

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

WRIT PETITION NO. 5001 OF 2021

- 1) Sau Kanchan Narayan Meshram,
Aged about 30 years, Occu. - Household,
- 2) Sameer Annaji Mahajan,
Aged 36 years, Occu.- Agriculturist.

Both R/o. Village Varadh,
Tahsil Ralegaon, Dist. Yavatmal.

.... **PETITIONER**

// VERSUS //

- 1) State of Maharashtra,
through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai – 32.
- 2) The Hon'ble State Minister,
Revenue and Village Development
department, Mantralaya, Mumbai-32.
- 3) Divisional Commissioner,
Amravati Division, Amravati.
- 4) Zilla Parishad, Yavatmal,
Through its Chief Executive Officer,
Yavatmal.
- 5) Village Panchayat, Varadh,
Tq. Ralegaon, Distt. Yavatmal,
through its, Secretary.
- 6) Tahsildar, Ralegaon,
District, Yavatmal.

.... **RESPONDENTS**

Shri M. I. Dhatrak, Advocate for petitioners.
Shri A. S. Fulzele, Addl.G.P for respondent Nos.1 to 3 & 6.

**CORAM : SUNIL B. SHUKRE AND
ANIL L. PANSARE, JJ.**

DATED : 07.12.2021

ORAL JUDGMENT : (Per Sunil B. Shukre, J.)

1. Heard Shri Dhatrak, learned counsel for the petitioners and Shri A. S. Fulzele, learned Additional Government Pleader who appears by waiving notice for respondent Nos.1 to 3 and 6. Considering the limited prayer before this Court made by the learned counsel for the petitioner, we do not think it necessary to issue notice to the rest of the respondents and we are of the view that this petition can be finally disposed of by issuing necessary directions in the matter.

2. Hence **Rule**. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The grievance of the petitioners is that the appeal filed by the petitioners, against the order dated 06.09.2021 passed by respondent No.3 removing the petitioner No.1 from the post of 'Sarpanch' and directing recovery of taxable amount from the petitioner No.1 and Secretary of the village panchayat, is not being decided by respondent No.2 and even interim relief is not being granted, although the petitioners have a very good case on merits.

4. Learned counsel for the petitioners submits that the impugned order has been passed by respondent No.3 without giving any sufficient opportunity of hearing to the petitioners. He further submits that respondent No.3 has wrongly held that for allotment of fishing rights in a minor water body like the one involved in this petition, resolution of Gram Sabha is necessary, ignoring the specific provisions made in the Panchayats (Extension of Scheduled Areas) Act, 1996 (for short the "PESA Act"). He points out that Section 4 (j) of the PESA Act, deals with a minor water body like the one involved in this petition and it lays down that planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level, meaning thereby that Gram Sabha of a panchayat has no control over the planning and management of any minor water body which would include auctioning of the fishing rights in such a minor water body.

5. Considering the submissions made on behalf of the petitioners, we are inclined to issue necessary directions to respondent No.2 for expeditious disposal of the appeal, in accordance with law.

6. Hence, the Writ Petition is partly allowed.

7. Respondent No.2 is directed to decide the appeal of the petitioners, filed on 29.09.2021 before him, as expeditiously as possible, preferably within three months from the date of receipt of the order.

8. Meanwhile, having considered the submissions, we direct that parties shall maintain status-quo as regards the present position of petitioner Nos.1 and 2 in Gram Panchayat, Varadh, Tq. Ralegaon, till the final decision of the appeal.

Rule made absolute in the above terms. No costs.

(ANIL L. PANSARE, J.)

(SUNIL B. SHUKRE J.)

Kirtak