

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 8462 OF 2020
WITH
CIVIL APPLICATION NO. 2764 OF 2021**

1. Savita W/o. Ram Panmalkar, **...PETITIONERS**
Age-39 years, Occu-Household
2. Sharad S/o. Aanadrao Gaikwad
Age-47 years, Occu-Agri,
3. Suryakant S./o. Chandrakant Pakhare,
Age-25 years, Occu-Agri,

VERSUS

1. The Divisional Commissioner, **...RESPONDENTS**
Nashik Division, Nashik
2. The Block Development Officer (Administration),
Divisional Commissioner Office, Nashik,
3. Chhaya W/o. Babasaheb Jare,
Age-40 years, Occu-Household,
R/o.Sankalp Colony, Nagardevale,
Tq. Nagar, Dist.Ahmednagar
4. Babasaheb S/o. Karbhari Jare,
Age-46 years, Occu-Agri,
R/o. Sasewadi, Post Jeur,
Tq. And Dist. Ahmednagar

Mr. N. V. Gaware, Advocate for the petitioners
Mr. R. D. Sanap, AGP for the respondents/State
Mr. S. N. Gaikwad, Advocate for respondent No.3
Mr. D. R. Markad, Advocate for the applicants in CA/2764/2021

CORAM : N. J. JAMADAR, J.
RESERVED ON : 24-03-2021
PRONOUNCED ON : 23-04-2021

JUDGMENT

. Rule. Rule made returnable forthwith. And having regard to the nature of the controversy with the consent of the learned counsel for the parties heard finally at the admission stage.

2. The challenge in this writ petition is to the notice dated 18-11-2020, issued by the Divisional Commissioner, Nashik Division, Nashik purportedly under the provision of Section 39 (1) of the Maharashtra Village Panchayat Act, 1958 (the Act, 1958), professing to provide an opportunity of hearing to the petitioners before taking action of removal of the petitioner No. 1 from the post of Sarpanch and petitioner Nos. 2 and 3 from the post of Member of Village Panchayat Nagardevale.

3. The petition arises in the backdrop of the following facts.

a] In the election to the Village Panchayat Nagardevale, held in the year 2017, the petitioner No.1 came to be elected as Sarpanch and petitioner Nos. 2 and 3 were elected as Members. The respondent No. 4-Babasaheb Jare had acquired a plot of land, bearing Plot No. 22, admeasuring

129 sq. Mtrs., situated at Gut No.285/2A of Bhingar, Ahmednagar, under a registered sale deed from Shobha Nivrutti Gangurde dated 19-08-2003. The name of respondent No. 4 came to be mutated to the record of rights vide mutation entry No. 13472. The name of respondent No. 4 was also recorded in the assessment list of the village panchayat. The respondent No. 3- Chhaya Jare wife of respondent No. 4 Babasaheb Jare surreptitiously got her name inserted in the assessment list. There was no resolution passed by the village panchayat to insert the name of respondent No. 3-Chhaya Jare. The respondent No.4- Babasaheb Jare submitted an application on 23-01-2018 to delete the name of respondent No.3. The application was supported by copies of registered sale deed and index-II. In the monthly meeting of the village panchayat held on 19-03-2018, an unanimous resolution was passed by the village panchayat to delete the name of respondent No.3-Chhaya Jare.

b] The respondent No.3-Chhaya Jare filed an application with the Deputy Chief Executive Officer, Zilla Parishad, Ahmednagar seeking action for deletion of her name from village property register in violation of direction contained in the government circular dated 20-11-2003 which warranted that in the assessment list property be entered in the joint names of husband and wife. The respondent No. 3 had also

instituted a suit bearing RCS No. 274 of 2018, in the court of learned Civil Judge Senior Division, Ahmednagar against the respondent No.4-Babasaheb Jare and Rajendra Shinde, transferee of the said plot. By the judgment and order dated 13-02-2000, the civil court dismissed the said suit as the respondent No.4-Babasaheb Jare was held to be exclusive owner of the suit plot.

c] In the meanwhile, pursuant to the application of the respondent No.3 dated 03-05-2018 an enquiry was conducted by the Chief Executive Officer, Zilla Parishad and a report was submitted to the Divisional Commissioner. By an order dated 30-11-2019, the Divisional Commissioner was persuaded to close the proceeding opining that the issue of mutation of name in the property register could be agitated before the appropriate forums and since the dispute in respect of property No. 4042 was subjudice before the Civil Court in RCS No. 274 of 2018, the action under Section 39(1) of the Act, 1958 was not warranted. Thus, the proceeding initiated under Section 39(1) of the Act 1958 came to be closed.

d] The respondent No.3-Chhaya Jare again preferred an application, styled as an appeal, before the Divisional Commissioner, Nashik on 09-10-2020 and sought setting aside of the said order dated 30-11-2019 and restoration of enquiry initiated against the petitioners under Section 39(1)

of the Act, 1958 as the civil suit, being RCS No. 274 of 2018, came to be decided in the intervening period.

