

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

4 WRIT PETITION NO.10388 OF 2015 WITH CIVIL
APPLICATION NO. 10910 OF 2016
IN WP/10388/2015

AJIJ MASOOD BAREKHANI @ GULAM AJAJ GULAM
MASOOD
VERSUS
THE ADDITIONAL DIVISIONAL COMMISSIONER,
AURANGABAD AND OTHERS

Shri. Sudarshan J. Salunke, Advocate, for petitioner.

Shri. S.R. Yadav, Assistant Government Pleader, for
respondent Nos.1 to 5.

Shri. G.B. Kulkarni, Advocate, for respondent No.7.

Shri. S.T. Shelke, Advocate, for respondent No.11.

CORAM: T.V. NALAWADE, J.

DATE : 22 AUGUST 2016

ORDER:

1) The petition is filed to challenge the order made by the Additional Collector, Jalna in matter No.2012/Sasha/VPE/CR/76 dated 8-10-2014. The petition is also filed to challenge the order made by the appellate authority, Additional Divisional Commissioner, in appeal filed against the aforesaid decision of the Additional Collector. Both the sides are heard.

2) Application was made by respondent Nos.8 to 10 before the Collector under the provisions of Sections 14 and 16 of the Maharashtra Village Panchayats Act 1958 for disqualifying present petitioner who was member of Village Panchayat Ashti, Tahsil Partur, District Jalna. In the application it was contended against the present petitioner that he had grabbed one house bearing No.1590/1 when he was working as member of the village panchayat by making false contentions and he was in actual possession of that property and this possession can be treated as encroachment over the public property. It was contended that present petitioner had made encroachment over the land and building of Irrigation Department and he was in possession of two buildings of the Irrigation Department along with open space which was meant for Jayakwadi Project. They contended that this information was also not supplied when the nomination was filed by the petitioner to contest the election. Order was made to collect necessary material in respect of aforesaid allegation for taking action like disqualification of the present petitioner from the post of member of the village panchayat which he was holding.

3) The petitioner filed say to the application and denied the allegations made against him. He contended that he was not in possession of the aforesaid property of the Irrigation Department and that property was in possession of persons like Sopan Rathod and Rahul Mundhe. He contended that his name was entered as the person enjoying the property given under Gharkul scheme by mistake and he had requested the authority to delete his name from the record of the property.

4) Before the appellate authority the present petitioner had produced copies of correspondence made with the Village Development Officer in the year 2004. He had requested to delete his name from the record in respect of one house property allotted under the Gharkul scheme to homeless persons. He placed reliance on panchanama prepared in the year 2007 to show that in fact he was not living in that house. He placed reliance on correspondence made by the Irrigation Department with Rahul Mundhe on 18-12-2013 in which Rahul Mundhe was asked to remove the encroachment made by him on the property of the Irrigation Department. A letter given by

Rahul Mundhe dated 18-12-2013 to the Irrigation Department to the effect that he was handing over the possession to the Irrigation Department was also produced.

5) On the other hand there are circumstances against the petitioner as follows :-

(i) He admits that one Gharkul, house property, was allotted to him under the scheme when he was having his own property. It does not look probable that he had not made application and by mistake the property was allotted to him. At that time also he was member of the village panchayat.

(ii) Panchanama dated 10-12-2012 shows that it was prepared by the Irrigation Department and they found that the present petitioner was in possession of the two buildings, one godown and open space belonging to the Irrigation Department. The inquiry revealed that he was using the property for about 15 years and nobody was taking action against him as he was political leader. It also shows that notice was sent against him on 25-5-2011 and he was asked to remove the encroachment but he did not remove the encroachment and he had sent back the said notice.

6) The aforesaid circumstances show that the petitioner is admitting that one Gharkul was allotted in his

name even when he was having his own property. There is also material to show that he was enjoying the property of the Irrigation Department for about 15 years and nobody dared to take action against him as he was political leader. On the basis of these circumstances the authority held that, his conduct is covered by provision of Section 14 (1)(j-3) of the Maharashtra Village Panchayats Act, 1958 and so the authority declared him as disqualified for the remaining period. The finding of the authority is confirmed by the appellate authority and there is material of aforesaid nature against the petitioner which is considered by both the authorities. Though the encroachment made on the property of Irrigation Department is the main reason for disqualification, the other record cannot be ignored. In view of these circumstances, this Court holds that there is no possibility of interference in the decision given against the petitioner. In the result, the petition stands dismissed. Civil Application stands disposed of.

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

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