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

WRIT PETITION NO. 5335 OF 2022

Mahendra Machhindra Kawale
and Ors

...Petitioners

Versus

Group Grampanchayat Awas
and Ors

...Respondents

Mr. V. S. Kapse i/by Mr. Kunal J. Rane, for the
Petitioners.

Mr. Sandeep Mahadik i/by J. M. Joshi, for Respondent
Nos. 1 to 12.

Mr. Rohit D. Joshi, for the Respondent No. 13.

Mr. R. S. Pawar, AGP for Respondent No. 14 – State.

Adv. C. G. Gavnekar a/w Adv. Ashutosh Gavnekar for
Respondent No. 15.

**CORAM : PRASANNA B. VARALE &
SHRIKANT D. KULKARNI, JJ.**

DATE : JUNE 15, 2022

PER COURT :

1. The Petitioners who are the residents of Awas,
Alibaug Tq, District Raigad by way of present Writ
Petition prayed for direction to Respondent Nos. 14 and
15 i.e., Divisional Commissioner, Konkan Division and
Chief Executive Officer, Zilla Parishad, Alibag, Raigad
respectively to conduct an inquiry and further
direction to decide applications dated 07th September,
2020 and 04th November, 2020 filed by the Petitioners

under Section 39 of the Maharashtra Village Panchayats Act, 1958 (for short '**Act of 1958**') expeditiously & in accordance with law.

2. As certain detailed orders were passed by this Court and we may refer to these orders in the later part of this order, now we may make a brief reference to certain factual aspects giving rise to the Petition. A general election program of Grampanchayat, Awas was declared and the election was scheduled on 27th May, 2018. The Respondent Nos. 2 to 13 submitted their candidature for the election from different wards, namely, ward nos. 1 to 4. Respondent No. 2 was declared as an elected candidate for the direct post of Sarpanch, whereas other Respondent Nos. 3 to 12 were the elected members of Grampanchayat, Awas from their respective wards. The Petitioners found certain irregularities and illegalities in respect of land grabbing and passing certain resolutions without taking the members in confidence and further giving permission for the assessment of certain landed property when the property was not at all in existence.

3. It was also a complaint of the Petitioners

that the Respondents with hand in gloves passed certain resolutions so as to facilitate some private persons to grab the land of one of the protected tenants. It was also complaint of the Petitioners that though in revenue record the nature of the land was shown as Government land / land reserved for grazing, Respondent Nos. 2 to 13 with the help of some forged documents passed resolutions. It is also submitted by the Petitioners that some part of the land was a protected land and as the land was covered by CRZ provisions could not have been subjected to disposal to a private persons, but giving go by to all the provisions and by overlooking the revenue record, the Respondent Nos. 2 to 13 played mischief and record was created in a way to facilitate the private persons who are the land grabbers. It was also complaint of the Petitioners that the Respondent Nos. 2 to 13 were duty bound to conduct periodical meetings of the Gramsabha and in spite of specific provision to that effect no meeting was conducted, on the contrary, record was created to show that the meeting was conducted in the private residence of Respondent Nos. 2 to 12.

4. Petitioners being aggrieved by the acts of Respondent Nos. 2 to 13 submitted an application to the Respondent No. 15 - Chief Executive Officer seeking disqualification of Respondent Nos. 2 to 13 under Section 39 of the Act of 1958. It is submitted by the Petitioners that as per Section 39 of the Act of 1958 inquiry is required to be conducted by Respondent No. 15 within 1 month from the receipt of the application and thereafter within one month of receipt of the report of inquiry from the CEO, application for the disqualification is required to be heard. Despite of the same, no hearing given in the present matter, therefore, the Petitioners through Advocate prayed for early hearing.

5. It is also submitted by the Petitioners that the Respondent No. 13 who is working as Gram Vikas Adhikari was duty bound to conduct an inquiry and submit report to Respondent No. 15 but Respondent No. 13 hand in gloves with Respondent Nos. 2 to 12, neither conducted inquiry nor submitted report to Respondent No. 15. Petitioners were expecting an early hearing of the application and thereafter decision from Respondent

No. 15, however, as there was no progress in the application, the Petitioners left with no choice, but to approach this Court by filing present Writ Petition.

6. It may not be out of place to refer to the relevant provisions of Act of 1958, and the same 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-Sarpancha 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 months:

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 re-signed his office as a member, Sarpanch or Upa-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.]

7. Perusal of provision clearly indicates that an early decision in the matter is expected and the authorities are duty bound to take appropriate steps by completing the various steps as per the provision,

namely, conducting an inquiry, submitting report to the competent Authority for recording its opinion and ultimately the appropriate authority to pass the order on the application.