The Divisional Commissioner again sought report from the Chief Executive Officer, Zilla Parishad vide communication dated 15-10-2020. The Chief Executive Officer, Zilla Parishad, after an enquiry, submitted a report on 05-11-2020 and opined that the deletion of the name of the respondent No.3-Chhaya Jare from the property No. 4042 in the assessment list, was in violation of the circular issued by the State Government on 20-11-2003, whereby the properties have been directed to be entered in the assessment list in the joint names of the husband and wife. Thus, action was warranted against the petitioners under Section 39(1) of the Act, 1958. On the strength of the said report, the Divisional Commissioner issued the impugned notice dated 18-11-2020.

4. Being aggrieved, the petitioners have invoked writ jurisdiction of this court.

5. An affidavit-in-reply is filed on behalf of respondent Nos. 1 and 2 justifying the impugned action of initiation enquiry of under Section 39(1) of the Act, 1958. The respondents contend that as the allegations against the petitioners have been found to be proved, in an enquiry conducted by the Chief Executive Officer, the

Divisional Commissioner has issued notice with a view to provide an effective opportunity of hearing to the petitioners. The petition is, thus, pre-mature and not tenable. In fact, the petitioners had appeared before the Divisional Commissioner and participated in the proceedings. Thus, the petition does not deserve to be entertained.

6. Mr. Sushil Kadam and Mr. Nikhil Shelar who claim to be residents of village panchayat have preferred an application for intervention, being civil application No. 2764 of 2021, and sought to support the initiation of action by the Divisional Commissioner under Section 39(1) of the Act, 1958.

7. In the wake of the aforesaid pleadings, I have heard Mr. N. V. Gaware, learned counsel for the petitioners, Mr. R. D. Sanap, learned AGP for the respondent Nos. 1 and 2, Mr. S. N. Gaikwad, learned counsel for the respondent No.3 and Mr. D. R. Markad, learned counsel for the applicants in civil application No. 2764 of 2021. With the assistance of the learned counsel for the parties I have also perused the material on record.

8. At the threshold, it may be apposite to deal with the issue of tenability of the petition as the challenge is to the notice of hearing issued by the Divisional Commissioner purportedly under Section 39 (1) of the Act, 1958. Section 39 of the Act, 1958 reads as under:-

Section 39: Removal from office- The Commissioner may-

i] remove from office any member or any Sarpanch or Upa-Sarpanch who has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or of neglect of or incapacity to perform his duty, or is persistently remiss in the discharge thereof. A Sarpanch or Upa-Sarpanch so removed may at the discretion of the Commissioner also be removed from the panchayat, or

ii] Remove from office the member, Sarpanch or as the case may be, Upa-Sarpanch if not less than twenty per cent, of the total number of voters in the village who have paid all dues of the panchyat regarding taxes on buildings and lands and water charges, make a complaint that the annual accounts and the report of the expenditure incurred by the *panchyat* on the development activities are not placed before the Gram Sabha; and the information thereof is not displayed on the notice board as required sub-section (1) or (1-A) of Section 8.

Provided that, no such person shall be removed from the office unless, in case of Clause-(i), the Chief Executive Officer or in case of Clause (ii), the Deputy Chief Executive Officer as directed by the Chief Executive Officer; under the orders of the Commissioner, holds an inquiry after giving due notice to the *Panchyat* and the person concerned; and the person concerned

has been given a reasonable opportunity of being heard and thereafter the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer concerned through the Chief Executive Officer, submits his report to the Commissioner. The inquiry officer shall submit his report within a period of one month :

Provided further that, the Commissioner shall, after giving the person concerned a reasonable opportunity of being heard, take a decision on the report submitted by the Chief Executive Officer or, as the case may be, the Deputy Executive Chief Officer, within a period of one month from the date of receipt thereof.

