

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5836 OF 2020

Smt. Sarla w/o. Vijay Kad,
Age 42 years, Occ. Agri.
R/o. Shipora Bajar,
Tal.Bhokardan, Dist. Jalna. ..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai.
2. The Additional Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Jalna.
4. Baburao s/o. Narayan Kad,
Age 52 years, Occ. Agri.
R/o. Shipora Bajar,
Tal.Bhokardan, Dist.Jalna. ..RESPONDENTS

...
Mr.S.S.Thombre, Advocate for the petitioner.
Mr.S.K.Tambe, AGP for the respondent-State.
Mr.S.S.Gangakhedkar, Advocate for the
respondent no.4.

...
CORAM : V.L.ACHLIYA,J.
DATE : 25.08.2020

ORAL JUDGMENT :

1] Rule. Rule made returnable forthwith. With the consent of the learned Advocates, the Petition is heard finally at the stage of admission.

2] Leave granted to add Hon'ble Minister for State, Rural Development Department as party respondent to the Petition.

3] By this Petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has preferred this Petition seeking following relief :

B. Pending the hearing and final disposal of the Appeal filed before the Hon'ble Minister, the effect, execution and implementation of the order passed by the Additional Divisional Commissioner, Aurangabad dated 3.08.2020 may kindly be stayed

and for that purpose issue necessary orders.

4] In brief, it is the contention of the learned counsel for the petitioner that after seeking liberty from this Court vide order dated 07.08.2020 passed in Writ Petition No.5533 of 2020, the petitioner preferred statutory appeal as provided under Section 39 [3] of the Maharashtra Village Panchayats Act, 1958, before the Hon'ble Minister for State, Rural Development Department, Government of Maharashtra. Appeal along with stay application presented on 11th August, 2020. Since the date of presentation of the Appeal, the petitioner – appellant tried to press the appeal for grant of interim stay in the matter. However, the Hon'ble Minister for State, Rural Development Department has not taken up the appeal for hearing and to pass interim order. It is

submitted that due to political reason, Minister for State—Appellate Authority is not taking-up the hearing of the Appeal as well as application seeking stay. It is submitted that respondent is using political pressure to see that appeal should not be heard and as a part of it, the former MLA from the Region has given a letter dated 11.08.2020 to the Hon'ble Minister for State and requested the Hon'ble Minister not to grant stay in appeal preferred by the petitioner. Since the protection granted by this Court coming to end on 22.08.2020 and the Hon'ble Minister is not hearing the appeal, the petitioner is left with no alternate except to approach this Court seeking appropriate directions in the matter and continuation of the interim protection granted vide order dated 07.08.2020 till hearing of stay application by Hon'ble Minister.

5] In view of contention raised and the statement made across the bar, learned AGP was directed to take instructions from the responsible Officer from the office of the Hon'ble Minister for State, Rural Development Department, as to availability of the Hon'ble Minister and time within which Appeal can be heard and decided by Hon'ble Minister. The matter was kept after post-lunch session to to facilitate learned AGP to take appropriate instructions in the matter.

6] In view of submissions advanced and the contentions raised that the Appellate Authority is deliberately avoiding to take-up the matter, learned AGP was directed to take instructions from the office of the Hon'ble Minister the time within which the appeal can be heard and decided by the Hon'ble Minister. In order to facilitate learned AGP to take

instructions, the hearing of the case was postponed and kept after post-lunch session.

7] Post lunch session learned AGP appeared and expressed his difficulty in securing the instructions from the office of the Appellate Authority. He submits that he has received the information that the Hon'ble Minister i.e. Appellate Authority as well as some of the staff members of the Rural Development Department are detected corona positive, and therefore, no responsible Officer available to provide instructions in the matter.

8] Mr.Gangakhedkar, learned counsel for the respondent no.4 countered the submissions made by learned counsel for petitioner with contention that appeals filed by other persons are taken up for hearing by Hon'ble Minister. He further submits that he has been informed by his client that notice has been

displayed outside the office of the Hon'ble Minister for State, Rural Development Department that from 21st August, 2020 to 25th August, 2020, the office will remain closed. In that view the Hon'ble Minister may be available from 26.08.2020 onwards for taking up the appeals for hearing. He objected the maintainability of the petition and opposed for continuation of the interim protection granted vide order dated 07.08.2020.

9] On due consideration of the submissions advanced, that the Hon'ble Minister for State, Rural Development and some of the staff members have detected corona positive and due to this reason the normal functioning of the office of the Appellate Authority is affected, I am of the view that the petition deserves to be disposed of by giving appropriate direction to the Appellate Authority to decide the

appeal in a time bound manner by continuing interim protection granted by order dated 07.08.2010 in Writ Petition No.5533 of 2020. Accordingly, the following order is passed :

ORDER

i] The Hon'ble Minister for State, Rural Development, Government of Maharashtra the Appellate Authority is directed to hear and decide the Appeal preferred by the petitioner within eight [8] weeks from date of passing of this order.

ii] Till disposal of the Appeal by the Appellate Authority, the interim protection granted vide order dated 07.08.2020 passed in Writ Petition No.5533 of 2020 to remain in operation.

iii] Rule made absolute in above terms.

iv] It is expressly made clear that this Court has not considered the merit of the case of the petitioner. All the contentions raised in the petition are kept open to be raised before the Appellate Authority.

[V.L.ACHLIYA]
JUDGE

DDC