.

The petitioners claim to have been elected to Gram Panchayat Manora in the year 2015. The petitioner no.1 was thereafter elected as its Sarpanch. The respondent no.5 made a complaint to the Divisional Commissioner as regards the manner in which the petitioners conducted themselves while acting as Sarpanch and Member of the Gram Panchayat. In the application dated 11.05.2016 moved by the respondent no.5 under provisions of Section 39 of the said Act, it was stated that on 10.02.2016, the Gram Panchayat had passed a resolution bearing No.9 of 2001 thereby illegally mutating the names of Ganpati and Kashinath Dudhbale and in the process depriving the applicant's father Kawadu from the ownership of the land in question. In the application, it was stated that despite intimation being given that

the said names should not be mutated without the consent of all legal heirs of Rama, the said mutation entry was effected on the basis of a false partition-deed. Another grievance made was that a physically handicapped person had taken on rent a room from the Gram Panchayat for running petty business. Despite that his occupation of the premises was treated to be illegal and therefore the said handicapped person had filed a civil suit. Though an order of injunction was granted in his favour by the civil Court he was prevented from carrying on his business and he was asked to vacate the premises. According to the respondent no.5 these acts indicated the aspect that the petitioners were not acting as Member and Sarpanch of the Gram Panchayat in a legal manner and had misused their authority by acting illegally. After receiving the aforesaid application, an enquiry was directed to be conducted and the Chief Executive Officer submitted an enquiry report in that regard. In that enquiry report, it was observed that the grounds mentioned in the application preferred by the respondent no.5 had substance and therefore the petitioners were liable for being removed under Section 39 of the said Act. After calling for an explanation from the petitioners and after giving them due opportunity, the Divisional Commissioner recorded a finding that the petitioners were liable to be removed as Member and Sarpanch of the Gram Panchayat under Section 39(1) of the said Act. An order to that effect was passed on 23.02.2017. The appeal preferred by the petitioners came to be dismissed by the Appellate Authority on 31.10.2017. Being aggrieved, the petitioners have challenged their removal.

Shri Y.B. Mandpe, learned counsel for the petitioners submitted that the petitioners have been removed under provisions of Section 39 of the said Act without granting them due

opportunity. The relevant records from the Gram Panchayat had not been called and without verifying the facts the impugned order came to be passed. It was submitted that while passing the resolution in question the Gram Panchayat had followed its earlier practice that was being followed since last fifteen years. Mutation entries were taken on the basis of the application made in that regard and by following a summary procedure. There was no reason to deliberately pass Resolution No.9/1 as alleged by the respondent no.5. In absence of any misconduct or a disgraceful act on the part of the petitioners they were not liable to be so removed. He referred to the minutes of the meeting in which the resolution was passed and submitted that the impugned order of removal under Section 39(1) of the said Act was uncalled for.

Shri B.B. Mehadia, learned counsel for the respondent nos.3 and 4 and Ms A.R. Kulkarni, learned Assistant Government Pleader for the respondent nos.1 and 2 supported the impugned orders. Shri B.B. Mehadia, learned counsel, referred to the enquiry report and submitted that full opportunity was granted to the petitioners. Statements of various members including the Block Development Officer had been recorded and it was thereafter that the Chief Executive Officer in the enquiry report found necessary ingredients of Section 39 of the said Act warranting removal of the petitioners. Despite specific instructions given by the Block Development Officer that the mutation entries could not be changed without there being any registered document indicating change in the ownership rights of the property, the said resolution came to be passed. The members were informed about the basic requirements and the Government Resolutions in that regard but ignoring them, the resolution in question came to be passed. Similarly, despite orders being passed by the Civil Court, the

successful plaintiff was sought to be removed from the suit property despite orders of injunction in his favour. It was thus submitted that both the authorities having considered all the relevant aspects, no interference was called for.

I have heard the learned counsel for the parties at length and I have perused the documents placed on record. Insofar as the grievance with regard to grant of opportunity to the petitioners is concerned it can be seen that before conducting the enquiry the Chief Executive Officer had given due notice to the petitioners and it thereafter recorded the statement of various witnesses. The petitioners were made aware about the allegations against them and after considering the statements of the Block Development Officer and other persons, reference being made to the Government Resolution in that regard. On that basis it was held that the petitioners had acted in a manner contrary to law. The manner in which proper opportunity was not given to the petitioners has not been demonstrated. Except for stating that due opportunity was not granted to the petitioners to put forth their say, the said grievance was sought to be raised. In the orders passed by the Additional Commissioner as well as by the Hon'ble Minister of State, it is seen that the stand taken by the petitioners has been duly considered while removing the petitioners under Section 39(1) of the said Act. There is nothing on record to justify the stand taken by the petitioners that due opportunity was not given to them. Hence said contention as raised on behalf of the petitioners cannot be accepted.

Insofar as passing of resolution by the Gram Panchayat being Resolution No.9 of 2001 on 16.02.2016, it has been found that without publishing any proclamation and without taking said subject on the agenda, said resolution came to be passed. A specific

objection was raised on behalf of the respondent no.5 that such mutation entries may not be taken without giving due opportunity to the respondent no.5. The relevant facts were also brought to the notice of the Gram Panchayat by the Block Development Officer. However, ignoring the same the resolution in question came to be passed. As a result of said resolution, the father of the respondent no.5 was deprived of his rights in the property held by him. Thus, passing of said resolution despite clear directions to the contrary and without verifying the basic facts has resulted in it being concluded that the petitioners acted in a manner contrary to the manner in which they were expected to act as public representatives. Their conduct has been found to be in violation of Section 39 of the said Act.

Further conduct of the petitioners of having the shop premises that was leased out by the Gram Panchayat being sought to be got vacated in a manner contrary to law has also been held against the petitioners. The fact that there was a decree in favour of the occupier of the said shop is not in dispute. Despite that the petitioners proceeded to treat the said plaintiff as an encroacher and it has been found that such conduct resulted in breach of the orders passed by the Civil Court as well as amounting to contempt of the Court. Necessary guidance in that regard was given by the Block Development Officer which was ignored by the petitioners.

It is thus found that both the Authorities have taken into consideration the enquiry report prepared by the Chief Executive Officer. The said report was submitted after giving full opportunity to the petitioners. There is no specific breach of principles of natural justice during the course of adjudication brought on record. Since the conduct of the petitioners was found to be contrary to the requirements of Section 39 of the said Act,

they were rightly removed as Sarpanch and Member of the Gram Panchayat. The impugned orders do not suffer from any jurisdictional error and hence no ground is made out to interfere with the same.

As a result, the Writ Petition stands dismissed by maintaining the orders passed under Section 39(1) of the said Act. The parties to bear their own costs.

JUDGE

APTE