1-A) Where a person is removed from the office of Sarpanch or Up-Sarpanch, he shall not be eligible for re-election as Sarpanch or Up-Sarpanch during the remainder of the term of office of members of the *Panchayat*.

2. The Commissioner may subject to like condition disqualify for period of not exceeding six years, any person who has re-signed his office as a member, Sarpanch or Up-Sarpanch and has been guilty of the acts and omissions specified in Sub Section (1).

3. Any person aggrieved by the order of the Commissioner under Sub Section (1) and (2) may, within a

period of fifteen days from the date of the receipt of such order, appeal to the State Government and the Government shall decide the appeal within a period of one month from the date of receipt thereof.

9. A plain reading of the aforesaid section would indicate that the Divisional Commissioner is empowered to remove any Member, Sarpanch or Upsarpanch of village panchayat in two contingencies. Clause (i) of the Sub-Section (1) is couched in general terms and has wild amplitude. It empowers the Commissioner to remove any Member or office bearer of the panchayat who has been found guilty of misconduct in the discharge of his duties or of any disgraceful conduct, or of neglect of or incapacity to perform his duty or is found persistently remiss in the discharge thereof. Clause (ii) of the Sub Section (1), on the other hand, addresses a singular lapse of failure to place before Gramsabha the annual accounts and report of expenditure incurred by the Panchayat on the development activities and to display the information thereof on the notice board as required by Sub-Section (1) or (1-A) of Section 8 of the Act. The first proviso to Section 39 mandates that before a person is removed from office under Sub-Section (1) the Commissioner shall order an enquiry to be conducted by the Chief Executive Officer, in case of clause (i), or the Deputy Chief Executive Officer, in case of clause (ii), in which the panchayat and the person concerned is given a reasonable opportunity of being heard. The officer has to submit a report to the

Commissioner. Second proviso enjoins the Commissioner, in turn, to give the person concerned a reasonable opportunity of being heard before a decision is taken on the report submitted by the officer, under the first proviso. Sub-Section (2) empowers the Commissioner to disqualify a person for a period not exceeding six years who has been found guilty of acts and omissions specified in Sub-Section (1) and had since re-signed his office as Member, Sarpanch or Upsarpanch. Sub-Section (3) of Section 39 provides for an appeal to the State Government against the order passed by the Commissioner under Sub-Section (1) or (2).

10. In the light of aforesaid statutory provisions, the challenge to the tenability of the petition is rested on two counts. One, under the provisions of Subsection (3) of the Section 39 of the Act, 1958 in the event the petitioners are aggrieved by the order which may be ultimately passed by the Divisional Commissioner they have a statutory right of appeal before the State Government. Thus, there is an equally efficacious alternate remedy and therefore, the writ petition does not deserve to be entertained. Two, the petition is pre-mature in the sense that the Divisional Commissioner has issued a notice of hearing, impugned herein, post a report of enquiry submitted by the Chief Executive Officer, as mandated by second proviso to Sub-Section (1) of Section 39. No decision is yet taken much less an order is passed. Thus, in view of the provisions contained in Chapter-XVII Rule-18 of the Bombay High Court Appellate Side Rules, 1960 the writ petition is not

competent before the learned Single Judge.

11. So far as the challenge to the tenability of the petition on the count that there is efficacious alternate remedy, in the nature of an appeal statutorily provided under Sub-Section (3) of Section 39, in the event the petitioners are aggrieved by the ultimate order which may be passed in the proceeding pending before the Divisional Commissioner, it would be suffice to note that existence of alternate remedy is a self imposed restraint on exercise of writ jurisdiction. It does not preclude the writ court from exercising writ jurisdiction completely. A useful reference in this context, can be made to the judgment of the *Supreme Court in the case of Whirlpool Corporation Vs Registrar of Trade Marks, Mumbai and others SCC 1998 (8) 1* wherein the circumstances in which the writ court can exercise the jurisdiction despite existence of an alternate remedy were enunciated. Para 14 and 15 read as under:-

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.....”

[emphasis supplied]

12. In my considered view, the nature of the impugned order cannot be judged from its outward form or formal reading thereof. The consequences which impugned order entails are required to be taken into account. The manner in which the impugned notice of hearing infringes the rights of the petitioners cannot be lost sight of. It has to be seen, whether in the facts of the instant case, exercise of writ jurisdiction is warranted.