8. It may not be out of place to state here that as the ultimate action i.e., disqualification of elected members is sought for, the provision of Act specified a proper manner and method and by adopting these manners and method the elected members are unseated.

9. When the matter was listed before this Court on May 05, 2022 following order was passed:

1. Mr. Joshi, learned Counsel appears for respondent Nos. 1 to 12. The present petition depicts deplorable state of affairs. The learned Counsel for the respondent No. 15 Chief Executive Officer submits that notice is not issued by the Commissioner for him to forward the report. The learned AGP submits that four times the notices are issued by the Commissioner to the Chief Executive Officer. The proceedings filed by the petitioners are seeking disqualification against the Sarpanch and other members purportedly

under Section 39 of the Maharashtra Village Panchayat Act, 1958. The said proceedings are required to be decided expeditiously. However, for one and half year, the complaint has not proceeded further.

2. The respondent No. 15 is answerable to the same.

3. At the request of learned Counsel for the respondent No. 15, place the matter on 8th June, 2022.

10. By recording our reasons and on finding that sufficient time has been lapsed and there was a non-responsive approach of Respondent No. 15, the Petition was disposed of with direction to Respondent No. 15. Our order dated 08th June, 2022, reads thus:

1. Heard learned counsel for the petitioner.

2. Perused the order of this Court dated 5th May, 2022. The Division Bench of this Court was constrained to express its displeasure in the said order on the approach of respondent No.15 - Chief Executive Officer, Zilla Parishad, Raigad. Learned counsel representing respondent respondent No.15 - Chief Executive Officer,

Zilla Parishad, Raigad submitted before this Court that no notice was issued to respondent No.15 by the Commissioner to forward the report.

3. It may not be out of place to state here that the present petition revolves around the issue of disqualification of an elected member of Grampanchayat Awas, Taluka – Alibaug, District Raigad. Learned AGP, on earlier date i.e. on 5th May, 2022, submitted before this Court that notice was issued to respondent No.15 four times. The statement made before this Court by learned AGP finds support in view of the documents placed on record and annexed to the affidavit-in-reply filed of behalf of the State through respondent No.14-Assistant Commissioner (Inspection), Konkan Bhavan, Belapur, Navi Mumbai. In paragraph 3 of the affidavit- in-reply, a reference is made to the provisions viz. Section 39(3) of the Maharashtra Village Panchayats Act, 1959, and it is stated that as per Section 39, it is contemplated that no such person shall be removed from the office, unless the Chief Executive Officer or Deputy Chief Executive Officer, under the direction of the Commissioner, held an enquiry after giving due notice to the Panchayat and to

the person concerned and the Enquiry Officer shall submit his report within a period of one month to the Commissioner.

3. Now, in pursuance of the said provision, the Deputy Commissioner (Establishment), Konkan Division, Navi Mumbai, by communication dated 7th October, 2020, informed the CEO, Zilla Parishad, Raigad, to conduct an enquiry and submit a self-speaking report. The copy of the communication is annexed to the affidavit-in-reply at Exhibit-1. Then there is 1st reminder dated 18th November, 2020, a copy of which is also annexed at Exhibit-2 to the reply. Then, 2nd reminder was forwarded to the Office of the Chief Executive Officer and there was no response to the same. By the said communication dated 15th June, 2021, the Chief Executive Officer was requested to personally look into the matter and submit his self-speaking inquiry report along with his opinion within 15 days. But, it seems that respondent No.15 – Chief Executive Officer, Zilla Parishad, Raigad, was so busy that he paid no heed even to the 2nd reminder forwarded by the Divisional Commissioner himself and as such the Office of the Divisional Commissioner, Konkan Division, was prompted to forward

one more reminder dated 8th April, 2022. Perusal of the copy of the said reminder, which is placed on record at page 218, shows that it was informed to the Chief Executive Officer, Zilla Parishad, Raigad that even though the period of eight months has lapsed, no enquiry report is submitted and the failure to do so is treated as a very serious issue. But, even this reminder was unable to move respondent No.15 and the matter till date is as it was there i.e. back to square one.

4. We are more than surprised to see the non-responsive approach of officer like Chief Executive Officer to the official communication and reminders forwarded from the Office of the Divisional Commissioner, Konkan Division and least to say that a bold statement was made before this Court on 5th May, 2022, on behalf of respondent No.15 - Chief Executive Officer, Zilla Parishad, Raigad that no notice is issued by the Commissioner to him to forward the report. One can only say that the statement made before this Court was only contrary to the records.

