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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.315 OF 2022

CHANDRASHEKHAR PRABHAKAR GAWAS ... Petitioner

Versus

VILLAGE PANCHAYAT OF NAVELIM

THR. SECRETARY AND 8 ORS. ... Respondents

Mr Gaurang D. Panandiker with Mr Shivam Fadte, Advocates *for the Petitioner.*

Mr. Richard Almeida, Advocate *for Respondent No.1.*

Mr P. Shirvoikar, Advocate *for Respondent No.8.*

**CORAM: M.S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED: 12th December, 2022

ORAL ORDER:

1. Heard Mr Gaurang Panandiker who appears along with Mr Shivam Fadte, learned Counsel for the Petitioner and Mr P. Shirvoikar, learned Counsel for Respondent No.8.

2. On 17.08.2022, we made the following order:-

“Heard Mr. Panandiker, learned counsel for the petitioner and Mr. Allan Andrade, learned counsel holding for Mr. R. Almeida, learned counsel for respondent no.1.

2. Issue notice to respondents no.2 to 9 returnable on 12.09.2022. In addition to the usual mode of service, private service/humdast is also permitted. Petitioner to file affidavit of service. The respondent no.1 to make a statement as to the time

limit within which petitioner's complaints dated 08.04.2022 and 13.04.2022 will be disposed of.

3. Notice to indicate that this petition will be disposed of finally at the stage of admission.

4. Stand over to 12.09.2022.”

3. In terms of the above order, we now proceed to dispose of this petition finally at the stage of admission. Most of the Respondents are served. However, for the order which we propose to make, we need not await service upon the unserved Respondents.

4. The Petitioner complains about inaction on the part of Village Panchayat of Navelim in initiating action against certain illegal constructions put up by Respondent Nos.2 to 9. The Petitioner also challenges resolution dated 27 April 2022 passed by the Panchayat for keeping in abeyance the Petitioner's complaints concerning the illegal constructions. Finally, the Petitioner seeks mandamus to require the Panchayat to dispose of the Petitioner's complaints dated 8 April 2022 and 13 April 2022 in a time-bound manner.

5. The impugned resolution dated 27 April 2022 has been unanimously passed by the then members of the Panchayat. This includes Respondent Nos.3 and 8 who were at that time, the Sarpanch and Panch of the Panchayat. In our opinion, the very participation of Respondent Nos.3 and 8 in the meeting and passing of the impugned resolution vitiates the impugned resolution. The complaints about the illegal constructions were made, inter alia, against Respondent Nos.3 and 8. Therefore, it is basic that Respondent Nos.3 and 8 should not have participated in the meeting to consider such complaints. Instead, the

Respondent Nos.3 and 8 not only participated in such meeting, but without assigning any reasons, resolved along with the other Panch members to keep such complaints in abeyance.

6. In our opinion, the conduct of Respondent Nos.3 and 8 is quite shocking and should have attracted disqualification in terms of Section 12(1)(d) of the Panchayat Raj Act. This provision provides that if a member of a Panchayat votes or takes part in discussion in contravention of the provisions of sub-section (4) of section 55, his seat shall be deemed to be or to have become, as the case may be, vacant.

7. Section 55(4) of the Panchayat Raj Act provides that no member of a Panchayat shall vote on, or take part in the discussion of, any question coming up for consideration at a meeting of a Panchayat, if the question is one in which, apart from its general application to the public, he has any pecuniary interest, and if the person presiding has such an interest, he shall not preside over the meeting when such question comes up for consideration.

8. Since the complaints made by the Petitioner concern constructions put up, inter alia, by Respondent Nos.3 and 8, it is obvious that the bar under Section 55(4) of the Panchayat Raj Act would be attracted. In the teeth of the bar, the Respondent Nos.3 and 8 took part and even voted upon the resolution. Respondent No.3 was the Sarpanch at the resolution time and was presiding over the meeting in which such resolution was made. All this, according to us, attracts the disqualification under Section 12(1)(d) of the Panchayat Raj Act. The authorities like the Director of Panchayats should have taken action in the matter.

9. However, it is now pointed out that after the impugned resolution was made, there was a general election to the panchayat in which Respondent Nos.3 and 8 have not been returned. Nevertheless, the complaints about illegal construction allegedly made by them continues.

10. Mr Richard Almeida, learned Counsel for the Panchayat, quite fairly did not even defend the impugned resolution. He further stated that the new body has taken cognizance of the Petitioner's complaints and based upon the same, conducted site inspection. He submits that stop-work orders have been issued to prevent the parties from undertaking further construction and show-cause notices have been issued to the parties requiring them to show-cause as to why action in accord with law should not be taken in the matter. On instructions, he states that the show-cause notices would be disposed of within 45 days from today.

11. Mr Panandiker confirms that no constructions are proceeding at the site as of now. Accordingly, we accept Mr. Almeida's statement and direct the Panchayat to dispose of the show-cause notices as expeditiously as possible and in any case within 45 days from today. The Panchayat will have to comply with principles of natural justice in this matter.

12. The impugned resolution is hereby set aside. Copy of this order along with the impugned resolution should be placed by the Panchayat before the Director of Panchayats. The Director of Panchayats to consider whether some directive should be issued to all the Panchayats so that the members/Panchas against whom allegations of illegal

construction are made, refrain from being parties to resolution recommending no action or for keeping the complaints in abeyance. The Director of Panchayats to consider apprising the Panchayats the provisions of Section 12(1)(d) and Section 55(4) of the Panchayat Raj Act. According to us, this is necessary because, the provisions have been made to ensure that the purity of Panchayat administration is maintained and there is no issue of conflict between interest and duties of the members/panchas.

13. We request Mr Shirodkar, learned Additional Government Advocate to forward a copy of this order to the Director of Panchayats.

14. By accepting the statement of Mr Almeida on behalf of the Panchayat, we now dispose of this petition. There shall be no order for costs.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.

JOSE
FRANCISCO
DSOUZA

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