

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

WRIT PETITION NO. 10462 OF 2015

Thakubai Dnyandeo Dubal and Others ..PETITIONERS

VERSUS

State of Maharashtra and Others ..RESPONDENTS

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Mr. K.F. Shingare, Advocate for petitioners.

Mr. S.N. Kendre, A.G.P. for Respondent Nos.1 to 3.

Mr. C.V. Thombre and Mr. G.B. Kulkarni, Advocates for Respondent No.4.

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CORAM : T.V. NALAWADE, J.

DATED : 21st OCTOBER, 2016

ORDER :

1. The petition is filed to challenge the decision given by Additional Commissioner, Aurangabad in Appeal No. 14 of 2014 which was filed against the decision of Additional Collector, Jalna given in Dispute Application No. 32 of 2013 filed by respondent – Ganesh Patil.

Both sides are heard.

2. The dispute application was filed against the present petitioner who was Sarpanch of village Pimpalgaon, Tahsil Ambad, District Jalna on the ground that after becoming Sarpanch, encroachment was made on government land by the family of the present petitioner and two rooms

were constructed having size 20x20 feet. It was contended that in the said construction son of present petitioner – Bharat was running a mobile shop. Bharat was made party to the proceeding. Prayer was made to declare that petitioner was disqualified due to aforesaid conduct under provision of Section 14(j-3) of the Maharashtra Village Panchayats Act, 1958.

3. The proceeding was contested by present petitioner by filing say. She denied that the encroachment was made by her family. She contended that her son was running shop at other place and he was living separate from her. She contended that the construction shown in the dispute application was belonging to Madhukar Kisanrao Gaikwad. Affidavit was filed before the Additional Collector but it does not show that he was the owner of that place. Such record was created only after filing of dispute proceeding and it can be said that this step was afterthought.

4. Evidence was given before Additional Collector which include resolution made in the meeting of village panchayat on 07th March, 2013. This meeting was presided over by the Sarpanch – present petitioner. In the said meeting, resolution was passed that in government land, Bharat –

son of petitioner had made encroachment and other encroachments were made by other villagers. It was also mentioned in resolution that Bharat was running mobile shop in the said portion of land by making construction. This resolution was passed unanimously on 07th March, 2013. It appears that in the meeting of village panchayat on 05th August, 2013, another resolution was moved to cancel the aforesaid resolution made in the meeting dated 07th March, 2013. It was mentioned in this resolution that said encroachment was made by other person. Name of other person was not mentioned in the resolution.

5. The resolution dated 07th March, 2013 was made as complaint was made to revenue authority in respect of that encroachment and revenue authority had already taken steps and panchnama of the encroachment was made on 13th February, 2013. The panchnama shows that the construction was made by Bharat in the space belonging to government and it was made without taking permission of the village panchayat. The husband of present petitioner was the president of committee constituted for dispute resolution of the village. Even photograph of the construction was taken when panchnama was prepared. The size of encroachment construction was 20 x 20 feet. It can be said that only to create some record that it was already there, the

resolution was made in March but subsequently the present petitioner realised the mistake and then after few months, the resolution of March was also canceled.

6. It was submitted before the learned Additional Collector that the panch witnesses who signed on the aforesaid panchnama were relatives of the person who had made complaint before the revenue authority and who had filed dispute application, viz. Ganesh Patil. This contention was accepted and only on that ground the Additional Collector had held that the encroachment was not proved and dispute application was dismissed.

7. It was submitted for present petitioner that the decision given by Additional Collector was on facts and in appeal there was no scope to change it. Additional Commissioner has reversed the decision and has given finding that encroachment was made by family of Sarpanch. It was appeal proceeding and it is open to the appellate authority to consider the facts again and give finding which can be different from the finding given by authority like Additional Collector. Even when defence was taken that Bharat was living separate, no record at all in that regard was produced. On the contrary, the record like panchnama and the report in that regard

showed that Bharat was living with present petitioner – Sarpanch. These circumstances are sufficient to infer that only due to the post which the present petitioner was holding such construction was made on government land without taking permission of local body. It can be said that by creating record of resolution, an attempt was made to show that Bharat was in possession and present petitioner wanted to see that possession is protected. If it was the construction of other person, evidence in that regard could have been given before the Additional Collector and his name could have also been mentioned in the resolution made by panchayat. Thus, by making first resolution in one way regularisation was attempted. It was mentioned that this construction was not recorded in assessment record – 8A form.

8. Due to this circumstance this Court holds that Additional Commissioner has not committed any error in giving decision against the present petitioner and in holding that petitioner has incurred disqualification. It is not possible to interfere in the decision of the Additional Commissioner and so petition stands dismissed.

(T.V. NALAWADE, J.)

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