

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

WRIT PETITION NO. 9190 OF 2017

MIRABAI NAVNATH MORE
VERSUS
THE ADDITIONAL COMMISSIONER NASHIK AND OTHERS.

...

Advocate for the Petitioner : Mr. A. S. More
AGP for Respondents Nos. 1 & 2 : Mr. S. N. Kendre
Advocate for Respondent Nos. 3 & 4 : Mr. S. T. Shelke
Advocate for Respondent Nos. 5 and 6 : Mr. N. B. Narwade

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WITH
WRIT PETITION NO. 9189 OF 2017

TUKARAM BAPU LASHKAR.
VERSUS
THE ADDITIONAL COMMISSIONER NASHIK AND OTHERS.

...

Advocate for the Petitioner : Mr. A. S. More
AGP for Respondents Nos. 1 & 2 : Mr. S. N. Kendre
Advocate for Respondent Nos. 3 & 4 : Mr. S. T. Shelke
Advocate for Respondent Nos. 5 and 6 : Mr. N. B. Narwade

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th September, 2017

Per Court:

(a) Writ Petition No.9190/2017:-

1 The Petitioner is aggrieved by the order dated 18.01.2016 passed by Respondent no.2 in Dispute No.75/2016, thereby concluding that the Petitioner/ lady Sarpanch deserves to be disqualified under

Section 14(1)(j-3) of the Maharashtra Village Panchyats Act. The Petitioner is also aggrieved by the order dated 12.07.2017 passed by Respondent No.1, thereby confirming the order passed by Respondent No.2.

2 I have heard the learned Advocates for the respective sides at length and with their assistance, I have gone through the petition paper book, threadbare. I have also gone through the judgments cited by them as they have referred to various paragraphs of the said judgments.

3 I am not required to advert to their entire submissions. It was put to the learned Advocate for the Petitioner, who has strenuously contended that the aspect of tin-sheds being erected on the Gairan land, has not been gone into, as to whether the Petitioner is willing to have a rehearing before Respondent No.2/ Additional Collector and till then, would remain disqualified as a Sarpanch.

4 The learned Advocate for the Petitioner, upon being instructed by the husband of the Petitioner present in the Court, submits that the Petitioner is willing to remain disqualified as a Sarpanch for the present, if the Second Respondent is directed to conduct a detailed enquiry as regards the following aspects:-

- (a) In 1996, the concerned land admeasuring 30 X 20 feet, was allotted to the husband of the Petitioner.
- (b) The tin-sheds erected on the said plots were only to

accommodate the families of the Petitioner and similarly situated persons during the rainy season and flooding of the river.

- (c) Beyond the rainy season, the Petitioner and her family do not reside in the said tin-shed.
- (d) By virtue of the resolution passed in 2008, the said plot has been allotted to the husband of the Petitioner for accommodation during the rainy season.

5 The learned Advocate for the original Complainant submits that he has no objection if the matter is remitted to Respondent No.2/ Additional Collector for conducting a detailed enquiry subject to the Petitioner remaining disqualified until she is exonerated.

6 In the light of the above and upon recording the statements made on instructions, this Writ Petition is partly allowed on the following terms:-

- (a) Both the impugned orders are set aside and Gram Panchayat Dispute Application No.75/2015 is remitted to the Second Respondent/ Additional Collector for a rehearing after directing an officer of the rank of the Tahasildar to conduct a detailed enquiry on the aspects recorded in paragraph No.4 above.

- (b) The learned Advocates for the respective sides request that they would appear before Respondent No.2 on 29.09.2017 at 3.00 pm.. The said request is accepted and formal notice need not be issued by Respondent No.2.
- (c) Respondent No.2, considering the oral and written submissions of the litigating sides, shall formulate the points including the points mentioned above in paragraph No.4.
- (d) Upon considering the contentions of the litigating sides, Respondent No.2 may direct the Tahsildar, Taluka : Karjat to conduct a detailed enquiry and submit a report with reasons as to whether, there is any encroachment.
- (e) Respondent No.2 would also direct the Tahsildar to investigate as regards the issuance of the certificate by the Talathi in his own handwriting dated 08.11.2016, which is at page No.52 of the paper book and enquire as regards the reasons and circumstances for issuing the said certificate.
- (f) The Petitioner shall place a copy of this petition paper book (92 pages) before Respondent No.2/ Additional Collector for assistance.
- (g) After The Tahasildar submits his report, copies of the same would be handed over to the litigating sides before they proceed to file their respective say on the said report.

Thereafter, Respondent No.2 would consider the pleadings of the parties and pass a reasoned order.

- (h) Respondent No.2 would decide the said proceedings as expeditiously as possible and preferably on or before 31st March, 2018.
- (i) In the event, any person is elected in place of the Petitioner, no equities would be created in his/her favour and his/her election would be subject to the result of the proceedings before Respondent No.2/Additional Collector.

(b) Writ Petition No.9189/2017:-

7 This Writ Petition No.9189/2017 is not on the Board. Mentioned.

8 In so far as this Writ Petition No.9189/2017 is concerned, since the same stands on an identical footing, the petition papers are called for by the consent of the parties.

9 The directions issued herein above in Writ Petition No.9190/2017, would also apply to the case of the Petitioner (Tukaram Bapu Lashkar) in this Writ Petition No.9189/2017.

10 As such, this Writ Petition is also disposed of with the same directions issued in Writ Petition No.9190/2017.

11 Needless to state, the Petitioner would also appear on the

same date before Respondent No.2/ Additional Collector and Respondent No.2 would be at liberty to segregate these two cases for avoiding confusion. His disqualification would also continue on the above conditions till the decision in his proceedings. The election of any person in his place as a member shall be subject to the result of the proceedings before Respondent No.2/ Additional Collector and no equities would be created in his favour.

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(RAVINDRA V. GHUGE, J.)