

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****BENCH AT AURANGABAD****PUBLIC INTEREST LITIGATION NO. 19 OF 2015**

Kisan Mahadev Avhad

..

Petitioner

**Versus**

The State of Maharashtra and others

..

Respondents

Shri. A. G. Ambetkar, Advocate for Petitioner.

Smt. M. A. Deshpande, Addl.G.P. for Respondent Nos. 1 to 6 and 9.

Shri. S. T. Shelke, Advocate for Respondent Nos. 8, 10 and 11.

**CORAM : S.V. GANGAPURWALA AND****S. M. GAVHANE, JJ.****DATED : 29<sup>th</sup> September, 2018****PER COURT:**

. Mr. Ambetkar, the learned advocate for the petitioner submits that large scale misappropriation has been done by Gram Sevak and Sarpanch of Gram Panchayat Jambhali. According the learned counsel no proper enquiry has been conducted with regard to the misappropriation committed by them. There is a misappropriation of more than of Rs. 34,00,000/- (Rupees Thirty Four Lacks) and odd amount. However amount recoverable is shown as only Rs. 1,34,000/-. The same is erroneous. The

facts on record clearly establish misappropriation on the part of the Gram Sevak and the Sarpanch to the extent of Rs. 34,00,000/- and odd amount. The learned counsel submits that the ombudsman has not taken into consideration the misappropriation done in respect of the road. He has only considered the trees. The learned counsel submits that proper enquiry be directed to be conducted against the Gram Sevak and Sarpanch of village Jambhali and the amount be recovered from them.

2. Mr. Shelke, the leaned advocate for Respondent Nos. 7, 8, 10 and 11 submits that the Public Interest Litigation is filed with malafide intention. The petitioner himself is prosecuted from criminal offence under section 307 of the Indian Penal Code. The learned counsel submits that there is no misappropriation. The enquiry establishes the said fact. The amount is deducted after considering everything. The amount is paid. Mr. Shelke, the learned counsel further submits that the report of the ombudsman dated 22.11.2013 is abundantly clear.

3. The learned A.G.P. submits that the Respondent No. 7 had issued notice to the Gram Sevak and Sarpanch for recovery of the amount. The reports received from the ombudsman mention recovery of Rs. 1,32,784/-. Criminal prosecution is also lodged against them. The FIR is already filed against the Gram Sevak and Sarpanch. The charge-sheet is also filed and

the same is pending.

4. We have considered the submissions.

5. If no enquiry would been conducted, we certainly would have directed enquiry. However report of ombudsman, who has conducted enquiry shows that an amount of Rs. 1,34,000/- is recoverable from these Gram Sevak and Sarpanch. It also appears that FIR bearing Cr. No. I-392/2014 has been filed against these persons and the same is pending. We would not preempt decision in the criminal case. Any observation made here may affect the criminal prosecution. We need not go into said aspect.

6. It is further submitted that during the pendency of the present PIL, the petitioner has approached the Collector. The Collector may take decision on the representation of the petitioner as may be permissible.

7. With these observations, the Public Interest Litigation stands disposed of.

[ S. M. GAVHANE, J. ]  
ass/pil 19.15

[ S. V. GANGAPURWALA, J. ]