

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

WRIT PETITION NO. 431 OF 2015

Smt. Sabnoorbee Shaikh Saleem ... Petitioner

VERSUS

The State of Maharashtra
& others ... Respondents

.....
Mr. A.D. Shinde, Advocate holding for
Mr. A.V. Hon, Advocate for petitioner
Mr. V.G. Shelke, A.G.P. for respondent Nos. 1 to 3
Mr. Girish Rane, Advocate for respondent No. 4
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CORAM : RAVINDRA V. GHUGE, J.

DATED : 20th JANUARY, 2015

PER COURT :

1. The petitioner is aggrieved by the proceedings initiated in SR No. 24/2014 under Section 44 of the Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965.

2. Grievance of the petitioner is that a complaint was earlier lodged by Captain J.K. Shaikh against the petitioner under the same provisions seeking disqualification of the petitioner as a Councilor on the ground of having indulged in encroachment on Government land.

3. By judgment and order dated 31-08-2013, the Collector, Jalgaon has rejected the request for disqualification and has concluded that the petitioner does not incur disqualification as she has not indulged in an act of encroachment. Nevertheless, the encroachment that appeared from the records was directed to be demolished and the unauthorised shop was directed to be removed from the concerned place. The petitioner submits that the allegation of encroachment was thus decided and put to rest.

4. The petitioner submits that report dated 06-12-2013 was submitted by the Municipal Council, Amalner against the petitioner to the District Collector, Jalgaon. It was stated in the said report that the petitioner has indulged in an act of encroachment. It is submitted that the report pertains to the same encroachment as was subject matter of decision by the District Collector, Jalgaon.

5. The petitioner further submits that by a communication dated 18-01-2014, the Chief Officer, of the said Municipal Council, Amalner has informed the District Collector, Jalgaon that the report dated 06-12-2013 was based on a wrong information and the Municipal Council does not contend that the petitioner has resorted to any encroachment. The District Collector, Jalgaon

was, therefore, requested to treat the said report dated 06-12-2013 as being a nullity.

6. The petitioner submits that the present proceedings before the District Collector, Jalgaon bearing S.R. No. 24 of 2014 under Section 44 of the Act is in fact, based upon the report dated 06-12-2013 submitted by the Municipal Council, Amalner. As Such, when an earlier complaint of encroachment was sufficiently dealt with and rejected by the District Collector, the communication of the Municipal Council, Amalner dated 18-01-2014, clearly indicates that the District Collector was not required to proceed with the S.R. No. 24 of 2014.

7. The petitioner, therefore, moved an application dated 30-07-2014 praying before the District Collector, Jalgaon to close the proceedings S.R. No. 24 of 2014. By the impugned order dated 30-12-2014, the said application has been rejected and the District Collector, Jalgaon has posted the hearing in the proceedings on 21-01-2015. The petitioner submits that when the complaint filed by Captain J.K. Shaikh pertaining to the same encroachment was decided, the present proceedings amount to reopening of the same subject issue and double jeopardy.

8. Shri Rane, learned Advocate appearing on behalf of respondent No. 4 submits that though the letter dated 18-01-2014 was addressed to the District Collector, Jalgaon, the Sub Divisional Officer, Amalner had submitted a report dated 30-06-2014. It is based on the said report that the District Collector, Jalgaon has continued S.R. No. 24 of 2014.

9. Having heard the learned Advocates for the rival parties and having gone through the petition paper book with their assistance, I find that the District Collector, will have to scrutinise the report of the Sub Divisional Officer, Amalner dated 30-06-2014.

10. In order to avoid per-judging the matter and making any observations which might impact the proceedings before the District Collector, Jalgaon, I deem it proper to let the District Collector, Jalgaon scrutinise the issue of encroachment against the petitioner in the light of the report of the Sub Divisional Officer, Amalner, dated 30-6-2014. I do not wish to stall the said proceedings for the reason that if such information has come before the District Collector, through the report of the Sub Divisional Officer, which was not before the District Collector, when he decided S.R. No. 51 of 2010, the proceeding S.R. No. 24 of 2014 needs to be taken to its logical end.

11. As noted above, I am neither appreciating the contents of the report dated 30-06-2014, nor am I dealing with the merits of this petition since the competent authority to deal with the said issue is the District Collector. It cannot be ruled out that additional or new information emerging from the report of the Sub Divisional Officer, dated 30-06-2014, may reveal more than what met the eye in S.R. No. 51 of 2010. It is in this back-drop, that I am not entertaining this petition.

12. The District Collector, Jalgaon is the authority to deal with the said proceedings in accordance with the law. Copy of the report of the Sub Divisional Officer, dated 30-06-2014, if not already supplied to the petitioner, shall be so done by the District Collector, within a period of three weeks from today. After serving a copy of the said report, the District Collector, Jalgaon shall proceed to decide S.R. No. 24 of 2014 on its own merits and after giving the petitioner a reasonable opportunity of hearing. It needs to be noted that the observations made by the District Collector, Jalgaon in the impugned order dated 30-12-2014 or the observations made in this order shall not influence the District Collector, Jalgaon while deciding S.R. No. 24 of 2014 on its own merits and in accordance with law.

13. With the above observations and without causing any interference in the impugned order dated 30-06-2014, this petition is disposed off. All contentions of the respective sides are kept open.

(**RAVINDRA V. GHUGE, J.**)