

**(2014) 02 BOM CK 0133**

**Bombay High Court**

**Case No:** Writ Petition No. 6186 of 2013

Bharat Moru Mahadik

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

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**Date of Decision:** Feb. 14, 2014

**Acts Referred:**

- Constitution of India, 1950 - Article 226 227
- Maharashtra Gramdan Act, 1964 - Section 11 11(2) 13 2 39

**Citation:** (2014) 5 ALLMR 141 : (2014) 6 BomCR 58 : (2014) 6 MhLj 71

**Hon'ble Judges:** R.M. Savant, J

**Bench:** Single Bench

**Advocate:** C.G. Gavnekar, for the Appellant; A.I. Patel AGP for Respondent Nos. 1 to 4, for the Respondent

**Final Decision:** Partly Allowed

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### **Judgement**

R.M. Savant, J.

Rule, with the consent of the learned Counsel appearing for the parties, made returnable forthwith and heard. The Writ Jurisdiction of this Court under Articles 226 and 227 of the Constitution of India is invoked against the order dated 18th December, 2012 passed by the Respondent No. 4 and the order dated 14th April, 2013 passed by the Respondent No. 2, by which order, the Appeal filed by the Petitioner before the Respondent No. 2 has been disposed of on the ground that the same is not maintainable.

2. The controversy in the above Petition is as regards the election of the Respondent No. 5 as a president of Gramdam Mandal, village Gagode Budruk, Taluka - Panvel, District - Raigad. The Gramdam Villages are constituted under the Maharashtra Gramdan Act, 1964 (hereinafter referred to as "the said Act") pursuant to the movement initiated by Acharya Shri. Vinoba Bhave. The said Act provides for constitution of Gram Mandals and the matters connected therewith. In respect of

the Gramdan Villages, the Gram Mandals are established for administering the same and the Gram Mandal is constituted of the President, Vice President and other members, who find mention in the said Act. The said Act prescribes the pre-requisites for being elected as a President or as a Vice President. The same is provided for in Section 11 of the said Act, which inter alia provides for the Gram Mandal being presided over by the President who shall be elected by the Mandal from amongst its members. The proviso to the said provision makes an exception inasmuch as by the proviso it is provided that no person shall be elected as a President or Vice President if he has not filed a declaration of voluntary transfer of any land by way of Gramdan under Sub-section (1) of Section 5 of this act or if he is disqualified for being chosen as, or for continuing as, a member of a Panchayat under the Panchayats Act. The declaration is to be in terms of Section 5 of the said Act, which provides that any owner of land not being a minor may file a declaration in the prescribed form before the Collector that he donates, that is to say, voluntarily and without consideration agrees to transfer to the Mandal all his land in the village specified in the declaration by way of Gramdan. It further provides that the declaration shall specify the lands which he would like to hold as Gramdan Kisan, and which may be distributed to landless persons under this Act. One can find the definition of owner in clause(f) of Section 2 of the said Act. It defines the owner to mean in relation to alienated land, the occupant, tenure holder, or as the case may be, a person who has permanent and heritable rights of possession of land and in relation to alienated land, the superior holder.

3. The Respondent No. 5 as well as the Petitioner had filed their nominations to contest the post of the President of the Gram Mandal pursuant to the election which was notified some time in December, 2012. The said nominations were filed on 18th December, 2012. The nomination of the Respondent No. 5 was objected to on behalf of the Petitioner on the ground that the Respondent No. 5 is not entitled to contest the election, as he does not fulfill the qualification required as prescribed by Section 11 of the said Act. The said objection of the Petitioner was rejected by the Respondent No. 4 by his order dated 18th December, 2012, wherein, the objection was turned down on the ground that since the father of the Respondent No. 5 was tenant of the land which was of the ownership of the Trust, the conditions mentioned in Section 11 were satisfied on the Respondent No. 5 executing a declaration as contemplated u/s 5 of the said Act. It appears that the election to the post of President was held on 19th December, 2012, in which meeting, the Respondent No. 5 was declared as elected as President of the Gram Mandal of village Gagode Budruk. The Petitioner, thereafter, complained to the District Collector, Raigad as regards the manner in which the nomination of the Respondent No. 5 for the post of President was accepted when he was not qualified to contest the election. The Petitioner, ultimately, filed an Appeal purporting to be one under Sections 11(2), 44(2) of the said Act, before the Divisional Commissioner, Konkan Division. By the said Appeal, the election of the Respondent No. 5 was challenged

inter alia on the ground that there was a wrongful acceptance of the nomination of the Respondent No. 5, when he was not qualified to contest the election to the post of President. In the said Appeal, the Respondent No. 5 filed his reply and opposed the Appeal inter alia on the grounds mentioned in the said reply. The Divisional Commissioner, has, by the impugned order, rejected the said Appeal, as not tenable under the provisions of the said Act. However, whilst so rejecting the Appeal, the Divisional Commissioner has made certain observations on merits, which find a place in the last paragraph of the impugned order. The observations are to the effect that he did not find any illegality in the order passed by the Tahsildar, Pen rejecting the objection raised on behalf of the Petitioner as regards the acceptance of the nomination of the Respondent No. 5. As indicated above, it is the said order dated 12th April, 2013 impugned in the present Petition.