13. The factual backdrop is rather uncontroverted. The genesis of action initiated against the petitioners is resolution

passed by the village panchayat on 19-03-2018 whereby the name of the respondent No.3-Chhaya Jare was ordered to be deleted from the property No. 4042 in the assessment list of the village panchayat. The petitioner No.1 presided over the said meeting in the capacity of Sarpanch. All the resolutions were proposed by the petitioner No.2 Sharad Gaikwad and seconded by the petitioner No.3-Suryakant Pakhare. It is incontrovertible that plot No.22, which was entered at property No.4042, was acquired by respondent No.4-Babasaheb Jare under a sale deed dated 19-08-2003. The mutation entry No.13472 was certified in the name of respondent No.4-Babasaheb. In the assessment list for the years 2012-2013 to 2015-2016, the name of respondent No. 4-Babasaheb Jare was entered against the property No.4042 as holder thereof. In the assessment list for the year 2016-2017, the name of respondent No.3-Chhaya Jare came to be added thereto, in the holders column, by an entry made in ink. Indisputably, the deletion of her name from the assessment list was challenged by the respondent No.3-Chhaya Jare not only by making grievances with the authorities under Act but also by instituting the suit, being RCS No. 274 of 2018. In the said suit, Gram Vikas Adhikari of village panchayat was impleaded as defendant No.2. The suit was instituted seeking a declaration that the sale deed of the said property executed by respondent No. 4-Babasaheb Jare in favour of Mr. Rajendra-defendant No.3 therein, dated 20-06-2018 was not binding on the plaintiff. Reliefs of cancellation of the said instrument and perpetual injunction were also sought. The civil court, was

persuaded to dismiss the suit holding *inter alia* that respondent No.3-Chhaya Jare failed to prove that she was the co-owner of the suit property.

14. In the context of the controversy at hand, it is imperative to note that, the civil court had framed the following issue No.5;

‘Does plaintiff prove that defendant No. 2 by joining hands with defendant No. 3 illegally deleted her name from Grampanchayat record of suit property’.

The said issue came to be answered in the negative observing that the name of respondent No.3-Chhaya Jare was recorded in the assessment list without following proper procedure and without calling objection from the respondent No.4-Babasaheb Jare. Thus, the deletion of the name of respondent No.3-Chhaya Jare from the assessment list was not illegal. The civil court went on to observe that while inserting the name of respondent No.3-Chhaya Jare in the assessment list against the property No. 4042 the procedure prescribed in the circular was not followed.

15. It would be contextually relevant to note that initially pursuant to the order dated 08-06-2018 passed by the Divisional Commissioner, the Chief Executive Officer conducted an enquiry and submitted report. By an order dated 30-11-2019 the Divisional Commissioner was persuaded to close the enquiry as forums are

available for agitating the grievances against deletion of the name from the property card and since the matter was subjudice before the civil court in RCS No. 274 of 2018 action under Section 39(1) of the Act, 1958 was not warranted. The Divisional Commissioner has revived the proceeding and initiated the enquiry under Section 39(1) apparently on the basis of application dated 09-10-2020 preferred by respondent No. 3 and on the premise that the civil suit came to be decided.

16. In this backdrop, the submission on behalf of the petitioners that the impugned notice transcends the character of a notice simplicitor and infringes the rights of the petitioners appears to be well merited. The question as to whether the Divisional Commissioner was within his rights in reviving the proceedings, which were closed by order dated 30-11-2019, post submission of report of enquiry by the Chief Executive Officer, warrants consideration. In this view of the matter, the respondent Nos.1 and 2 cannot wriggle out of the situation by asserting that there is no harm in proceeding with the enquiry under Section 39 (1) of the Act, 1958 and the petitioners have the remedy of appeal in the event an order adverse to the interest of the petitioners is passed in the said proceedings.

17. Mr. Gaware, learned counsel for the petitioners would urge that even a notice of the instant nature falls within the ambit of the 'order' which is susceptible to challenge before the Single

Judge under the provision of Rule 18 of Chapter-XVII of the Bombay High Court Appellate Side Rules, 1960. To lend support to this submission, Mr. Gaware placed a strong reliance on the judgment of a learned single judge of this court in the case of Jyoti Anil Ganeshpure Vs State of Maharashtra Mh.L.J. 2006 (2) 173. In the said case the petitioner, who was then the President of Zilla Parishad, had challenged show cause notice issued by the Commissioner, Amravati under Section 16 (1)(i) of the Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961. A challenge was raised to the tenability of the petition on the ground that the 'show cause notice' did not constitute an 'order' and, thus, the single judge could not have entertained the writ petition. After advertent to the provisions contained in Rule 18 Chapter-XVII of the Bombay High Court Appellate Side Rules, 1960 and governing precedents, learned single judge held that indisputably proceeding was pending before the Divisional Commissioner and later had taken a decision to issue notice and, thus, show cause notice which evidenced the said decision is an 'order' which could be challenged before the learned single judge. It was further observed that the matter was covered by Chapter - XVII Rule 18 (3) read with explanation thereto.

