

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5532 OF 2023

Gram Panchayat Karak (Karvali) ...Petitioner
Versus
Zilla Parishad, Ratnagiri & Ors ...Respondents

Mr Shriram Kulkarni, *with Sachin Chavan, for the Petitioner.*
Mr Ajit M Savagave, *for Respondent No1.*
Mrs MP Thakur, AGP, *for Respondents Nos 2 & 3.*
Mr Sanskar Marathe, *for Respondent No4.*

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 17th January 2024

PC:-

1. Two Gram Panchayats both in Taluka Rajapur in District Ratnagiri are at war over a Primary Health Centre. The Petitioner is the Gram Panchayat Karak (Karvali). The 4th Respondent is the Gram Panchayat Karavali. Originally land was gifted by someone in Gram Panchayat Karak to the Ratnagiri Zilla Parishad to set up a Primary Health Centre. Then, on a representation by the rival Gram Panchayat Karavali, the Government decided that the Primary Health Centre was more appropriately or more suitably located at

another site that was closer to the Gram Panchayat Karvali but which is said to be at some distance from the gifted land.

2. The prayers in the Petition seek that the original Government Resolution (“GR”) of 20th August 2017 to establish the Primary Health Centre near the Petitioner village at Karak be implemented and that the subsequent GR locating the Primary Health Centre near the 4th Respondent Gram Panchayat Karavali and which is the GR of 24th June 2022 be quashed and set aside.

3. As we said, it is not for a Writ Court to decide where a Primary health centre is most appropriately located. But we do not see how the Zilla Parishad can hold on to the land gifted by the Petitioner or one of its villagers while setting up the same facility for which that gift was made at some other location. At a minimum, the Zilla Parishad must return the land.

4. **Rule**, returnable forthwith. The Gram Panchayat, Karak has a population of about 1500. There is no Primary Health Centre in its immediate vicinity. The nearest one is about 10Km away. Critical medical care is even further away at a distance of about 100Km. Considering these facts, according to the Petitioners, the State Government issued a GR on 5th January 2001 regarding the shifting of various Primary Health Centres. The Primary Health Centre at Raipatan, Taluka Rajapur was to be shifted closer to the Petitioner Gram Panchayat. On 22nd January 2001, the Zilla Parishad Ratnagiri told the Petitioner that the Government had approved of the location of this Primary Health Centre. The Zilla Parishad called

upon both Gram Panchayats to provide sufficient land for constructing the Primary Health Centre. These Gram Panchayats were to do so by executing a deed of gift supported by an appropriate resolution. The Gram Panchayats were also asked to provide a suitable building with water supply. On 23rd April 2001, the Zilla Parishad informed the district health officer that the Petitioner was ready to transfer land in favour of the Zilla Parishad under an appropriate gift deed.

5. On 25th June 2001, the public health officer informed the Petitioner that three acres of land were required with appropriate water connections. On 30th December 2001, one of the villagers, Arjun Narayan Diwalkar, executed a gift deed in favour of the Zilla Parishad, Ratnagiri of to three acres of land. Mutation Entry No 1187 (Exhibit-E, page 42) reflects this.

6. It seems that the rival Gram Panchayat, Karvali had also offered land for a Primary Health Centre and had also executed a gift deed in favour of the Zilla Parishad, Ratnagiri. This was the subject matter of Mutation Entries Nos 364 & 365.

7. Thus, the Zilla Parishad had was the recipient of gifts of land from both Gram Panchayats for constructing one Primary Health Centre. Various other resolutions were passed. Correspondence ensued but that is not relevant for our immediate purposes today. We note that there is an allegation in the Petition about the need for a survey, and of the land to be offered by Respondent No 4 being on a slope, of insufficient size, near a valley and, therefore, unsuitable.

However, as we noted, these are not factors that a Writ Court can be expected to decide. These are purely executive decisions.

8. On 13th April 2016, it seems that at the level of the Legislative Assembly, a Member of the Legislative Assembly, requested the Hon'ble Minister of Public Health to approve the construction of a Primary Health Centre at the Petitioners' village. On 10th August 2017, the State of Maharashtra issued a GR approving the construction of the Primary Health Centre on the land gifted on behalf of the Petitioner. It seems that other Gram Panchayats were also asked to consent to this location. They seem to have done so. On 6th April 2022, it seems that Joint Director Medical Services, Mumbai wrote to the Additional Principal Secretary suggesting that the resolution for relocating the Primary Health Centre near the Petitioner's village be cancelled and then an appropriate decision be taken. This led to the impugned decision of 24th June 2022, a copy of which is at page 116, cancelling the GR of 10th August 2017 that was originally in favour of the Petitioner. This is how the matter stands.

9. We are not being asked today to enter into any assessment of any allegations of mala fides, and rightly so. The question is whether having obtained by gift (not by acquisition) a parcel of land for a public purpose, and when a body like the Zilla Parishad, Ratnagiri cannot put it to that public purpose use, whether it can simply retain it and shift the public facility, i.e., the Primary Health Centre, to some other location. It is not possible for this Court to decide what is the appropriate location. It is always open to the Petitioner to

make whatever representation it thinks fit in that regard whether it be for a further relocation, or a second Primary Health Centre and we have no observations to make on that score. But we do not see how the Zilla Parishad, Ratnagiri can hold on to the land gifted to it on behalf of the petitioner by Arjun Narayan Diwalkar.

10. Accordingly, we dispose of this Petition by moulding the relief and directing the Zilla Parishad, Ratnagiri to take appropriate steps to cancel the deed of gift and to return the three acres of land that is the subject matter of the gift to the donor in the Petitioner's village. All necessary permissions must be obtained within time including from the Collector. Mrs Thakur state that she will instruct the Collector accordingly to process the papers. We dispense with the requirement of anybody having to make a separate application in that regard. The reason is simple. It is not open to either the Collector or to the Zilla Parishad, Ratnagiri to refuse to return the land to the Petitioner's villager. If any supporting documentation is required to process this application, an ordinary or authenticated copy of this order will suffice.

11. The land is to be returned within a period of four weeks from today.

12. List the matter for compliance on 21st February 2024.

(Kamal Khata, J)

(G. S. Patel, J)