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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 7635 OF 2022

Gram Mandal (Gram Sabha),
Mendha (Lekha) through
Shri Devaji Navalu Tofa, President,
Executive Committee, Aged about
66 Years, Occ. Cultivator,
r/o Mendha (Lekha) At Post Heti,
Taluka Dhanora, District Gadchiroli.

..... PETITIONER

// VERSUS //

1. State of Maharashtra,
Through Secretary, Ministry of Revenue
and Forest, Madam Cama Road, Hutatma
Rajguru Square, Mantralaya, Mumbai – 32.
2. State of Maharashtra, Through Secretary,
Gram Vikas and Panchayat Raj Department.
3. The Divisional Commissioner,
Nagpur Division, Nagpur.
4. The Collector, Gadchiroli,
District Gadchiroli.
5. The Maharashtra Gramdan Board,
Mumbai, through its Secretary
Shri M. T. Khairkar, Rambai
Ambedkar Nagar, Nehroli,
Taluka Wada, District Palghar.

.... RESPONDENTS

Mr. Akshay Sudame, Advocate for petitioner.
Mrs. Kalyani Deshpande, AGP for respondents/State.

CORAM : AVINASH G. GHAROTE AND
URMILA JOSHI-PHALKE, JJ.
DATED : 21.09.2023

ORAL JUDGMENT : [PER: URMILA JOSHI-PHALKE, J.]

1. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

2. The present petition is for seeking direction against the respondent No.1 to issue notification declaring Gram Mandal Mendha (Lekha) a Gramdan village. Mendha (Lekha) is a village located 30 KM from Gadchiroli in Dhanora Tahsil consisting of the population of 84 families with a population of 434 (as of March 2007) which is at a distance of 3 KM from Dhanora. On 21.10.2013 all the villagers of the said village submitted their individual declarations which is required by Section 5 of the Maharashtra Gramdan Act, 1964 (hereinafter referred as to 'the said Act') to the respondent No.4 – The Collector, Gadchiroli. The respondent No.4, after complying with the conditions issued a declaration under Section 4 of the said Act, declaring village Mendha (Lekha) as Gramdan village by publishing a notification in the official Gazette. Though the Notification under Section 4 of the said Act was issued in the year 2013 no further action was taken by the respondents – State. The Divisional Commissioner, Nagpur Division Nagpur addressed a letter to the respondent No.1 requesting to issue the Notification under Section 39 of the said Act. As the respondent No.1 – State has not issued Notification under Section 39 of the said Act for last nine years, the respondent No.5 – the Maharashtra Gramdan Board, Mumbai has

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made a representation to the respondent No.1 – State, pointing out that due to delay in notifying and confirming upon the petitioner Gram Mandal powers of Panchayat under the Village Panchayat Act, the petitioner Mandal is being deprived of financial and administrative power. On 20.12.2021, the respondent No.1 conducted a meeting under the Chairmanship of the Minister of Revenue, wherein the respondent No.2 – Secretary, Gram Vikas and Panchayat Raj Department stated that subsequent to the amendment to the Constitution of India, it would not be proper to confer upon the Gram Mandal, powers exercisable by Panchayat. On 13.08.2019 the respondent No.1 – State constituted a State Level Committee of assessment of tribal areas under the Chairmanship of Shri Vivek Pandit who addressed a representation to the then Chief Minister indicating the delay and inaction on the part of the respondent No.1 in issuing the notification. On 18.10.2019 a similar representation was made to the respondent No.2 – Secretary, Gram Vikas and Panchayat Raj Department. However, no action was taken therefore, another communication was addressed on 17.06.2021 by the petitioner to the respondent No.1 – State.

3. It is submitted by the petitioner that several representations were made to the respondent Nos.1 and 2 and also to the Guardian Minister reiterating all the relevant facts and brought to the notice that

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village Mendha has been notified as Gramdan village by notification dated 28.11.2013 and requested him to look into the matter. No action was taken and inordinate delay is caused in completion of the work stipulated in Section 10 of the said Act and therefore, petitioner is constrained to approach to this Court.

4. In response to the notice, respondent No.5 – The Maharashtra Gramdan Board, Mumbai by filing affidavit supported the claim of the petitioner and submitted that respondent No.4 – The Collector, Gadchiroli, after complying with the conditions imposed by Section 6, issued a declaration under Section 4, thereby declaring village Mendha (Lekha) as Gramdan village by publishing a notification in the official Gazette on 21.10.2013. As a necessary corollary, a notification ought to have been issued in terms of Section 39 of the Act by the respondent No.1 – State, however till date no such notification has been issued by the State Government. It is further submitted that in consonance with the general duties conferred upon the Board in view of the provisions of the Act and in particular the duty to expedite legal and other formalities in connection with the Gramdan village, the Board made representations to the Minister for Revenue, the District Collector, Gadchiroli as well as the Secretary, Minister of Revenue and Forest and brought to the notice of the Authorities that since 2013, no action in

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respect of Notification under 39 of the Act has been taken in respect of the petitioner Mandal. The Board thus time and again requested the State and its Authorities to expedite the procedure for notifying the Mandal as a Panchayat under Section 39 of the said Act. However, none of the representations either replied or any action is taken. In absence of Notification under Section 39 of the said Act, the entire exercise of notifying and declaring a village as Gramdan village under Section 4 of the said Act, is rendered redundant.