18. A profitable reference, can also be made to another judgment of a learned single judge of this court in the case of Damodar Jairam Sao Vs Deputy Charity Commissioner, Nagpur and others MH.L.J. 2011 (6) 431 wherein the import of the expression

'order' in the explanation to Rule 18 of Chapter-XVII was expounded. Para 9 and 10 are material. They read as under:-

“9. The expression “order” is wide and carries different meanings in different contexts. It includes all such orders passed by the statutory authorities, whether administrative, judicial or quasi-judicial, in exercise of the statutory powers conferred by special or local laws, including the Code of Civil Procedure. The Explanation below Rule 18 of the Bombay High Court Appellate Side Rules, therefore, clarifies the sense in which the expression “orders” is used in sub-rule (3) and it restricts the meaning to a power of Court, tribunal or quasi-judicial authority to adjudicate. Even if the Explanation below Rule 18 is ignored, the rule of interpretation led by the maxim *noscitur a sociis* shall come into operation in respect of the expression “decrees” or “orders”. Both the words, susceptible of analogous meaning, are coupled together. Hence, they have to be understood in their cognate sense. They take as it were their colour from each other and the word “order”, which is more general in nature will have to be understood as one adjudicating a dispute, *lis* or contest and determining the rights of parties, with regard to all or any matters in controversy, like a decree. Perusal of sub-rule (3) reproduced above, shows that such orders are required to be passed in any suit or proceeding, including suits and proceedings, under any special or local law, by any court or

quasi-judicial authority. Sub-rule (4) relates to the orders passed by the subordinate courts in appellate or revisional proceedings arising from the suits or proceedings in sub-rule (3).

10. A conjoint reading of sub-rules (3) and (4) with Explanation under Rule 18, clearly shows that the expression “order” used therein means the order passed by the court, or quasi-judicial authority empowered to adjudicating in any suit or proceeding of judicial or quasi-judicial in nature determining rights of parties with regard to all or any of the matters in controversy. It also includes any order passed in any appeal or revision by a subordinate court, arising from the suits or proceedings mentioned in sub-rule (3). It is thus the exercise of statutory power to adjudicate or decide, conferred upon the court, or quasi authority, as contemplated by sub-rules (3) and (4), which can be made a subject-matter of challenge in a writ jurisdiction under Article 226 and 227 of the Constitution of India before the Single Judge. If the order is passed by any statutory authority not in exercise of judicial or quasi-judicial authority under the provisions of the BPT Act, then the Single Judge is not competent to decide any writ petition under Article 226 or 227 of the Constitution of India, challenging such order, even if the authority passing such an order, is otherwise a judicial or quasi-judicial authority. In other words, the statutory power to adjudicate or decide all or any matter in controversy in any suit or judicial or quasi-judicial proceeding would be a necessary

concomitant for exercise of writ jurisdiction by a Single Judge under sub-rules (3) and (4) of Rule 18 of the Bombay High Court Appellate Side Rules.”

19. It becomes evident that the test is whether the impugned action is taken by the authority in exercise of a statutory power. It is not the nomenclature of the action or its outward form which is of decisive significance. Impact of action is of critical salience. Viewed through this prism, in my considered view, the impugned notice of hearing post receipt of second report of enquiry from the Chief Executive Officer, Zilla Parishad manifests a decision on the part of the Divisional Commissioner to prosecute the enquiry under Section 39 (1) of the Act, 1958, which was given a quittance by order dated 30-11-2019. Therefore, the order is susceptible to writ jurisdiction. Thus, challenge to the tenability of the petition does not merit countenance.

