

DDR

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3106 OF 2021

SMT. RITU HARESH LALWANI ..PETITIONER
VS.
STATE OF MAHARASHTRA & ORS. ..RESPONDENTS

Mr. Dhairyasheel Sutar for the petitioner.
Mr. S.D. Rayrikar, AGP for the respondent Nos. 1 and 2 – State.
Mr. Ruturaj Pawar for the respondent No.6.

CORAM : M.S.KARNIK, J.

**DATE : JULY 20, 2021
(VIA V.C.)**

P.C.:-

Heard learned counsel for the petitioner, Shri Pawar, learned counsel appearing on behalf of the contesting respondent No.6 and learned AGP appearing on behalf of the respondent Nos. 1 and 2.

2. It is the contention of Shri Sutar, learned counsel for the petitioner that the petitioner who was elected as a Sarpanch of Gandhi Nagar, District – Kolhapur is removed by the impugned order passed by the Commissioner under Section 39 of the Maharashtra Village Panchayats Act, 1958 (hereinafter referred to 'the said Act'). He submitted that aggrieved by the order of the Commissioner, an appeal has been preferred within the limitation

prescribed, to the State Government. Along with the appeal an application for stay has been made. It is his submission that due to Covid-19 situation, the appeal and the application for stay which was filed on 8/7/2021 are not being heard. He apprehends that if the application for stay is not heard, the seat which is presently occupied by the petitioner, is likely to be declared vacant. He submits that he has a very good case on merits and in any case, as the statute gives him statutory right to file an appeal which has been availed, he needs to be protected at least till the time the application for stay is heard.

3. Learned counsel for the respondent No.6 pointed out that even before filing of the appeal on 8/7/2021, the petitioner filed this Petition on 7/7/2021. According to him, this speak volumes about the conduct of the petitioner even though he was well aware that the petitioner has a statutory right of filing an appeal to the State Government.

4. Shri Pawar further pointed out that sub-section (3) of Section 39 of the said Act provides that the Government shall decide the appeal within a period of one month from the date of receipt thereof. In such circumstances, he submits that there is no justification to stay the impugned order, as for good reasons

the Commissioner has passed the order of removal.

5. The petitioner has preferred an appeal before the State Government on 8/7/2021. No doubt, the present Petition was filed on 7/7/2021. In any case, in view of the filing of the appeal under Section 39 (3) of the said Act, the present Petition need not be entertained in view of the alternate efficacious remedy which has already been availed of by the petitioner.

6. It, however, cannot be lost sight of the fact that the petitioner is a duly elected representative (Sarpanch) and holding the said post from 2017. The petitioner has statutory right of filing an appeal to the State Government which he has availed of. The appeal has been filed within a period of limitation provided by sub-section (3) of Section 39 of the said Act. The application for stay was filed on 8/7/2021. In this view of the matter, it is necessary to grant a limited protection to the petitioner. The State Government is requested to hear and decide the application for stay within a period of three weeks from today. The petitioner as well as the contesting respondent no.6 to appear before the State Government on 22/7/2021, at 3.00 p.m. to enable the Hon'ble Minister to fix the further schedule and pass appropriate orders.

7. In the interest of justice, till the time the application for stay is decided, it is necessary to protect the applicant and therefore, the impugned order shall remain stayed till then.

8. It is made clear that I have not made any observations on the merits of the controversy and all contentions are kept open.

9. The Hon'ble Minister shall decide the appeal as well as the application for stay without being influenced by any observations made by me in this order.

10. The Petition is disposed of.

(M.S. KARNIK, J.)

Digitally
signed by
DIKSHA
DINESH
RANE
Date:
2021.07.20
18:46:12
+0530