5. Whereas, respondent Nos.1 and 4 by affidavit submitted that Gram Mandal Mendha is a Gramdan village duly declared under the provisions of Section 4 of the said Act. The State of Maharashtra with an intention to provide for the establishment of Gramdan villages enacted the Maharashtra Gramdan Act, 1964 and the respondent No.4 – The Collector has nominated Tahsildar, Gadchiroli to preside over the meeting of Gram Sabha wherein majority of the persons residing in village passed the resolution to join the Gramdan Community. It is further submitted that a process to publish Notification under Section 39 (1) of the said Act in the official Gazette declaring the Gram Mandal of Mendha (Lekha) shall exercise all the powers and discharge of all the duties and function of the Panchayat is underway at the Government

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level and the decision would be taken at the Government level and prays for rejection of the petition.

6. Heard learned Counsel Mr. Akshay Sudame for the petitioner. He reiterated the contentions and invited our attention towards the relevant provisions and submitted that as a statutory consequence of the declaration under Section 4 of the Act, the State Government has to issue the Notification under Section 39 of the said Act which is not issued by the State, which frustrates the object of the Act. Therefore, direction to the Government is required, hence petitioner approached to this Court for the said direction.

7. Per contra, learned AGP Mrs. Kalyani Deshpande, for the respondent /State submitted that the issue is pending at the Government level and respondent No.1 will take appropriate decision and prays for dismissal of the petition.

8. Heard both the sides and on perusal of the facts and the reply on record. It is not disputed that Gram Mandal Mendha is a Gramdan village duly declared under the provision of Section 4 of the said Act. It is not disputed that all the villagers of village Mendha submitted their individual declarations to the respondent No.4,

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thereafter respondent 4 – The Collector after complying with the conditions issued a declaration under Section 4, thereby declaring village Mendha as a Gramdan village by publishing a notification in the official Gazette. The respondent No.5 as well as the petitioner preferred various representations to the respondent No.1 for declaring the said village as Gramdan village and due to the delay the petitioner is deprived from having the power exercisable by the Panchayat.

9. Before entering into the controversy involved in the issue it is necessary to refer the relevant provisions of the said Act. The definition of 'Gramdan' is defined in Section 2(a) of the Maharashtra Gramdan Act, 1964 which is as under:

“Gramdan” means a voluntary donation of land in a village for the purposes of this Act, and in accordance with the provisions thereof.

10. Section 4 of the said Act deals with declaration of village as Gramdan village, which is reproduced for the purpose of reference.

*“4. (1) Where, in a village—
(a) the extent of lands in respect of which the declarations filed under section 5 have been confirmed, is not less than sixty per cent of the total extent of lands owned by persons residing in that village;*

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(b) the number of persons whose declarations have been so confirmed is not less than seventy-five per cent of the total number of persons owning land and residing in the village;

(c) the number of persons in respect of whom declarations made under sub-sections (1) and (3) of section 5 have been confirmed is not less than seventy-five per cent of the persons (excluding minors) residing in that village; and

(d) not less than fifty-one per cent of persons attending the meeting held under section 6 have expressed their willingness to constitute the village a Gramdan village by joining the Gramdan community,

the Collector may, after making such inquiry and in such manner as may be prescribed, by notification in the Official Gazette, declare that village to be a Gramdan village with effect from the date specified in such notification.

(2) A copy of every notification under sub-section (1) shall be displayed in a prominent place in the village, and another copy affixed on a conspicuous part in the office of the Collector within whose jurisdiction the village is situated, and the substance of every such notification shall also be published in the prescribed manner.

(3) Where the conditions mentioned in sub-section (1) are not satisfied within a period not exceeding six months commencing on the prescribed date, the

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Collector may by order declare in the manner prescribed that the village is not qualified to be a Gramdan village, and thereupon every declaration under section 5 shall, notwithstanding that it had been confirmed, cease to have effect.”

11. The Section 9 of the said Act deals with constitution of Gram Mandal. Section 9 is also reproduced here for the reference.

“9. Gram Mandal.

(1) On the declaration of a village to be Gramdan village under section 4 all persons whose names are included in the register referred to in section 10 shall be deemed to constitute a Gram Mandal for the Gramdan village from the date specified in the declaration aforesaid; and the Gram Mandal shall have all such powers and discharge all such functions as are vested in, do conferred on, it by or under this Act, or otherwise.

