

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

WRIT PETITION NO. 12572 OF 2018

Ashok s/o Sampat Pathade

... Petitioner

Versus

The State of Maharashtra
& others

... Respondents

Mr. S.S. Thombre, Advocate for the Petitioner.

Mrs. V.N. Patil-Jadhav, AGP for Respondents no. 1 to 3.

Mr. S.G. Kawade, Advocate for Respondent no. 4.

Coram : N.M. Jamdar, J.

Date : 10 December 2018

Oral Order :

1. Heard learned counsel for the parties.

2. In August 2015, the general elections of Grampanchayat Warzadi were held. Respondent no. 4 was elected as a member of the Grampanchayat. The petitioner filed an application seeking disqualification of respondent no. 4 under section 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1958. According to the

petitioner, respondent no. 4 was disqualified for encroaching upon the land belonging to the Government. Respondent no. 4 filed reply and denied that the land was a Government land. Relying upon the report dated 7 December 2015 prepared by the Circle Officer and also panchanama dated 4 December 2015, the Collector, Aurangabad, by judgment and order dated 20 June 2018, accepted the contentions of the petitioner and allowed the application and disqualified respondent no. 4 from acting as a member of the Grampanchayat. In the appeal filed by respondent no. 4 before the Additional Commissioner, the Additional Commissioner by the impugned order, has remanded the proceeding to the Collector.

3. It is the contention of petitioner that the issue as to whether the land in question is Government land is concluded by the admission of respondent no. 4 himself. Learned counsel for the petitioner submits that since respondent no. 4 has admitted the factum of the land being a Government land and the only explanation that is being given that earlier it was his father who was in occupation of the said land and consequently respondent no. 4, in view of decision of the Supreme Court in the case of *Janabai Vs. Additional Commissioner*¹, respondent no. 4 stands disqualified. This position is

¹ 2018 SCC Online SC 1560

disputed by learned counsel for respondent no. 4 submitting that respondent no. 4 has not admitted the land being the Government land.

4. Perusal of the impugned order passed by the Additional Commissioner shows that the Commissioner has referred to the panchanama dated 4 December 2015 and the report dated 7 December 2015. These documents are relied upon by the Collector to come to a conclusion that respondent no. 4 has committed encroachment on property gat number 487. This report does not specifically refer to gat no. 487 but it refers to various other gat numbers. The report also states that though there is an entry in respect of gat no. 487 showing the Government as owner, it is not explained as to how this entry has come. This is the very entry on which learned counsel for the petitioner has relied upon. Said report also mentions that in the years 1987-1988, 1993-1994 and 2000-2001, the name of respondent no. 4 appears as the owner. In view of this unclear position, the learned Commissioner was of the opinion that unless the basic fact that the land is a Government land is established, the question of disqualification will not arise. Learned counsel for the petitioner has sought to urge that there is no such doubt in respect of the character of the land as a Government land.

As far as contention regarding admission of respondent no. 4 is concerned, there does not appear to be any express admission by respondent no. 4 to the character of the land as a Government land. If in these circumstances, the appellate authority has found it fit to get the factual position established, this exercise cannot be interfered under Article 227 of the Constitution of India. Considering the fact that the question is of disqualification, the Collector will have to be directed to dispose of the proceeding at the earliest.

5. The Collector will take a decision within a period of six weeks, subject to earlier time bound commitments. Both the parties will co-operate with the Collector in disposal of the proceeding within time limit, if there are no earlier time bound commitments. Since the matter is remanded to the Collector, all contentions of the parties are kept open. Observations in this order are only in the context of the remand. The parties to appear before the concerned Collector on 18 December 2018.

6. Writ petition is disposed of in above terms.

N.M. Jamdar, J.