

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

Writ Petition No. 4878 of 2015

Prashant s/o Dattatraya Pawar. .. **Petitioner.**

Versus

Hon'ble Minister for Urban
Development Department,
Maharashtra State, Mantralaya,
Mumbai And Others. .. **Respondents.**

Shri. Mahesh S. Deshmukh, Advocate, for petitioner.

Shri. S.R. Yadav, Assistant Government Pleader, for
respondent Nos.1 to 3.

Shri. N.B. Khandare, Advocate, for respondent No.4.

Shri. S.B. Talekar, Advocate, for respondent No.5.

CORAM: T.V. NALAWADE, J.

DATE : 24 OCTOBER 2016

ORDER:

1) The proceeding is filed to challenge the decision of the Hon'ble Minister for Urban Development Department of Maharashtra State by which the order made by the learned Collector to declare that the petitioner was disqualified and his post has fallen vacant

is dismissed by the Hon'ble Minister. The disqualification is on the ground of illegal and unauthorized construction made by a councillor, present petitioner.

2) The petitioner was elected as councillor of Municipal Council Bhadgaon for the years 2010-2015. The term commenced on 30-3-2010. On 6-8-2012, respondent No.5, Shri. Choudhari filed application before the Collector Jalgaon for declaration that the petitioner was disqualified to hold the post of Councillor. It was contended that present petitioner had made illegal and unauthorized construction and in view of the provision of section 44(1)(e) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as "the Act") he was disqualified to continue as a councilor. Allegations were made that in Gat No.82/1B the petitioner had made illegal and unauthorized construction. It was contended in the proceeding that by notice dated 3-7-2012 the local body, Bhadgaon Municipal Council, had already asked the present petitioner to remove the construction but the petitioner had not removed that construction.

3) The learned Collector issued show cause notice to the petitioner. The petitioner made following contentions in his defence :-

(i) The petitioner admitted that he is owner of 68 R portion of Gat No.82/1B but he denied that he had made illegal construction;

(ii) The petitioner contended that he had proposed to make construction of godown on aforesaid portion but he had not started making of the construction;

(iii) The petitioner contended that he had already made some construction but it was of thrashing place for agriculture purpose in the past and for such construction it was not necessary to obtain permission of any authority;

(iv) The petitioner contended that he had prepared development plan in respect of aforesaid land and he had filed application for approval of the said plan before the Chief Officer of this local body on 16-1-2012;

(v) The petitioner contended that he had intention to apply to the revenue authority for grant of Non Agricultural permission (N.A. permission) and for that he has prepared the development plan;

(vi) The petitioner contended that the provisions of the Town Planning Act are still applicable to the area of the local body as the local body has not yet prepared the development plan of the town;

(vii) The petitioner contended that he had paid necessary fees for processing of the matter of approval of the development plan;

(viii) The petitioner contended that the Assistant Director of Town Planning had asked the petitioner to remove the deficiencies by letter dated 9-6-2012 and he had taken such steps;

(ix) The petitioner contended that in view of the provisions of section 45 and 189(6) of the Act there is deemed permission if nothing is informed within 60 days to the applicant by the local body on application filed for

permission of construction. He contended that as nothing was informed to him within 60 days he presumed that there was permission. He contended that by letter dated 30-6-2012 the local body had rejected the application but such order was not legal;

(x) The petitioner admitted that on 3-7-2012 notice was given to him by the local body for removal of the so called illegal construction. He contended that it was not the construction newly made and so the notice was illegal;

(xi) The petitioner contended that as per the direction given by the Town Planning Authority he had prepared corrected plan and he had submitted the plan on 4-10-2012 to the Chief Officer of the local body. It is contended that though there was direction from the Town Planning Authority to see that some corrections are made, the Chief Officer did not take steps with mala fide intention and he refused to give permission of construction;

(xii) The petitioner contended that he had collected construction material on the site in anticipation of

construction permission but he had not made any construction of godown which he wanted to make;

(xiii) The petitioner contended that the Chief Officer had submitted false report;

and,

(xiv) The petitioner contended that before making construction of godown he was to leave open space as set back on all the sides as proposed by the town planning authority.

4) The learned Collector considered the aforesaid say given by the petitioner and he considered the material like reports of the Chief officer and the Town Planning Authority. On that basis the Collector made order against the present petitioner. Hon'ble Minister had granted stay to the order of the Collector. Due to these circumstances the petitioner enjoyed entire remaining term of his office. The Hon'ble Minister dismissed the appeal on 24-4-2015 when the previous term had come to and end on 30-3-2015.

5) Many submissions were made to challenge the order made by the Collector and the Hon'ble Minister which include political influence. It needs to be kept in mind that the political party of the petitioner was in power when the appeal was filed and at that time he got stay to the order made by the Collector. When the appeal was decided, his political party was not in power and the appeal was dismissed. The Court is expected to consider the material and the law applicable is required to be applied without considering the possibility suggested.

