

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

921 WRIT PETITION NO.11788 OF 2022

**PRAVIN CHANDRABHAN WAGH
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS**

...

Advocate for Petitioners : Mr. Jarare Prasad D.
AGP for Respondents State: Mr. P K. Lakhotiya
Advocate for Respondent No.2 :Mrs. Chaitali Kutti
Advocate for respondents 4 to 13: Mr. P B.Patil

CORAM : RAVINDRA V. GHUGE, &
Y. G. KHOBRAGADE, JJ.

DATE : 26th July, 2023

ORDER:

1. The learned Advocate representing the Zilla Parishad, Jalgaon submits that an affidavit in reply has been filed by Shri Dadaji Eknath Jadhav, Block Development Officer, Zilla Parishad, Jalgaon, wherein it is stated that an appropriate enquiry has been conducted and an encroachment has been noticed. Enquiry report is also annexed to the affidavit in reply.

2. The petitioner had not approached the State Government under Section 39A of the Maharashtra Village Panchayats Act. We are circumspect as to whether the enquiry conducted by the BDO, would be of any assistance in a proceeding under section 39. Under Section 39A, the petitioner had to approach the State Government and the State Government would have directed the Chief Executive Officer to

conduct an enquiry against any Member, Sarpanch or the Upsarpanch so as to submit the report to the Commissioner within one month. The proceedings as contemplated under section 39 and under section 39A of the Act are independent of each other.

3. We, however, find that the proceeding initiated by the petitioner, is wrongly placed before the Chief Executive Officer, Zilla Parishad, Jalgaon. If this issue, by way of a proceeding, has been raised under section 39 of the Act before the Commissioner, the first proviso below Section 39(1), provides that the Commissioner would direct the Chief Executive Officer or the Deputy Chief Executive Officer, to hold an enquiry and tender the report to the Commissioner. The second proviso indicates that the Commissioner thereafter shall proceed in accordance with the procedure applicable and decide the proceedings within one month.

4. In view of the above, **this petition is disposed off** as the petitioner desires to initiate the proceedings under section 39 of the Act before the competent authority. We leave it open to the Commissioner to follow the due procedure laid down under section 39 of the Act.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)