

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

WRIT PETITION NO.4539 OF 2021

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Smt. Ritu Haresh Lalwani

..Petitioner

Versus

State of Maharashtra & Ors.

..Respondents

Mr. A. Y. Sakhare, Senior Advocate i/by Dhairyasheel Sutar, for the Petitioner.

Mr. S. D. Rayrikar, AGP for the Respondent Nos.1 & 2.

Mr. Ramesh D. Rane, for the Respondent Nos.3 & 4.

Mr. Manoj A. Patil, for the Respondent No.5.

Mr. Atul Damle, Senior Advocate a/w Surel Shah i/by Ruturaj Pawar, for the Respondent No.6.

CORAM : NITIN W. SAMBRE, J.

RESERVED ON : 28th JULY, 2022

PRONOUNCED ON : 19th SEPTEMBER, 2022.

PC.

1. In exercise of powers under Section 39(1) of the Maharashtra Village Panchayats Act (hereinafter shall be referred to as “the Act” for the sake of brevity), petitioner came to be disqualified from the post of Sarpanch vide order dated 29th June, 2021, which was confirmed in an appeal by the State Government passed under Section 39(3) of the said Act. As such, this petition.

2. The facts necessary for deciding the present petition are as under :-

On 29th December, 2017, petitioner was elected as

Sarpanch from the electoral roll of general voters of respondent No.5 village panchayat. Respondent No.6, who is a businessman preferred a complaint against the petitioner to the Chief Executive Officer alleging that the petitioner has failed to discharge her duty as Sarpanch and has involved herself in illegal activities viz. (a) illegally drawing handicap certificate and misuse of the same; (b) unable to remove illegal structures within the jurisdiction of village panchayat.

3. After the aforesaid complaint was received, the same was processed under Section 39 of the Maharashtra Village Panchayat Act, which reads thus :-

“39. Removal from office.- [(1) 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 *panchayat* 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 *panchayat* on the development activities are not placed before the *Gram Sabha*; and the information thereof is not displayed on the notice board as required by sub-section (1)

or (1-A) of section 8:

Provided that, no such person shall be removed from 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 *panchayat* 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 Chief Executive Officer, within a period of one month from the date of receipt thereof.]

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

[(2) The Commissioner may subject to like condition disqualify for a period of not exceeding six years, any person who has resigned his office as a member, *Sarpanch* or *Up-Sarpanch* and has been guilty of the acts and omission specified in sub-section (1).

(3) Any person aggrieved by an order of the Commissioner under sub-section (1) or (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.]”

4. As a sequel of above complaint, the respondent No.5 Gram Panchayat, so also the petitioner and respondent No.6 complainant were called for hearing by the Chief Executive Officer.

5. The complaint preferred by the respondent No.6 produced at Exh.A which speaks of failure of the petitioner to discharge her duty in the matter of functioning of the petitioner as Sarpanch of respondent No.5 village panchayat.

6. The petitioner was accordingly called upon by the Deputy Chief Executive Officer to furnish her say to the said complaint vide communication dated 5th October, 2020. Further communications were also issued by making her available all the relevant documents.

7. The Block Development Officer, Panchayat Samiti, Karveer within whose jurisdiction the respondent No.5 village panchayat falls was also called upon to furnish report which was submitted on 14th October, 2020.

8. Based on the above, the Chief Executive Officer i.e. respondent No.3 has submitted his report on 14th October, 2020.

9. It appears that another complaint was submitted by one

Mr. Dhiraj Tahilyani of similar nature against the petitioner on which also a report was called. The respondent No.3/Chief Executive Officer accordingly submitted another report dated 9th December, 2020 and pointed out that *prima-facie* there appears to be failure on the part of the petitioner in discharge of her duties as Sarpanch of the village.

10. As a sequel of above, the hearing was conducted by respondent No.2/Divisional Commissioner and after considering the rival claims directed removal of the petitioner from the post of Sarpanch of respondent No.5 village panchayat.

11. The petitioner feeling aggrieved preferred an appeal under Sub Section (3) of Section 39 of the Act before the State Government which was also dismissed vide impugned order dated 10th August, 2021. As such, this petition.

12. While assailing the order impugned, learned senior counsel, Mr. A. Y. Sakhare would urge that the complaint was moved against the petitioner out of political rivalry. According to him, Sub-Section (14) of Section 3 of the Act defines 'Panchayat' which means panchayat established or deemed to have been established under the Act. Based on provisions of Section 10, he would urge that a panchayat constituted under the Act includes such number of members as the State Government may prescribe who are to be elected in accordance with Section 11 of the Act.

According to him, Chapter-III of the Act particularly Section 45 provides for administrative powers and duties of Panchayat. He would invite attention of this Court to the provisions of Section 52 and 53 which respectively provides for control on erection of buildings and obstruction and encroachment upon public street and open sites. He would urge that powers to remove obstruction and encroachment, so also control on erection of buildings vest with the village panchayat and not with the Sarpanch. As such, according to him, the petitioner cannot be singled out by holding her responsible for failure to discharge the duties.

13. In addition, his contentions are, the complaint moved against the petitioner by the respondent No.6 is as vague as it could be. As such, he would urge that there was no specific charge framed against the petitioner calling upon her to answer the same. In such an eventuality, he would claim that great prejudice is caused to the petitioner. Mr. A. Y. Sakhare would urge that democratically elected Sarpanch cannot be removed in such a mechanical and stereotype manner. As such, he would urge that the orders impugned are also in violation of principles of natural justice. So as to substantiate his contentions, he has drawn support from the judgment of Apex Court in the matter of ***Tarlochan Dev Sharma Vs. State of Punjab and Ors.*** reported in (2001) 6 SCC 260. By relying on aforesaid judgment, he would support his aforesaid arguments so as to claim that the charge of failure to perform the duty or functions ought to have been specifically framed and

communicated, failing which the order vitiates by perversity.

