

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

WRIT PETITION NO. 6831 OF 2014

(BUDHARAJ PARMANAND SAWWALAKHE..VS..GOVERNMENT OF MAH. & 5 OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : DECEMBER 16, 2015.

Heard Shri S.K.Tambde, advocate for the petitioner, Shri K.S.Motwani, advocate for the respondent No.4 and Ms M.N. Hiwase, A.G.P. for the respondent Nos. 1, 2, 3 and 6.

2. The Additional Collector allowed the application filed by the respondent No.4 and declared that the petitioner is disqualified from continuing as a member of the Village Panchayat as per Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959. The appeal filed by the petitioner is dismissed by the Additional Commissioner.

3. The subordinate authorities have concurrently recorded that the petitioner has encroached on government land by constructing the shop and running business. The findings are based on the report of Talathi and Tahsildar. It is further recorded that the petitioner has not been able to show that the land on which the shop is constructed belongs to the petitioner.

4. The learned advocate for the petitioner has submitted that the Additional Collector has not examined any witness which has deprived the petitioner the opportunity of cross-examination. However, the learned advocate for the petitioner has not been able to

point out any provision under the Maharashtra Village Panchayats Act, 1959 which casts obligation on the Additional Collector to record evidence. Moreover, the petitioner had not made any such request before the Additional Collector.

Shri S.K. Tambde, learned advocate has relied on the judgment given by this Court in the case of *Narayan Sadhu Suryawanshi Vs. State of Maharashtra & oth.*, reported in **2010(1) ALL M.R. 347** and has submitted that the alleged encroachment is since 2001 and at that time the provisions of Section 14(1)(j-3) were not on the statute book and it is held in the above referred judgment that the provisions of Section 14(1)(j-3) have no retrospective operation. The submissions made are misdirected.

5. In the case of *Narayan Sadhu* (supra) the elections were held on 06/09/2005 and Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959 is brought on the statute book on 21st December, 2006 i.e. after the elections were held and in this context it is held that these provisions cannot affect the elections which were held before the provisions were brought on the statute book. In the present case, the elections are held in the year 2012 i.e. much after the provisions of Section 14(1)(j-3) have been brought on the statute book.

6. Lastly, it is submitted on behalf of the petitioners that the learned Additional Commissioner has not recorded proper reasons and therefore, the matter be remitted for fresh decision. This submission also cannot be accepted. The learned Additional Commissioner has exhaustively dealt with all the contentions of the respective parties and the material on the record in paragraph 3 of the impugned order.

7. I see no reason to interfere with the concurrent findings recorded by the subordinate authorities.

The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

RRaut..