5. Perusal of the material placed on record further shows that respondent No.15 - Chief Executive Officer, Zilla Parishad,

Raigad, who was informed by the Divisional Commissioner to conduct enquiry and submit self-speaking report assigned this exercise to his subordinate and one Block Development Officer – Panchayat Samiti, Alibaug, forwarded communication dated 27th/28th September, 2021, to Gram Sevak/Village Development Officer to conduct an enquiry and submit a self-speaking report. This was certainly not expected of respondent No.15 – Chief Executive Officer, Zilla Parishad, Raigad.

6. It was expected of respondent No.15 – Chief Executive Officer, Zilla Parishad, Raigad to provide necessary instructions to the counsel to make some statement in the backdrop of the order of this Court dated 5th May, 2022 but learned counsel for respondent No.15 is also not present before this Court. The approach of respondent No.15 is not only non-responsive to the office of the Divisional Commissioner but also non-responsive to this Court and it can safely be said that respondent No.15 is having no regard to the orders of this Court. We are constrained to call upon respondent No.15 to remain present before this Court to explain as to why no response was submitted to the communication

forwarded by the Office of the Divisional Commissioner in spite of three reminders. Respondent No.15 - Chief Executive Officer, Zilla Parishad, Raigad, to remain present in this Court on 15th June, 2022 and file an affidavit with an explanation.

7. We further make it clear that if this Court finds that the explanation is not satisfactory, this Court shall proceed to pass appropriate orders including imposition of cost for the approach of respondent No.15 - Chief Executive Officer, Zilla Parishad, Raigad.

8. As already more than eight month's time have been elapsed in the matter due to non-responsive approach of the respondent No.15 - Chief Executive Officer, Zilla Parishad, Raigad, we direct respondent No.14 - Divisional Commissioner, Konkan Division, Belapur, Navi Mumbai to depute an officer, not below the rank of Additional Collector, so as to conduct the enquiry and submit report in compliance with Section 39(1) of the Maharashtra Village Panchayats Act, 1959.

9. Learned AGP to communicate this order to respondent No.15 - Chief Executive Officer, Zilla Parishad, Raigad.

10. All concerned to act upon a copy of this order duly authenticated by the Registry of his Court.

11. By the said order, the Respondent No. 15 was directed to remain present before this Court on 15th June, 2022 and to file an affidavit with an explanation. It was also observed by us that if this Court finds that the explanation is not satisfactory, this Court shall proceed to pass appropriate orders including imposition of cost for the approach of Respondent No. 15 – Chief Executive Officer, Zilla Parishad, Raigad.

12. When matter was listed on 15th June, 2022, Respondent No. 15 remained present before this Court and filed affidavit-in-reply. It is submitted by Respondent No. 15, in affidavit-in-reply as under:

2. At the outset, I express my regret that the Hon'ble Court was required to pass the above referred order due to in action and delay caused on the part of Raigad Zilla Parishad and myself to act on the Communications received from Office of Divisional Commissioner i.e., Respondent

No. 14 through Deputy Divisional Commissioner. I tender my unconditional apology for the same.

8. I say that the Report from the BDO, Alibag though received on 18/01/2021 was not processed by the concerned Staff till 24/05/2022. The same was placed for my perusal and opinion on 24/05/2022. I perused the same and my observation there on along with report is submitted vide letter dated 26/05/2022 to Office of Respondent No. 14. I found that the said Department did not dispatched the said report and ultimately, the same came to be e-mailed and dispatched by messenger to the Office of Respondent No. 14 on 09/06/2022.

9. I say there was delay and in-action on the part of the staff from the Gram Panchayat Department and therefore, I have taken steps by issuing Notices to the concerned staff. I say that I intend to take Departmental action against erring staff.

12. I say that as there was delay by the concerned staff in scrutinizing the report of Block Development Officer dated 10/05/2022 till 10/06/2022, I decided to take Departmental action against the

concerned staff and has issued Notices calling upon the explanation from them.

13. Considering the affidavit-in-reply, particularly the grounds for delay in action, namely, lapse on the part of the sub-ordinate officers and natural calamity faced by Raigad District i.e., two cyclones, namely, Nisarg and Toukte and heavy unprecedented floods, land slides and due to these calamities large number of staff to be deputed on priority basis to attend the same, which affected the regular administrative functions.

14. Considering these aspects, we are not proposing any action against Respondent No. 15 except a caution to Respondent No. 15 that henceforth in future he shall be more careful in discharging his duties and to follow the provision of law in letter and spirit. He shall make every endeavour to prevent any unreasonable delay in administrative functioning and particularly in quasi judicial proceedings. Accordingly, Writ Petition is disposed of.

(SHRIKANT D. KULKARNI, J.)

(PRASANNA B. VARALE, J.)