

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9845 OF 2018

DAMODHAR DEORAO NEVHAL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioners : Mr. Y.V. Kakade
h/f. Mr. V.B. Jagtap.
AGP for Respondent Nos. 1 to 5 : Mr. B.A. Shinde.
Advocate for Respondent No. 7 : Mr. S.R. Pande.

CORAM : RAVINDRA V. GHUGE, J.
DATED : 29th August, 2018.

PER COURT :

1. The petitioners are aggrieved by the interlocutory order passed by the Additional Commissioner, Aurangabad, Shri Shivanand Trimbakrao Taksale, by which, the judgment of the District Collector dated 10/07/2018, disqualifying the respondent No. 7 as a member of Gram Panchayat, has been stayed.

2. I have considered the submissions of the learned advocates for the respective sides and the learned AGP on behalf of respondent Nos. 1 to 5. Learned counsel for the petitioner seeks leave to delete respondent No. 6 who is not necessary in relation to the cause of action set out in this petition. Deletion is permitted and shall be carried out forthwith.

3. Since an interlocutory order is under challenge and the appeal preferred by respondent No. 7 against his disqualification under Section 14 (1) (J-3) on grounds of encroachment is pending, an interference in the impugned order is normally not called for. However, the petitioners point out from a complaint filed by respondent No. 7/Haridas Dagadu Nevhal that a complaint has been lodged by Haridas against the same Additional Divisional Commissioner, Shri Taksale and his wife. Certain allegations have been leveled against Mr. Taksale by respondent No. 7. Since Haridas is respondent No. 7 and an elected representative who has suffered disqualification, it is contended that the said Additional Divisional Commissioner should have kept himself away from instant proceeding.

3. Learned counsel submits on instructions from respondent No. 7 who is present in the Court that he is the appellant before the Additional Commissioner. He is the complainant in RCC no. 324/2013 filed against the Additional Commissioner and his wife. He has no objection, if the pending disqualification appeal is placed before the Divisional Commissioner for adjudication instead of Mr. Taksale, for hearing the matter.

4. I find that Mr. Taksale, should not hear this matter. Respondent No. 7 Haridas consents for moving the matter to the Divisional Commissioner. I find that it would be appropriate that Mr. Taksale keep

himself away from the pending proceedings in view of the pending proceedings against Mr. Taksale and his wife under Section 420, 406 read with Section 34 of the I.P.C.

5. Learned AGP submits that the matter can be moved to an Additional Divisional Commissioner, Aurangabad, in the above peculiar facts.

6. In view of the above, this petition is disposed of with the following directions :

(A) The petitioners and respondent No. 7 shall appear before the Divisional Commissioner, Aurangabad, on 24/09/2018 at 11:00 a.m.

(B) The Divisional Commissioner may either take up the pending appeal/CR/83/2018 filed by Haridas Dagadu Nevhal or may allot the said matter to any Additional Divisional Commissioner, obviously excluding Mr. Taksale.

(C) After the matter is so allotted, these parties would cause an appearance in the said proceedings.

(D) Notice may be issued to the Gram Sewak, Village Panchayat, Shivrai, Tq. Gangapur, Dist. Aurangabad.

(E) Thereafter, the said authority shall consider the appeal on its own merit and shall decide the said proceedings as expeditiously as possible and in any case on/or before 31/01/2019.

(F) All contentions of litigating sides are kept open.

(RAVINDRA V. GHUGE, J.)

S.P.C.