14. While countering aforesaid submissions, learned senior counsel, Mr. Atul Damle appearing for respondent No.6 would support the impugned order, as according to him, the due procedure contemplated under Section 39 of the Act was duly adhered to. According to him, even if provisions of Section 52 and 53 casts a duty on Panchayat to remove encroachment and illegal construction within the Panchayat limits, the fact remains that the Sarpanch cannot shirk her responsibility of instructing the Panchayat to take appropriate steps in the matter of removal of encroachment.

15. Learned AGP, so also the other respondents would support the order impugned.

16. I have appreciated the aforesaid submissions.

17. Section 39(1) of the Act provides for removal from the office of Sarpanch who is guilty of misconduct in discharge of his duty or of any disgraceful conduct or neglect, incapacitate to perform his duty or consistently remiss in discharge of his duty.

The aforesaid section further provides for the Chief Executive Officer to hold an inquiry by issuing due notice to the Panchayat, person concerned and after hearing the concerned, submit a report to the respondent No.2 Divisional Commissioner.

18. Perusal of the complaint against the petitioner in

categorical terms narrates failure of the petitioner to take steps in the matter of removal of illegal construction/ encroachment. Rather it is claimed by the complainant that the petitioner has supported the act of carrying illegal constructions in the village. The complaint preferred by respondent No.6 produced on record at Exh.A which was received by the office of Zilla Parishad on 12th August, 2020 in categorical terms speaks of the neglect on the part of the petitioner in discharge of her duties as a Sarpanch of the respondent No.5 village panchayat. The specific instances are narrated in the said complaint. As a sequel of above, the village panchayat, so also the complainant/respondent No.6 were called by the Chief Executive Officer and after granting hearing to the concerned, including that of petitioner, a report was submitted to the respondent No.2/Divisional Commissioner. The report submitted by the Chief Executive Officer in specific terms deals with the contentions of the complainant, the information supplied by the Block Development Officer and specific observations are made therein that in City Survey No.1726 illegal construction was carried out.

19. It appears that during the course of hearing before the Chief Executive Officer, particularly, the proceedings of 29th June, 2020, it is noted that the petitioner intentionally remained absent for said hearing and not co-operated with the Chief Executive Officer. During the said hearing, the Village Development Officer has brought on record that there are 93 illegal structures and 17

Court cases are pending. Certain orders were passed by the High Court in 2007 in regard to the illegal structures.

20. As such, what can be noticed is the petitioner was specifically served with the notice of illegal structure carried out on City Survey No.1726 and it appears that the Village Panchayat has issued notice for removal of said structure pursuant to the complaint dated 31.03.2018 on 3rd April, 2018. It appears that in spite of direction by the Chief Executive Officer neither the encroachment was removed immediately in 2018 nor any action against the encroacher was taken.

21. The opportunity given to the petitioner before the Chief Executive Officer was not availed by the petitioner. The report of the Chief Executive Officer in categorical terms deals with the aforesaid fact and same is taken into account by the Divisional Commissioner while passing the order impugned.

22. In this background, the claim put forth by the petitioner that she was not specifically communicated the charge against her, cannot be accepted, as at no point of time such plea was raised by her in the present petition. Rather the documents reflect that the petitioner was specifically communicated about the illegal constructions on Survey No.1726 and inaction on the part of the petitioner in spite of there being notice issued by the Gram Panchayat in 2018 for removal of the same.

23. Though Mr. A. Y. Sakhare, learned senior counsel has invited attention of this Court to the order dated 25th June, 2020 passed in Regular Civil Suit No.341 of 2020 restraining the Village Panchayat from obstructing possession of the plaintiff over the said survey number, however, the order does not speak of their being any sanctioned structure over the said site. Rather from 2018 till passing of the injunction order, the petitioner intentionally had not taken any action against the illegal structure. In the aforesaid factual background, if we test the powers of Sarpanch as provided under Section 38 of the Act, all the executive powers for the purpose of carrying out provisions of the Act and the resolution passed by the Panchayat vest in the Sarpanch. In view of this provision, the contention raised by Mr. A. Y. Sakhare, learned senior counsel appearing for the petitioner that it is the Panchayat's duty and not that of individual Sarpanch based on the provisions of Sub-Section (14) of Section 3 and Section 10 of the Act cannot be accepted. Section 38 of the Act primarily casts duty on the petitioner to take such steps as are necessary for discharging her duties as Sarpanch for carrying out provisions of the Act. Section 52 of the Act empowers Panchayat to remove encroachment and illegal structure. As such, powers of removal of structures ought to have been exercised by the petitioner. Rather the conduct narrated hereinabove speaks of the consistent failure of the petitioner to discharge her statutory duty or has neglected to perform her duty. Rather from the facts, it appears that since 2018 to June, 2020, the

petitioner has sheltered illegal structures by not taking any statutory action. It appears that there are more than 93 illegal structures which have come up in the jurisdiction of respondent No.5 Village Panchayat as reflected from the proceedings before the Chief Executive Officer as observed hereinabove.

24. In the aforesaid background, in my opinion, it cannot be said that the petitioner was diligent in exercise of her powers and there was failure to communicate appropriate charge to the petitioner. That being so, no case for interference is made out.

25. The petition as such stands dismissed.

[NITIN W. SAMBRE, J.]