

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

WRIT PETITION NO.4235/2017

Sau.Anita Subhash Deshettiwar

Vs.

The Divisional Commissioner, Nagpur Division, Nagpur and others.

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

Court's or Judge's Orders

Shri S.D.Chopde, Advocate for petitioner.

Shri K.L.Dharmadhikari, Assistant Government Pleader for
 respondent no. 1.

Mrs. G.Reve, Advocate with Shri B.N.Jaipurkar, Advocate for
 respondent no.2.

Shri Bhojraj S.Dhandale, Advocate for respondent no.4.

CORAM : A.S.CHANDURKAR and VINAY JOSHI, JJ.

DATE : January 28, 2020.

Rule. Heard finally by consent of learned
 counsel appearing for the parties.

The petitioner has challenged the order dated 22.03.2017 passed by the respondent no.1-Divisional Commissioner, Nagpur, by which the decision taken in Gram Sabha held on 16.07.2016 has been validated. It is the grievance of the petitioner that at her instance the proceeding was initiated however without giving right of hearing, the proceeding came to be decided. Moreover, though the impugned order is passed by the Divisional Commissioner, Nagpur, the matter was heard by the Assistant Commissioner which is per-se illegal.

It is brought to our notice that the validity of the Gram Sabha held on 16.07.2016 has already been cancelled in the Gram Sabha dated 25.11.2016. The impugned order discloses that the hearing was conducted

by the Assistant Commissioner, whilst the order was passed by the Divisional Commissioner. There is no reference that the petitioner was heard in the proceedings meaning thereby principles of natural justice are violated. We find that the purpose of filing the writ petition would be served if the matter would be decided afresh by the Authority after giving an opportunity of hearing to the parties concerned.

In that view of the matter, the impugned order dated 22.03.2017 passed by the respondent no.1-Divisional Commissioner, Nagpur Division, Nagpur, is unsustainable in law and hence the same is set aside. The matter is remitted back for fresh adjudication by the Divisional Commissioner, Nagpur Division, Nagpur, with a rider of hearing to the petitioner and the contesting respondents. It shall be ensured that the Authority which hear the matter, shall decide the same. The parties shall appear before the Divisional Commissioner, Nagpur Division, Nagpur, on **10.02.2020**. After appearance of the parties before the Authority, the Authority shall endeavour to decide the proceedings within **six weeks** thereafter. Without prejudice to the rights of the parties, the interim order shall continue to operate till the decision is taken by the Authority.

With these directions, the writ petition stands disposed of. Rule accordingly. No orders as to costs.

JUDGE

JUDGE