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

927 WRIT PETITION NO.9083 OF 2018

**RAVINDRA SHIVAJI MATE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioner : Mr. Dhage Hemant U.
Mr. AB Chate, AGP for Respondents: 1 to 3;
Adv. Ostwal Abhaykumar D. For R-5.

**CORAM : P.R. BORA, J.
DATED : 11th July, 2019.**

PER COURT:-

1. Heard finally with consent of learned counsel appearing for the respective parties.

2. Aggrieved by order dated 10th July, 2018 passed by Additional Divisional Commissioner, Nasik in Gram Panchayat Appeal No.41/2018, the petitioner has preferred the present petition.

3. The petitioner had raised a Dispute bearing Gram Panchayat Dispute No.3/2018 before Collector Ahmednagar against present Respondent No.5. Respondent No.5 was elected as a member of

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the Grampanchayat Wambhori in the general elections held in the year 2014 for the term of five years from 2014-2019. Respondent No.5 subsequently became Sarpanch of the said Grampanchayat. The petitioner had raised the aforesaid dispute before the Collector, alleging that Respondent No.5 has committed encroachment on the public property and she was disqualified to hold the post of the member and in turn Sarpanch of the Grampanchayat.

4. The Dispute so raised was decided by Collector, Ahmednagar, vide order passed on 2nd May, 2018. The learned Collector allowed the Dispute raised by the petitioner and disqualified Respondent No.5 from holding the post of the member of the Grampanchayat.

5. Respondent No.5 challenged the said decision by filing an appeal bearing Appeal No. 41.2018 before the Divisional Commissioner, Nasik. The Additional Divisional Commissioner, Nasik, after having heard the parties and after having perused the record before him, has remanded the matter to Collector, Ahmednagar to decide the

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Dispute afresh for the reasons recorded in his judgment. Aggrieved by, the petitioner has preferred the present writ petition.

6. Shri Dhage, learned counsel appearing for the petitioner, submitted that in view of the judgment of the Hon'ble Apex Court in the case of Janabai Vs. Additional Commissioner and Ors. — 2018 (5) Mh.L.J. 921, encroachment, even if it is made by any of the family members of the member of the Grampanchayat, that would be sufficient for disqualification of a member of the Grampanchayat. The learned counsel further submitted that in the present matter, as is revealing from the record, it is not in dispute that husband of the petitioner was in occupation of the concerned property, more particularly Grampanchayat Milkat No.4566. The learned counsel further submitted that in view of the aforesaid admitted position, there is no need of remanding the matter to the Collector and in view of the law laid down by the Hon'ble Apex Court in the case of Janabai (cited supra), even the encroachment made by husband of the petitioner is sufficient to disqualify the petitioner from

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holding the post of the member of the Gramapanchayat. The learned counsel, in the circumstances, prayed for setting aside the impugned order passed by the Additional Divisional Commissioner.

7. Opposing the submissions made on behalf of the petitioner, Shri Ostwal, learned counsel appearing for Respondent No.5, submitted that no such evidence had come on record even before the Collector that Respondent No.5 was sharing the said property or was in occupation of the said property. The learned counsel further submitted that as has been rightly observed by the learned Commissioner, the pencil entry was not legally proved and on the basis of the said entry, no final conclusions were liable to be drawn. The learned counsel further submitted that it has also been rightly observed by the learned Additional Divisional Commissioner in the impugned order that, in so far as the resolution, on the basis of which the final entries were made, also need to be legally considered and unless site inspection report comes on record and further enquiries are carried out as about the

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alleged ownership over the said property, it would not be possible to reach any definite conclusion as to whether or not Respondent No.5 has incurred disqualification. The learned counsel further submitted that in the circumstances, the Commissioner has rightly remanded the matter to the Collector to decide it afresh.

8. Learned Counsel further submitted that to apply the ratio laid down in the case of Janabai (cited supra), it has to be substantially proved that the encroachment is being shared by the member of the Grampanchayat or the encroached portion is in occupation of the said member. The learned counsel further submitted that in the present matter, this aspect has not been considered. In the circumstances, according to the learned counsel, the learned Additional Divisional Commissioner has rightly remanded the matter to the learned Collector to decide it afresh.

9. Learned AGP Shri Chate was also of the opinion that the dispute cannot be substantially resolved unless the facts, which are directed to be

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brought on record by the Additional Divisional Commissioner, are brought on record.

10. After having considered the submissions made by the learned counsel for the respective parties and on perusal of the order passed by the learned Additional Divisional Commissioner, it does not appear to me that any patent error has been committed by the learned Additional Divisional Commissioner in remitting the matter back to the Collector, Ahmednagar for further enquiry. As has been observed by the learned Additional Divisional Commissioner in the impugned order, further enquiry needs to be carried out as to on what basis the entries were taken in Namuna No.8 and what criterion was applied while making such entries. The learned Additional Divisional Commissioner has observed that though the learned Collector has relied upon the report of the Village Development Officer, the report submitted by the Village Development Officer is silent on the aforesaid aspect. The learned Additional Divisional Commissioner has also observed that the spot inspection is must before reaching to any concrete

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conclusion and scrutiny also needs to be done as about the alleged ownership over the property in question. It has to be stated that Respondent No.5 has throughout denied the allegation to be in occupatio0n of the property, in question. The said aspect also needs to be scrutinized in view of the judgment in the case of Janabai (cited supra).

11. After having considered the material on record, it does not appear to me that any case is made out by the petitioner to cause interference in the order impugned in the present petition. The writ petition, therefore, fails and deserves to be dismissed.

12. At this stage, learned counsel for petitioner prays for a direction to Collector, Ahmednagar to hear and decide the Dispute, as expeditiously as possible. The request is worth considering. In the result, following order is passed, -

ORDER

- i. The Writ Petition is dismissed, however, without any order as to costs;

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ii. The Collector, Ahmednagar shall re-hear and decide the Dispute between the parties, as expeditiously as possible, keeping in view the observations made in the order passed by the learned Additional Divisional Commissioner, preferably within six weeks from the date of appearance of the parties before him.

iii. The parties to appear before Collector, Ahmednagar on 23rd July, 2019 so that no separate notice may be required for their appearance before the learned Collector.

(P.R. BORA)
JUDGE

BDV