

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

935 WRIT PETITION NO. 10640 OF 2018

Akash Mohan Rathod

... Petitioner

Versus

Manisha Vinod Rathod & Ors.

... Respondents

...

Mr. Girish S. Rane, Advocate for Petitioner

Mr. S.W. Munde AGP for Respondents/State

Mr. A.N. Nagargoje, Advocate for Respondent Nos. 1 & 2

...

Coram : N.M. Jamdar, J.

Date : 30 November 2018

Oral Order :

1 By this petition, the petitioner has challenged the order passed by the Additional Commissioner, Aurangabad dated 31 July 2018. By the impugned order, the Additional Collector allowed the appeal filed by respondent Nos. 1 and 2 against the order of the Collector, Nanded disqualifying them from the post of Sarpanch and, Member of the Village Panchayat.

2 The learned Counsel for the petitioner submitted that the order passed by the Divisional Commissioner is entirely unreasoned.

At the time of issuance of notice on 25 September 2018, the following order was passed by the learned Single Judge as regards the applicability of the Apex Court in the case of Janabai Vs. Additional Commissioner and Other¹ :

*“The learned Advocate for the Petitioner submits that the Honourable Supreme Court (three Judges Bench), in **Janabai vs. Additional Commissioner and others in Civil Appeal No.6832/2018** decided on 19.09.2018, has settled the position about encroachment and the view taken by the Honourable Supreme Court in **Sagar Pandurang Dhundare vs. Keshav A. Patil and others in Civil Appeal Nos.2306-2307/2017** decided on 13.11.2017, has been overruled. It is held that such candidates, who inherit the encroached property and enjoy such property, need to be disqualified.*

In view of the above, issue notice before admission to the Respondents returnable on 26.10.2018. The learned Advocate, who appears on caveat, waives service for Respondent Nos. 1 and 2. The learned AGP waives service for Respondent Nos. 3 to 5.

¹ 1 2018 (5) MhLJ 921

Until further orders in this petition, though the impugned order of the Additional Divisional Commissioner dated 31.07.2018 shall stand stayed, the charge of Respondent No.1 shall be handed over to the Deputy Sarpanch and no election to the post of the Sarpanch and to the post of a member occupied by Respondent No.2, shall be held till the next date in this matter.”

3 It is the contention of respondent Nos. 1 and 2 that there is no factual finding as regards actual encroachment. He submitted that this finding is not rendered by the Collector.

4 Therefore, it comes to this, that both the petitioners and respondent Nos. 1 and 2 are making a grievance that there is no factual adjudication. The appropriate course of action would be then to remand the matter to the Divisional Commissioner to consider the proceedings afresh, and the ad-interim order to be continued till the disposal of the appeal.

5 The learned Counsel for the petitioner, on instructions, is agreeable to this course of action. The matter was kept back for the

learned Counsel for respondent Nos. 1 and 2. Upon taking instructions from his clients, the learned Counsel for the respondents is agreeable. He requested that there be a time bound disposal of the proceedings before the Additional Divisional Commissioner.

6 Accordingly, the Additional Divisional Commissioner dated 31 July 2018 is quashed and set aside. The appeal filed by respondent nos. 1 and 2 before the Additional Divisional Commissioner stand restored to file.

7 The Additional Divisional Commissioner will decide the proceedings within a period of six weeks from the date the writ of this Court reaches it.

8 The interim order passed in this petition on 25 September 2018 to continue till the disposal of the proceedings before the Additional Divisional Commissioner.

9 The proceedings before the Additional Divisional Commissioner will be decided on its own merits and all the contentions are kept open.

10 The Writ Petition is disposed of in above terms.

N.M. Jamdar, J.

Sameer//