

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6371 OF 2022

RAMDAS BHIKAJI THOMBRE AND OTHERS
VERSUS
DIVISIONAL COMMISSIONER AURANGABAD AND OTHERS

...

Advocate for Petitioners : Ms. Neha B. Kamble
AGP for Respondent No.1 : Mr. K. B. Jadhavar

...

CORAM : MANGESH S. PATIL, J.

DATED : 15 JULY 2022

PER COURT :

Heard.

2. The petitioners who are the original complainants at whose instance a proceeding was initiated under section 39 of the Maharashtra Village Panchayat Act, 1958 are aggrieved by the order passed by the Divisional Commissioner in the original proceeding, refusing to accept the report of the Chief Executive Officer of the Zilha Parishad and dismissing the complaint.

3. When a query was put on the last date as to the availability of a statutory appeal under sub-section 4 of section 39 of the Act, the learned advocate Ms. Kamble referring to the decision in the matter of *State of M.P. and Ors. Vs. Sanjay Nagayach and Ors., AIR 2013 SC 1921*, vehemently

submits that availability of an alternate remedy doesn't necessarily rob this court of the powers, in an appropriate case, to entertain and exercise writ jurisdiction.

4. One need not delve and discuss the ratio laid down in the matter of ***Sanjay Nagayach*** (*supra*) which, with respect has to be followed by everyone.

5. However the fact situation in the matter in hand demonstrates that the Divisional Commissioner has not refused to exercise any power vested in him, albeit, he did not find the report submitted by the Chief Executive Officer acceptable for the reasons he has mentioned in the order under challenge. He has given few other grounds and reasons as to why, according to him, the complaint needed to be dismissed.

6. In the matter of ***Sanjay Nagayach*** (*supra*), the order was passed by the Joint Registrar in violation of the second proviso to section 53(1) of the Madhya Pradesh Cooperative Societies Act, 1960. Such is not the fact situation in the present case. The Divisional Commissioner has not violated any provision, even if his observations and conclusions in clause 5 in the reasoning portion of the order under challenge may not be tenable in view of the provisions of section 39(2) of the Act.

7. There is one more aspect. The statutory appeal as provided under

section 39(3) of the Act comes with a period of limitation of 15 days from the date of order passed by the Commissioner under sub section (1) of section 39 of the Act. As can be seen, the order under challenge was passed on 26 October 2021 and the writ petition has been filed on 7 May 2022. Even the application for certified copy seems to have been filed by the petitioner on 4 February 2022 i.e. beyond the period of limitation provided for preferring the appeal. If such is the state of affairs, having lost the statutory remedy by efflux of time, if the petitioners are seeking to invoke the writ jurisdiction of this court, in my considered view, this court should not permit any such challenge belatedly.

8. Writ petition is dismissed

(MANGESH S. PATIL, J.)