6) Learned counsel for the petitioner submitted that in view of the notings made in the disqualification proceeding a clear probability is created that the Collector did not write the judgment and his Clerk had prepared the draft and it was approved by the Collector. A copy of the noting made in file from the office of the Collector is produced and the noting dated 26-3-2013 shows that after completion of the hearing, the draft of the order was prepared and the office had given opinion that the draft was correct and there was no hurdle to sign the order. This circumstance cannot lead to inference that the Clerk

had dictated and prepared the order. As per the procedure which is followed in Revenue Department, such notings are ordinarily made and not much can be made from such notings. This Court holds that there is no force in the aforesaid contention made by the learned counsel for the petitioner.

7) While considering the merits of the matter it needs to be kept in mind that the land of the petitioner was agricultural land. Unless and until the development plan was approved by the authority like Town Planning Authority, further orders like N.A. order, construction permission were not possible. In view of this position of law, there is no force in the contention made by the petitioner that there was deemed permission in view of the provisions of Sections 45 and 189 of the Act.

8) The correspondence made by the Town Planning Authority with the local body and the other record show following things :-

- (i) That, there was discrepancy in the measurement map of the land and the proposed development plan;
- (ii) On each side of the construction proposed in the plan, set back of 9 meters was required to be kept as per the rules of development;
- (iii) As per the development plan parking space was required to be kept inside of the boundaries of the land;
- (iv) On one side there was public road which was State Road and more set back was required to be kept on that side for expansion of the road. The aforesaid points can be seen in the letter dated 19-6-2015 of the Town Planning Authority;
- (v) In the letter dated 3-7-23012 the local body informed to the petitioner that even when the plan of development was not approved and construction permission was not there, R.C.C. construction was made of the size of 30.5 meters (East - West) x 28 meters (North South) of the size of 854 square meters. This construction was made upto plinth level. This construction was more than the area of 274.5 square meters which could have been allowed on

the space. Most of the construction was made in the open space which was required to be kept on all the sides of the construction as set back space;

(vi) In view of the aforesaid nature of construction, notice was given to the petitioner to remove the illegal construction within 30 days. Thus, the construction noticed on the property of the petitioner was not of thrashing place but it was R.C.C. construction made for construction of big building;

(vii) The Town Planning Authority had accepted the corrected plan though subsequently but there is no record to show that the aforesaid illegal construction was removed.

9) When the process of getting permission of development plan was going on, disqualification proceeding was filed. The Chief Officer had already given report to the Collector on 3-8-2012 about the illegal and unauthorized construction. The Chief Officer had already suggested to take action of disqualification under the

aforesaid provisions of the Act. The Town Planning authority also gave report though after starting of the proceeding but it was on the basis of spot inspection made on 5-12-2012 and this report shows that R.C.C. construction of the aforesaid nature was made and it had come upto the plinth level.

10) The petitioner had become Councillor on 30-3-2010. The aforesaid circumstances are sufficient to prove that in breach of the provisions of the Town Planning Act and the Municipal Councils Act and the rules framed under the Act regarding development and construction, the petitioner had made construction and so it was illegal and unauthorized. This construction was made after becoming Councillor by the petitioner. He took false defence that it was already there and it was the construction of thrashing place, the platform created for agricultural purpose. Necessary description of the construction is already given and it was the R.C.C. construction. The construction which come into the set back place necessarily causes nuisance to the public and particularly when there is State Road by the side of such

plot. Thus, it was not possible to regularize this construction. In view of these circumstances there was no other alternative before the Collector than to pass the order against the petitioner.

11) Learned counsel for the petitioner placed reliance on a case reported as **(2012) 13 SCC 14 (Manohar v. State of Maharashtra)** and he submitted that the principles of natural justice were not followed in the proceeding. It is already observed that the Collector has followed the necessary procedure and the petitioner had filed the say. He was informed to show justification for the construction which was of the aforesaid nature. Thus reasonable opportunity was given by the Collector. On the other hand, there are circumstances on the record to show that the petitioner did everything to protract the decision of the disqualification proceeding and also the appeal proceeding which was pending before the Hon'ble Minister. The appeal came to be dismissed only when the term of the petitioner was over. Thus in the present matter, the petitioner got something more than the reasonable opportunity as mentioned in section 44(1)(e) of

the Act. The other case cited by the learned counsel for the petitioner reported as **2010(4) Mh.L.J. 801 (Arun vs. Returning Officer/ S.D.O.)** involved altogether different facts and in view of those facts disqualification was set aside. This Court had however observed that the disqualification, under the aforesaid provision can be only for the term of the post which the councillor was holding and the disqualification cannot be for further period. There cannot be dispute over this proposition and this Court is considering this point in other matter. So, there is no scope of interference in the order made by the Hon'ble Minister. The petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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