(2) Every Gram Mandal so established shall be a body corporate by the name of “Gram Mandal of ” having perpetual succession and a common seal, with power to enter into contracts; and subject to the provisions of this Act, to acquire, hold, administer or dispose of property, both movable and immovable, whether within or without the limits of the Gramdan village over which it has authority, and may in its corporate name sue and be sued.”

12. The present petition is filed to seek declaration under Section 39 of the said Act. Section 39 deals with Gram Mandal to be empowered to function as Panchayat which is reproduced here for the reference.

“39. Gram Mandal to be empowered to function as panchayat.

(1) The State Government shall, on the establishment of a Gram Mandal [for a Gramdan village in which, whether or not a panchayat is functioning] by notification in the Official Gazette, declare that the Gram Mandal shall exercise all the powers and discharge all the duties and functions of the panchayat in relation to the Gramdan village.

(2) Upon the issue of a notification under sub-section (1)—

(a) [the panchayat, if any] which functioned immediately before the date of the notification shall, in relation to the Gramdan village, cease to function therein:

(b) all the powers, duties and functions attaching to the panchayat under the Panchayats Act, or under any law for the time being in force in the State, shall, in relation to the Gramdan village, attach to the Gram Mandal, and accordingly, the Gram Mandal shall exercise the powers and discharge the duties and functions aforesaid; and the officers and servants of the panchayat [if any], shall, subject to the provisions of the Panchayats Act, become the officers and servants of, or as the case may be, work under the Gram Mandal;

(c) the person elected by the panchayat [if any], for the purpose of constituting a Nyaya Panchayat under section 64 of the Panchayats Act shall be deemed to be the person elected by the Gram Mandal out of its members for the constitution of that Nyaya Panchayat until the Gram Mandal elects any other person as provided by section 64 of that Act;

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(d) the provisions of the Panchayats Act shall, subject to such restrictions and modifications as the State Government may specify in the notification, apply to the Gram Mandal as if it were panchayat constituted under that Act for the Gramdan village;

(e) the Gram Mandal shall be entitled to all the assets and be subject to all the liabilities of the panchayat (including all rights and liabilities under any contract made by it) as on the date of the notification;

(f) where immediately before the date of the notification aforesaid, a panchayat was a party to any legal proceeding in any Court or tribunal in the State, the Gram Mandal shall stand substituted for that panchayat as a party to that proceedings or added as a party thereto, as the case may be, and the proceedings continued accordingly.

(3) Any notification issued under sub-section (1) may contain such supplemental, incidental and consequential provisions as the State Government may deem necessary, and in particular, may direct—

(i) that any tax, fee or other sum due to the panchayat shall be payable to the Gram Mandal;

(ii) that appeals, petitions or other applications with reference to any such tax, fee or sum which are pending on the date of such notification shall be disposed of by the Gram Mandal.”

13. Section 39 of the said Act states that the State Government on the establishment of a Gram Mandal by notification in the Official Gazette, declared that Gram Mandal shall exercise all the powers and discharge all the duties and

functions of the panchayat in relation to the Gramdan village. Despite the Gram Mandal Mendha having been declared the Gramdan village under the provisions of Section 4 of the said Act, no declaration was issued under Section 39 of the said Act and the petitioner is deprived from receiving the powers, in view of Section 39 of the said Act. The inaction on the part of the respondent Nos.1 to 4 frustrates the object of the Act as the Act is enacted in pursuance of the Gramdan movement initiated by Acharya Vinoba Bhave. As the village was declared as a Gramdan village, after following the due procedure, the respondent No.1 was under obligation to issue the Notification under Section 39 of the said Act. It is well known that Acharya Vinoba Bhave was an Advocate of non-violence and human rights and was spiritual successor of Mahatma Gandhi. He spent his entire life to persuade the landowners to give up their lands to the landless (Bhoodan) and to consent to the community ownership over land (Gramdan). Said movement succeeded in collecting about 1.9 million acres of land which shows that movement received active response from the citizens. To give the legal effect to the said movement the Maharashtra Gramdan Act was introduced and passed. In view of the provisions of the said Act, after necessary compliance by the villagers respondent No.4 issued a notification and declared it as a

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Gramdan village. Thereafter, it was a duty of the State to issue Notification under Section 39 of the said Act, which was not issued.

14. In view of the legal provisions enumerated in the Act and mentioned above, as the State is under obligation to issue the said notification and there is no explanation from the State why the said notification is not issued, direction to issue the said notification is required. Accordingly, the petition deserves to allowed.

15. In view of that, petition is allowed.

16. The respondent No.1 is directed to act in compliance with the provisions of Section 39(1) of the Maharashtra Gramdan Act, and to take appropriate steps in that regard by ensuring its compliance within four weeks from the date of communication of this order.

17. Rule is made absolute in the above terms. No costs.

(URMIL A JOSHI-PHALKE, J.)

(AVINASH G. GHAROTE, J.)