

UNREPORTED**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.2546 OF 2013**

Digambar S/o Sakharam Patil
(Shinde), Age 42 years,
Occ.Agril., R/o Babulde,
Tq.Shindkheda, Dist.Dhule. ... Petitioner.

Versus

1. The State of Maharashtra,
through Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.

2. The Additional Commissioner,
Nashik Division, Nashik.

3. The Additional Collector,
Dhule.

4. The Tahsildar, Shindkheda,
Dhule.

5. The Gram Panchayat, Babulde,
Tq. Shindkheda, Dist.Dhule,
through Gram Sevek. ... Respondents.

...
Mr.A.D.Pawar, advocate for the petitioner.
Mr.A.D.Namde, A.G.P. for the State.
Mr.B.R.Kedar, advocate for Respondent No.5.
Mr.A.S.Sawant, advocate for Respondent No.6.
...

CORAM : S.V.GANGAPURWALA J.

Date : 28.08.2017.

ORAL JUDGMENT

1. Rule. Rule returnable forthwith. With the consent of the learned counsel for parties, the petition is taken up for final hearing.

2. The petitioner is disqualified as a Member of the Grampanchayat on the allegations of encroachment made on the Government land.

3. I have heard Mr.Pawar, learned counsel for the petitioner, Mr.Namde, learned A.G.P., Mr.Kedar, learned counsel for Respondent No.5 and Mr.Sawant, learned counsel for Respondent No.6.

4. The complaint was filed by the Respondent No.6 before the Collector, alleging that the petitioner has encroached on the Government land. The Collector, dismissed the complaint. Aggrieved thereby, the Respondents filed appeal before the Divisional Commissioner, The Divisional Commissioner allowed the appeal.

5. The main contention of the petitioner is that the Divisional Commissioner relied upon the report dated 28.2.2012, issued by the Collector, Dhule to Chief Executive Officer on the basis of the report of the Tahsildar, regarding encroachment. This report of the Tahsildar or the said letter was never before the Collector while adjudicating the dispute. It appears that the petitioner was never given an opportunity to put forth his stand on the report of the Tahsildar, inter-alia, the letter of the Collector on which the complete reliance has been placed by the Divisional Commissioner while passing the order.

6. Today, the petitioner is not holding the office. However, as it concerns regarding the disqualification on the ground of encroachment which may have a perpetual effect, I have entertained the Writ Petition and remit it to the Collector, Dhule, for decision afresh, so as to give opportunity to the petitioner to comment upon the report of the Tahsildar, relied upon by the Divisional Commissioner, while

deciding the matter.

7. In the result, the impugned orders passed by the Divisional Commissioner and also the Collector are quashed and set aside. The matter is remitted before the Collector/competent authority for decision afresh. The parties may appear before the authority on 18.9.2017. The authority shall after hearing the party shall decide the matter afresh.

8. Rule accordingly made absolute in above terms. No costs.

Sd/-

(S . V . GANGAPURWALA, J .)

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