20. Mr. Gaware, the learned counsel for the petitioner strenuously urged that the Divisional Commissioner could not have revived the proceeding, after having closed the same by order dated 30-11-2019. Since the Divisional Commissioner is not statutorily empowered to review his own order, the revival of the proceeding, on the spurious ground that the civil court had adjudicated the dispute, was completely without jurisdiction, urged Mr. Gaware. It was submitted that there is no inherent jurisdiction to review an order passed or decision taken. It is a creature of

statute. Unless specifically conferred no court, tribunal or authority can review its own order or decision, submitted Mr. Gaware.

21. In order to buttress this submission, Mr. Gaware placed a strong reliance on the judgment of the Supreme Court in the case of Patel Narshi Thakershi Vs Pradyumanshinghi Arjunsinghi AIR 1970 SC 1273 and Lily Thomas Vs Union of India AIR 2000 (SC) 1650. In the case of *Lily Thomas* (supra) it was observed that:

“The dictionary meaning of the word “review” is “the act of looking, offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This court in Patel Nasrshi Thakershi and Ors Vs. Pradyunman-Singhi Arjunsinghi held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.”

The legal position is absolutely clear. No court or quasi-judicial body or authority would be justified in reviewing its judgment or order or decision unless it is legally empowered to do so. The following observations of the Supreme Court in the case of Haryana State Industrial Development Corporation Limited Vs Mawasi and others (2012) 7 SCC 200 are significant.

“26. At this stage it will be apposite to observe that the power

of review is a creature of the statute and no court or quasi-judicial body or administrative authority can review its judgment or order or decision unless it is legally empowered to do so.....”

22. In the light of aforesaid exposition of legal position, in the case at hand, the Divisional Commissioner was not within his rights in initiating the proceeding for removal under Section 39(1) of the Act, 1958, after having categorically held that action under Section 39(1) of the Act, 1958 was not warranted, as there is no provision which empowers the Divisional Commissioner to review his order either suo-moto or on the application of a party to the proceeding.

23. The matter can be looked at from a slightly different perspective. The authorities have proceeded on the premise that the decision in RCS No. 274 of 2018 dated 13-02-2020 furnished a cause for afresh prosecution of action under Section 39(1) of the Act, 1958. Had the civil court upheld the challenge mounted by respondent No.3-Chhaya Jare to the deletion of her name from the assessment list, for the sake of argument, different considerations would have come into play. On the contrary, the civil court not only ruled against respondent No.3-Chhaya Jare on her claim of co-ownership but also recorded a categorical finding that the action of village panchayat of deleting her name from the assessment list was legally sustainable and, in fact, insertion of the name of respondent No.3-Chhaya Jare to the assessment list was without

following due procedure. It defies comprehension as to how such a decision which completely negated the claim of respondent No.3 could furnish a ground for reviving the proceeding. On this count alone, the initiation of the proceeding against the petitioners constitutes an abuse of the statutory authority.

24. The grievance of the petitioners that they are being selectively prosecuted for removal from office and membership of the village panchayat Nagardevele cannot be said to be unfounded. The name of respondent No.3-Chhaya Jare was deleted from the assessment list pursuant to the unanimous resolution passed by the village panchayat in its meeting held on 19-03-2018. If the petitioners can be attributed with a conduct which falls foul of the provisions contained in Sub-Section (1) of Section 39 of the Act, 1958, then the taint attaches in equal measure to rest of the members of the village panchayat who were present in the said meeting and concurred with the said decision. It does not appear that any action has been initiated against rest of the members of the village panchayat.

25. The upshot of the aforesaid consideration is that the impugned action of afresh prosecution of the enquiry under Section 39(1) of the Act, 1958 is unsustainable on both the grounds. One, it is plainly without jurisdiction as the Divisional Commissioner is not empowered to review his own order. Two, on merits, in the peculiar facts of the case, the impugned action is wholly unjustifiable. The

petitioners cannot be made to suffer prejudicial consequences of defending an unjust and wholly unwarranted proceeding. It is, therefore, necessary to quash and set aside the proceeding initiated by the Divisional Commissioner.

26. For the forgoing reasons, the petition deserves to be allowed. Hence, the following order.

ORDER

- i. The petition stands allowed.
- ii. The impugned notice of hearing dated 18-11-2020 and the inquiry initiated under Section 39(1) of the Act, 1958 by the Divisional Commissioner, Nashik stand quashed and set aside.
- iii. No costs.
- iv. Rule made absolute in aforesaid terms.
- v. In view of disposal of the writ petition, the civil application No. 2764 of 2021 does not survive and accordingly stands disposed of.

[N. J. JAMADAR, J.]