

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

WRIT PETITION NO.10314 OF 2018

Ramdas S/o Bhimrao Khawale
Age: 40 Years, Occu: Agri., & social work
R/o: Takli (Ambad), Tq. Paithan,
Dist. Aurangabad. ..Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. The Additional Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The Additional Collector,
Aurangabad, Dist. Aurangabad.
4. The Tahsildar,
Paithan, Tq. Paithan,
Dist. Aurangabad.
5. The Circle Inspector,
Circle Vihamandva, Tq. Paithan,
Dist. Aurangabad.
6. The Talathi Sajja
Takli Ambad, Tq. Paithan
Dist. Aurangabad.
7. The Gramsevak,
Grampanchayat Takli Ambad,
Tq. Paithan, Dist. Aurangabad.
8. Pradip S/o Manikrao Narke
Age: 37 Years, Occu: Agri., & social work
R/o: Takli (Ambad), Tq. Paithan,
Dist. Aurangabad. ..Respondents

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Mr. P.R. Katneshwarkar h/f Mr Sandip R. Andhale, Advocate for Petitioner.

Mr. Ketan D. Pote hf/ Mr. A.G. Ambetkar, Advocate for Respondent No.8.

Mr. C.V. Bodkhe, Advocate for Respondent No.7.

Mr. S.K. Tambe, AGP for Respondent/State.

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CORAM : P.R. BORA, J.

DATED : 20th JUNE, 2019.

ORAL JUDGMENT:-

1. With consent of the learned counsel appearing for the parties, the petition is heard finally.

2. The petitioner has filed the present petition challenging the order passed by the Collector, Aurangabad on 28.11.2016, which has been confirmed by the Additional Commissioner, Aurangabad vide judgment and order passed on 20.11.2017.

3. The petitioner was elected as the Member of Grampanchayat, Takli (Ambad), Taluka Paithan, District Aurangabad, in the general elections held in the year 2015. The present respondent no.8 on 27.08.2015 raised a dispute and accordingly filed a complaint before the Collector, Aurangabad against the petitioner alleging therein that he was disqualified from holding the post of Member of Grampanchayat, Takli since, he has committed

encroachment on the government land and is residing thereon.

4. On receiving such complaint, the inquiry was conducted by the learned Collector. Reports were called by the Collector from the Tahsildar and his sub-ordinate officers as about the allegations made in the complaint. The petitioner had denied all the allegations against him. It was his contention that he was residing along with his father and the said land/plot was allotted to his father being a flood affected person by the government.

5. The learned Collector after having considered the submissions made by the parties and on perusal of the documents brought before him, recorded a finding that the father of the petitioner has committed an encroachment on the government land bearing no.153 and hence disqualified him from holding the post of Member of Grampanchayat. The petitioner challenged the order passed by the Collector by filing an appeal before the Revenue Commissioner, however, the appeal filed by the petitioner bearing Appeal No.380 of 2016 was dismissed vide order passed on 20.11.2017 and the order passed by the Collector was thus confirmed. The review application was also filed by the

petitioner before the Commissioner seeking review of his order however, that application also came to be rejected. Aggrieved by, the petitioner has preferred the present writ petition.

6. The record of the case shows that before my learned predecessor, exhaustive arguments were advanced by the parties. In the order passed on 03.04.2019, the Court has recorded a clear finding that the complaint filed by respondent no.8 before the Collector, Aurangabad is without merits. It is further observed in the said order that further inquiry was necessary as to whether the father of the petitioner was an encroacher on property no.153. The learned AGP was therefore called upon to collect instructions as regards whether there is any government record by which the father of the petitioner was permitted to enter into Gram Panchayat Plot No.153 and/or erect a construction over the said plot.

7. In compliance of the above order, the learned AGP has tendered across the bar the affidavit sworn by Naib Tahsildar, Paithan along with the relevant documents. Along with the affidavit in reply filed by respondent no.4 i.e. Naib Tahsildar, there is a report submitted by Gramsevak to the

Tahsildar, Paithan on 10.04.2019. In the said report it is stated that Bhimrao Motiram Khawale i.e. the father of the present petitioner is not residing on property bearing Gut No.195 or 19. It is further stated that said Bhimrao Motiram Khawale is residing on property bearing no.153 since 1979. It is further stated that as per the grampanchayat record, house tax of the said property is being paid by father of the present petitioner and till date the tax amount is paid. It is further stated in the said report that, the father of the petitioner has not made any sort of encroachment there. It is further stated that such plots were given to many other persons alike the father of the petitioner, who were flood affected.

8. After having gone through the affidavit filed on behalf of respondent no.4 which is accompanied by the above mentioned report of the Gramsevak dated 10.04.2019 submitted to Tahsildar, Paithan, there remains no doubt that as on today there is no evidence on record to hold that the father of the petitioner has encroached upon any government land so as to disqualify the present petitioner from holding the post of Member of Grampanchayat, Takli.

9. As I noted here-in-above, my learned predecessor has already held that the complaint filed by the present respondent no.8 which gave rise for initiation of disqualification proceedings against the present petitioner is without any merit. It has to be stated that for removal of democratically elected member of grampanchayat or to disqualify him from holding the said post, there must be some stringent proof proving the allegations against him on the basis of which it can be said that he has incurred the disqualification alleged against him.

10. In the present matter, as I noted here-in-above, the disqualification proceedings were initiated against the petitioner on a complaint dated 27.08.2015 preferred by respondent no.8 to the Collector, Aurangabad. In the said complaint, respondent no.8 had alleged that the petitioner had made encroachment on the government land Gut No.195 and 19. During the hearing before the learned Collector, it had become clear that neither petitioner nor any of his family members had committed any encroachment on Gut No.195 or 19. In the report which was submitted by the Circle Inspector, Vihamandva to Tahsildar, Paithan on 06.11.2015, it was clearly mentioned that the petitioner was not residing or in occupation of either Gut No.19 or 195. It

was further stated in the said report that as per the revenue record said Gut No.19 and 195 were not the government lands but the private properties. It was also stated in the said report that in the field visit, it was revealed that Grampanchayat Property No.153 was in occupation of Bhimrao Motiram Khawale i.e. father of the present petitioner and the said fact was also recorded in grampanchayat record maintained in Form 8-A. Based on the said report, the finding has been recorded by this Court that there is no merit in the complaint dated 27.08.2015 filed by respondent no.8.

11. However, as observed in para 3 of the order passed on 03.04.2019, during investigation of the complaint against the petitioner, it was submitted that the petitioner has caused an encroachment on the property bearing Gram Panchayat House No.153 and as such, the further inquiry was directed by this Court and the government was directed to submit the information in that regard.

12. As I noted here-in-above, the Naib Tahsildar has accordingly submitted an affidavit which is annexed by the latest report submitted by Gramsevak, Takli to Tahsildar, Paithan. The respondents have relied upon the said report.

After having perused the affidavit filed by the Naib Tahsildar and the report annexed with it of Gramsevak, Takli submitted to Tahsildar, Paithan, there has remained no doubt that there is no evidence against the petitioner, so as to hold that he or any of his family member has committed any encroachment on the government land, so as to disqualify him from holding the post of Member of Grampanchayat.

13. For the reasons stated above, the order passed by the Collector, Aurangabad on 28.11.2016, which has been confirmed by the Additional Commissioner, Aurangabad vide judgment and order passed on 20.11.2017 is quashed and set aside. The petitioner is restored to his status as Member of Grampanchayat, Takli (Ambad), Taluka Paithan, District Aurangabad. The petition thus stands allowed in the aforesaid terms.

(P.R. BORA, J.)

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