

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 4006 OF 2018

Dharba s/o Limbaji Chaure,
Age 60 years, Occu: Business,
R/o Jawala Bazar, Tq. Aundha Naganath,
District: Hingoli.

... **PETITIONER**

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Department of Rural Development,
Mantralaya, Mumbai-32.
2. The Additional Commissioner,
Divisional Office, at Aurangabad.
3. The Collector, Hingoli,
Tq. & District Hingoli.
4. The Extension Officer,
Panchayat Samiti, Aundha
Nagnath, Tq. Aundha
Nagnath, Dist. Hingoli.
5. The Chief Executive Officer,
Zilla Parishad, Hingoli,
Tq. & District Hingoli.

(Respondent Nos.4 & 5
Deleted as per order
dated 24/4/18)

... **RESPONDENTS**

...

Mr. Ramchandra J. Nirmal, Advocate for Petitioner.

Mr. V. S. Badakh, AGP for Respondent Nos.1 to 3.

...

CORAM : **V. L. ACHLIYA, J.**

DATE : 24th April, 2018.

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith. By consent of the learned counsel appearing for the parties, the petition is heard finally at the stage of admission.

2 Leave granted to delete Respondent Nos.4 and 5.

3 By this petition, the Petitioner has challenged the order dated 17th March, 2018 passed by the Additional Divisional Commissioner, Aurangabad. By the impugned order, the learned Additional Divisional Commissioner has rejected the application seeking stay to order passed by Collector, Hingoli to declare the Petitioner as a disqualified to hold the office as a member of village Panchayat. Being aggrieved, the Petitioner has preferred this petition.

4 It is the contention of the Petitioner that the order passed by learned Collector is not sustainable in law in the light of the decision of the Apex Court in the case of **Sagar Pandurang**

Dhundare Vs. Keshav Aaba Patil, reported in, ***2018(1) Mh. L.J. 1.***

According to Petitioner the alleged construction was not made by Petitioner before or after elected as a member of village Panchayat and same is in existence since the time of his forefather. In this background, it is contended that the case of the Petitioner is squarely covered by the decision of the Apex Court in the case **Sagar Pandurang Dhundare Vs. Keshav Aaba Patil** (supra). It is contended that the Petitioner have good case to succeed in appeal. It is contended that there is every likelihood that notification may be issued to hold the election on account of Petitioner being declared disqualified and in case election is held, the very purpose of filing of appeal will be frustrated. In this background, the learned counsel submits that the impugned order be set aside.

5 On the other hand, the learned AGP has supported the order passed by Respondent No.2. The learned AGP submits that the order being an interim order, no interference is called for in exercise of writ jurisdiction. He further submits that whether the encroachment in question was made by the Petitioner after elected as a member of village Panchayat or same was in existence much prior

to that, is a matter of consideration before the Appellate Authority.

6 In my view, the petition can be conveniently disposed of at the stage of admission for the reasons that the order challenged by the Petitioner in this petition confined to interim order of rejection of application seeking stay to the order passed by the Collector, Hingoli. By the order passed by Collector, Hingoli, the Petitioner has been declared as disqualified to continue as a member of village Panchayat Jawala Bazar, Taluka Aundha Naganath, District Hingoli. Unless the appeal preferred by the appellant is allowed, there is no question of Petitioner being allowed to hold the office as a member of village Panchayat. In this view, rejection of the application by the Additional Commissioner, Aurangabad calls for no interference in exercise of writ jurisdiction. The interest of the Petitioner can be safeguarded by directing the Commissioner to expedite the hearing of appeal and decide the same in a time bound manner and pending disposal of appeal the vacancy occurred on account of Petitioner be not filled in.

7 Accordingly, the petition is dismissed. Rule discharged. However, Respondent No.2 – Additional Commissioner, Divisional Office, Aurangabad is directed to expedite the hearing of Appeal

No.22 of 2018 and decide the same as early as possible and preferably within the period of three months from the date of communication of this order. Till the decision of appeal, the vacancy occurred on account of declaration of Petitioner as disqualified to hold the office as a member of village Panchayat be no filled in.

[V. L. ACHLIYA, J.]

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