

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3288/2016

Chhagan Arjun Khandare

..Vs..

The Additional Commissioner, Amravati Division, Amravati and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.A. Gaikwad, Adv. for the petitioner.
Shri N.R. Patil, A.G.P. for respondent Nos.1 and 2.
Shri P. Mahalle, Adv. for the respondent No.3.

CORAM : S.C. GUPTE, J.

DATE : 18.9.2017.

1. Heard learned counsel for the parties.

2. The subject matter of challenge in the present petition is a disqualification order passed by the Additional Collector and confirmed by the Commissioner in respect of membership of Grampanchayat of the petitioner. The disqualification was on the ground that the petitioner has constructed a toilet in government land and this fact attracted a disqualification under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act. The petitioner was earlier disqualified on the same ground when he was a member of the earlier Grampanchayat. The finding in the order of the Additional Collector that the toilet was constructed by the petitioner in government land was challenged by the petitioner before the Commissioner, who rejected the appeal. The petitioner did not take the matter any

further. It is not in dispute that the toilet till exists on the government land. It is, however, claimed by the petitioner that there is a report of Talathi and Circle Officer that there is no encroachment on the part of the petitioner. It is brought out on record that the combined report given by the Talathi and the Circle Officer does not hold that the petitioner had encroached on government land by constructing a toilet. The report accepts existence of a toilet on government land. The report however, notices that since the toilet was locked, the Talathi and the Circle Officer could not ascertain the ownership as well as use of the toilet by anyone. The Commissioner, in his impugned order, has noted that the earlier litigation involving the petitioner had conclusively established that he had built a toilet on government land. These orders were never challenged before this Court and had attained finality. Even as of now the Talathi and the Circle Officer found the encroachment of toilet on government land but since it was locked they could not figure out the ownership and use of the toilet by any particular individual. The Additional Commissioner, accordingly, held that the encroachment on the part of the petitioner, which was found in an earlier enquiry, still persists and, in the premises, rejected the petitioner's appeal. The earlier finding was on the basis of a certificate given by Village Development Officer, Dusarbid and Sarpanch, Grampanchayat, Dusarbid that the petitioner had constructed a toilet on the encroached government land. There is nothing on record to counter

this certificate. In the premises, there is no infirmity in the impugned orders of the authorities below in so far as the disqualification of the petitioner is concerned. There is no merit in the petition. The petition is accordingly **dismissed**. It is, however, made clear that the Grampanchayat has now taken over the possession of the toilet and accordingly as of date it is an accepted position that there is no encroachment on the part of the petitioner as of today on government land by means of toilet construed in it and that the existence of the toilet as of date shall not come in the way of any future elections of the petitioner to the post of member of Grampanchayat.

JUDGE

Tambaskar.