

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

WRIT PETITION NO.4274/2017

Babarao Pisaram Khadse and others

..Vs..

The Divisional 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 R.D. Wakode, Advocate for the petitioners.
Shri S. J. Kadu, A.G.P. for respondent Nos.1 and 2.

CORAM : S.C. GUPTE, J.

DATE : 5.9.2017.

Heard the learned counsel for the petitioners and the learned A.G.P. for respondent Nos.1 and 2. Respondent No.4, who is the original complainant at whose instance the impugned order was passed, is absent despite service. The notice issued by the Court was for final disposal and after receipt of this notice, service was waived by respondent No.4 entering appearance through counsel.

The challenge in the present petition is to an order passed by the Divisional Commissioner, Amravati on 16th June, 2017. By the impugned order, the Divisional Commissioner allowed the appeal filed by respondent No.4 herein challenging the order of Additional Collector, Yavatmal rejecting the application filed by respondent No.4 for disqualification of the petitioners herein from the post of members of Grampanchayat, Rajur on account of encroachment on government land, purportedly incurred under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act.

It is not in dispute that petitioner No.2 herein, who is a close relative of petitioner No.1 (being his wife) and petitioner Nos.3 and 4 (being respectively their mother and mother-in-law) had originally encroached on the grampanchayat land. The encroachment was, however, removed in the presence of Tahsildar Zari Jamni and Police Station, Mukutban on 9th April, 2015. The elections to the grampanchayat were held thereafter, i.e. in July, 2015. On the application of respondent No.4 for disqualification of the petitioners under Section 14(1)(j-3) of the Act, the Additional Collector, Yavatmal, during the course of hearing of the application, called for a report of Circle Officer, Mukutban. The Circle Officer in his report dated 24th May, 2016 observed that the subject encroachment was removed prior to the elections to the grampanchayat. Even respondent No.4, in his application, had accepted the fact that the encroachment was removed on 9th March, 2015 but his case was that the possession of the subject land was not handed over by petitioner No.2 to the grampanchayat. The Additional Collector, in his order, came to a specific conclusion that there was nothing to show that the subject land, the encroachment on which was removed by the grampanchayat, was still in possession of petitioner No.2 and in the premises, rejected the application of respondent No.4 for disqualification of the petitioners under Section 14(1)(j-3) of the Act. It appears that, in his impugned order, the Divisional Commissioner has relied on a letter issued

by Circle Officer, Mukutban after the order passed by the Additional Collector which was in appeal before the Divisional Commissioner. By this letter, the Circle Officer claimed that petitioner No.1 had put material like bricks, woods and iron bars on the disputed land and erected a compound around it. Based on this letter, the Divisional Commissioner came to the conclusion that encroachment by petitioner No.1 herein on government land was proved. If, as a result of availability of some further material bearing on the subject matter, the original order passed by the Additional Collector, Yavatmal was required to be reconsidered, the Divisional Commissioner should have remanded the matter to the Additional Collector for fresh consideration in accordance with law and after taking into account the newly available material. He could not have, simply on the basis of a communication issued by the Circle Officer *ex post facto*, which was anyway disputed by the petitioners herein, set aside the order of the Additional Collector and disqualified the petitioners from the post of members of the grampanchayat.

In the premises, the impugned order of the Divisional Commissioner needs to be quashed and set aside and substituted by an order of remand to the Additional Collector, Yavatmal for a fresh consideration of matter in accordance with law and after taking into account the letter dated 21st February, 2016 addressed by the Circle Officer, Mukutban.

In the premises, the following order is passed:

(a) The impugned order of the Divisional Commissioner, Amravati dated 16th June, 2017 is quashed and set aside.

(b) The application of respondent No.4 for disqualification of the petitioners herein from the posts of members of Grampanchayat, Rajur on account of encroachment on government land, i.e. for disqualification under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, is remanded to the Additional Collector, Yavatmal for a fresh hearing in accordance with law.

(c) The Additional Collector, Yavatmal shall, while deciding the application on remand, take into account the letter dated 21st February, 2017 addressed by the Circle Officer, Mukutban and reply, if any, of the petitioners herein to the contents of the letter.

(d) If necessary, the Additional Collector shall appoint a commissioner for verifying whether or not the disputed land is occupied by any of the petitioners herein.

(e) A copy of this order, duly authenticated by the Sheristedar of the Court, shall be produced by the petitioners herein before the Additional Collector, Yavatmal on 15th September, 2017. The Additional Collector shall dispose of the application within 3 months thereof after making the necessary enquiry.

No order as to costs.

JUDGE