4. Since the Petitioner has been non suited on the ground that the remedy by way of Appeal is not provided for by the said Act, the said issue is therefore required to be addressed. Insofar as the said issue is concerned, the relevant provisions of the said Act would have to be taken into consideration. It would therefore be apposite to refer to Section 11 and Section 39 of the said Act. The same are reproduced herein under for ready reference:-

[11. (1) Every Gram Mandal shall be presided over by a President, who shall be elected by the Mandal, from amongst its members. The Mandal shall also elect one of its members to be its Vice-President:

Provided that, no person shall be elected as President or Vice-President, if he has not filed a declaration of voluntary transfer of any land by way of Gramdan under sub-section (1) of Section 5 of this Act or if he is disqualified for being chosen as, or for continuing as, a member for a Panchayat under the Panchayats Act.

(2) The Gram Mandal shall make regulations for the conduct of election of the President and the Vice-President, including provision for deposit, if any, to be made by candidates, and for their return or forfeiture, for appeal against the decision of a returning officer accepting or rejecting the nomination paper, for setting disputes arising as to validity of election of the President and the Vice-President, and finality of such decision in such cases.

(3) Save as otherwise provided in this Act, the President and the Vice-President shall hold office for a term of four years commencing on the date of their election; but shall, subject to the provisions of section 13, be eligible for re-election.

(4) The President shall exercise such powers and discharge such duties and functions as are conferred or imposed on him by this Act and as may be provided by regulations made in this behalf. In the absence of the President the powers and duties of the President shall save as may be otherwise provided by regulations made by the Mandal be exercised and performed by the Vice-President.

(5) The President shall notwithstanding the expiration of his term continue to carry on such of the administrative duties of his office as may be specified by regulations made in the behalf until his successor enters upon his office.

[39. (1) The State Government shall, on the establishment of a Gram Mandal for a Gramdan village in which 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 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 shall, subject to the provision 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 for the purpose of constituting a Nyaya Panchayat u/s 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;

(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 proceeding, of 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.

A reading of Sub-section 2 of Section 11 as above discloses that the Gram Mandal shall make regulations for the conduct of election of the President and the Vice-president, including provision for deposit, if any, to be made by candidates, and for their return or forfeiture, for appeal against the decision of a returning officer accepting or rejecting the nomination paper, for settling disputes arising as to validity of election of the President and the Vice-president, and finality of such decision in such cases. Now, coming to Section 39 clause (d) of the said provision, it postulates the application of the provisions of the Panchayats Act subject to such restrictions or modifications as the State Government may specify in the notification, apply to the Gram Mandal as if it were a panchayat constituted under that Act for the Gramdan village. The said provision, in my view, would be a pointer to the remedy that the Petitioner may be required to adopt as regards any grievance in respect of the election to the post of President or Vice-president.

5. Insofar as making of the regulations u/s 11(2) is concerned, it is an undisputed position that such regulations have not been framed as of date. Therefore, in the absence of the said regulations, the forum for settling the dispute involving the validity of the election of the President and the Vice-President and the finality of such decision in such cases is not provided for. It would therefore be necessary to go to Sub-section 2 of Section 39, by clause (d) the provisions of the Panchayats Act are incorporated in the Maharashtra Gramdan Act, 1964. Though the said clause (d) provides that the provisions of the Panchayats Act would apply subject to such restrictions and modification as the State Government may specify in the notification, no such notification has been issued either making a restricted application of the said provisions or modifying the said provisions insofar as the Gram Mandal is concerned. The fact that the provisions of the Panchayats Act are incorporated in the Maharashtra Gramdan Act, 1964 is also fortified by the fact that there is a deeming fiction which appears in the said clause (d), as in the said clause (d) it is mentioned that the provisions of the Panchayats Act would apply as if the Gram Mandal was a Panchayat. In view of the incorporation of the provisions of the Panchayats Act in the Gramdan Act, 1964 and even though the notification prescribing the restriction or modification is not issued, nevertheless the existing provisions of the Panchayats Act would apply. Hence, insofar as the challenge to the election to the post of President of the Gram Mandal is concerned, the said challenge would have to be as per the provisions of the Panchayats Act, 1958 and the Petitioner would therefore have to invoke the remedy which is provided under the said Panchayats Act 1955. Hence, no exception could be taken to the order of the Divisional Commissioner rejecting the Appeal filed by the Petitioner on the ground that the same is not maintainable under the provisions of the said Act. However, the Divisional Commissioner, having found that the said Appeal was not

tenable, ought not to have made observations on merits of the case of the Petitioner. Hence, insofar as the said aspect is concerned, the said order, to the extent of the observations made on merits of the matter, would have to be set aside. However, the dismissal of the Appeal on the ground that the Appeal is untenable is sustained. It would be open for the Petitioner to adopt the remedy that is available under the Panchayats Act and the provision which would be applicable to challenge an election to the post of Sarpanch would apply for challenging the election of the Respondent No. 5 to the post of President of the Gram Mandal. Needless to state that if such proceedings are filed, the same would be considered by the concerned authority on its own merits and in accordance with law. The contentions of the parties are kept open for being urged before the concerned authority. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.