

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

914 WRIT PETITION NO. 12008 OF 2015

VENKATRAO MUKUNDRAOO NEMANIWAR AND ANOTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Godhamgaonkar A.G.
AGP for Respondents 1 to 3 : A.P. Basarkar
Advocate for Respondent 4 : V.P. Latange
Advocate for Respondent 5 : B.A. Darak
...

CORAM : T.V. NALAWADE, J.
DATED : 5th October, 2016.

ORDER :

1. The petition is filed to challenge the order made by the learned Collector, Nanded of disqualification of petitioner No. 1 under the provisions of section 44 (1) (e) of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 (hereinafter referred to as 'the Act' for short) and also against the decision given by the Hon'ble Minister in Appeal filed under section 44 (4) of the Act. Both the sides are heard.

2. Petitioner No. 1 - Venkatrao is the husband of petitioner No. 2. Under a sale deed, they have purchased different portions of land Survey No. 3 from Kinwat. 1 H. 60 R. portion was purchased in the name of petitioner No. 1 and 1 H. 40 R. portion was purchased in the name of petitioner No. 2. By

the order dated 1.9.2010, petitioner No. 2 was allowed to use her land for Non Agricultural (N.A.) purpose and there was permission to use 4000 Sq. Mtrs. of land for such purpose. There is allegation against petitioner No. 1, councillor of Municipal Council, Kinwat that by misusing his post as a councillor, he made construction on his land during his tenure and so, he has incurred the disqualification.

3. Petitioner No. 1 was elected as councillor in October 2012. It is not disputed that not only on the land of petitioner No. 2, but also on the land of petitioner No. 1 construction was made. Though on stamp paper, some portion is shown to be given to petitioner No. 2 by petitioner No. 1, it was not legal transfer as giving of such portion to petitioner No. 2 on stamp paper of Rs. 100/- is not permissible under the Transfer of Property Act. Thus, the construction is made on the portion belonging to petitioner No. 1 also which is of Mangal Karyalaya, marriage hall (function hall).

4. In the application filed by respondent No. 4 before Collector, he contended that construction was made during his tenure as councillor and as it is illegal, the petitioner No. 1 has incurred disqualification.

5. The learned counsel for petitioners placed reliance on some record like zerox copy of application given to Local Body, Municipal Council, for seeking permission to make construction in the year 2008. The learned counsel submitted that the construction was made well before the date of election of petitioner No. 1 and so, it cannot be said that he incurred disqualification by making construction during his tenure as councillor. Though such zerox copy is produced, there is no record to show that along with the application, some plan for construction was submitted as the property is situated within the limits of Municipal Council. It appears that in the year 2009, application was moved by petitioner No. 2 to the Local Body and she had informed that she would proceed with construction as nothing was informed to her in response to her application dated 15.11.2008 filed for permission to make construction. The petitioners are relying on one No Objection Certificate issued by the Local Body in November 2010 showing that the Local Body had allowed to use the hall as function hall, Mangal Karyalaya. Though there is aforesaid record, there is other record showing that in October 2012 one more application was given by petitioner No. 2 for seeking permission to make construction. Along with this application, the plan for making construction was

submitted which was in respect of front elevation, office of Mangal Karyalaya and ground floor plan for parking. There is correspondence showing that on 11.8.2014 permission was given for making construction of the ground floor for parking, construction of office etc. This application for permission to construct was given immediately after the election to the post of councillor of petitioner No. 1. There is no record at all about getting permission from the Local Body in the year 2009. It appears that some false record of completion certificate was created which is mentioned above of 2009 as affidavit is filed by one Superintendent of the Local Body, whose signature is appearing on the certificate dated 11.6.2009. In any case, there was no plan for construction, no permission was given for construction and so, there was no question of giving completion certificate for using the construction. It appears that after starting of the dispute, steps were taken by the petitioner No. 2 to see that property on which the construction was made illegally without taking N.A. permission and without taking permission of Local Body is transferred in her name. But, it is already observed that due to document created in her favour, there was no transfer and further, the circumstance that they are husband and wife, needs to be kept in mind. Steps were taken to show that the petitioner No. 2 was ready to hand over

the open space which was kept as per the approved development plan in the year 2013, after starting of the dispute. Then the record was created to show that space of petitioner No. 2 was utilized as per the N.A. order when construction is actually made on the property of petitioner No. 1 also. Such letter was issued by Local Body on 26.12.2013. In this letter, the division of the property developed for different purposes is mentioned.

6. On the basis of aforesaid record, the learned Collector had made order against the petitioner No. 1. The appeal filed by petitioner No. 1 was dismissed by the Hon'ble Minister. But in the Writ Petition No. 4784/2014, this Court (Other Hon'ble Judge) had set aside the order of Hon'ble Minister by holding that factual aspect was not discussed. The Hon'ble Minister has now decided the matter after giving hearing to both the sides and aforesaid factual aspect is mentioned.

7. There is grievance of the petitioners that in the order of disqualification, the Collector has given direction to the Local Body to see that the illegal construction is pulled down, removed. The learned counsel submitted that the procedure which is required to be followed for breach of conditions imposed in N.A. order is different than in the disqualification proceeding

and so such order could not have been made. This Court has carefully gone through the relevant provisions of Maharashtra Land Revenue Code and also the conditions which are imposed for conversion of land for N.A. purpose. The relevant circumstances are already quoted and they show that construction is made on excess portion and further, it is made on some portion which is not converted to its use for N.A. purpose. Though it is true that the procedure given under the Land Revenue Code for taking step is different, it cannot be ignored that the Collector has the power to bring it to the notice of the Local Body that there is illegal construction, open space which was required to be kept as per N.A. order and the approved plan of development was not kept and action needs to be taken by Local Body also. Local Body also can take action in that regard and such construction can be treated as illegal.

8. The record which is discussed above shows that only after becoming councillor, the petitioner No. 1 took steps to see that he can make additional construction and he can get regularized the previous construction which was illegally made. The record is sufficient to infer that he did make construction after becoming councillor and in the past also, he had made construction illegally on the land which was not converted to

N.A. purpose and he also tried to use false record before authority to show that in the past also, his wife was granted permission. All this was done due to the post the petitioner No. 1 is holding.

9. Other argument was advanced that the petitioner No. 1 is group leader in the Local Body of Congress I party and as there is the Government of B.J.P. in the State, the action against the petitioner No. 1 is politically motivated. Such proceedings are required to be decided on the basis of facts and inquiry in to such intention is not at all expected. There are concurrent findings of the two authorities against the petitioners. This Court holds that it is not possible to interfere in the decisions given by the two authorities. In the result, the petition stand dismissed.

[T.V. NALAWADE, J.]

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