

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

WRIT PETITION NO. 7506 OF 2016

Nagnath s/o Ajinath Jadhav and another .. Petitioners

VS

The State of Maharashtra and others .. Respondents

Mr. Narayan B. Narwade, Advocate for petitioners

Mr. S. N. Kendre, Asstt. Govt. Pleader for respondents no. 1 to 3

CORAM : SUNIL P. DESHMUKH, J.

DATE : 8th August, 2016

ORDER :

1. Heard learned counsel for petitioners.
2. Petitioners are before this court, purportedly aggrieved by interlocutory order on stay application passed on 04-07-2016 in the appeal pursuant to section 16 of the Maharashtra Village Panchayat Act, 1958 (The Act), by the Additional Commissioner, Aurangabad in Grampanchayat Appeal bearing no. 12 of 2016.
3. Petitioners are the complainants against respondent no.4. Respondent no. 4 is elected as member, and thereafter as Sarpanch, of the gram panchayat, Sidhtek Berdi, Taluka Karjat, District Ahmednagar. Pursuant to the allegations by petitioners

that respondent no.4 has caused encroachment over government land, respondent no. 4 had been disqualified by the Additional Collector, under his order dated 18-01-2016 in view of section 14(1)(j-iii) of the Act. When respondent no. 4 had been in appeal against said order before the Additional Commissioner, along with application requesting for staying effect and operation of the Additional Collector's order, such stay order has been granted by the Additional Commissioner under order dated 04-07-2016.

4. Learned counsel for the petitioners contends that there was no relief granted while initially the matter had been considered by the appellate authority, however, subsequently status-quo order came to be passed and upon realizing that there had been caveat said order had been withdrawn and application was heard on 4-7-2016.

5. Learned counsel further submits that while the finding of fact has been recorded by Additional Collector that respondent no. 4 stands disqualified under section 14 (1) (j-iii) of the Act, the order passed by the appellate authority upon an interlocutory application tends to be a non speaking order, for, according to learned counsel it has taken into account only one aspect about balance of convenience and rest of the

considerations are not reflected and do not appear to have been considered. He submits that there was no hitch in taking up the appeal itself for final hearing.

6. Perusal of the impugned order as has been annexed to writ petition at Exhibit G, particularly paragraph no. 3 of the same, gives an indication that the cases pleaded on either side have been taken into consideration while passing the order. It appears to be a case of respondent no. 4 that the encroachment alleged by petitioners is not encroachment at all. According to respondent no.4, whatever construction has been carried out is upon the land received by her husband under rehabilitation scheme. Additional Commissioner also appears to have referred to order in writ petition no.3707 of 2016 of this court and further that the allegations relate to past event and to that it had been the contention on behalf of the petitioners that past or present encroachment is not a proper consideration and the order passed by the Additional Collector is correct and proper.

7. It is upon aforesaid, the Additional Commissioner has considered that while the matter is pending in substantive appeal, balance of convenience would favour respondent no. 4 more, rather than petitioner. The order impugned is at an interlocutory stage, passed in his discretion by the Additional

Commissioner under his appellate powers. Exercise of powers under writ jurisdiction to upset said order under the circumstances does not appear to be called for.

8. Writ petition, as such, is rejected. However, it would be expedient that appellate proceedings are expedited. Observations in this order are at an interlocutory stage which shall not influence decision on merits in appeal and will not have any binding efficacy.

SUNIL P. DESHMUKH,
JUDGE

pnd