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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1712 OF 2019**

Ashok Devram Aher

.....Petitioner

V/s.

Shri. Uday Nimbaji Aher and others

.....Respondents

Mr. P. S. Dani Senior Advocate with Mr. Rajesh Patil i/b Mr. Rahul D. Motkari for the Petitioner

Mr. Nitesh Bhutekar for respondent no. 1

Mr. P. P. Poojari AGP for the State

Mr. Tejas Dande a/w Mr. Bharat Gadhavi a/w Mr. Vishal Navale i/b Tejesh Dande and Associates for respondent no. 2

CORAM : NITIN W. SAMBRE, J.

DATE : JUNE 6 2019.

P.C.

The petitioner was elected as Councillor of the Deola Municipal Council and suffered disqualification under section 42 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 vide order dated 25/04/2017 on the ground that petitioner has encroached on public property. The petitioner having noticed that the order impugned of disqualification was passed without hearing him, as such preferred a Review, which was

also rejected on 18/11/2017. Feeling aggrieved, the petitioner preferred an appeal before the State Government which came to be dismissed vide order dated 18/01/2019. As such, this petition.

2 The sum and substance of the allegations against the petitioners are, on 25/05/2016, Deputy Superintendent of Land Records, Deola carried out measurement for fixation of boundary of Deola Education Society in which it was noticed that the petitioner has encroached in survey no. 3/A. Since the petitioner in the capacity of a Municipal Councillor has acted contrary to the provisions of Section 44, the order of disqualification came to be passed.

3 I have heard the respective counsel for some time.

4 When confronted as to whether the petitioner was put to notice before carrying out such measurement by the Deputy Superintendent of Land Records Deola and such measurement report was served on the petitioner which is formed to be basis for ordering disqualification, the learned counsel for respondent

submits that the communication dated 10/06/2016 issued under the Right to Information Act, notice issued to the petitioner by the Municipal Council on objection dated 18/04/2016 raised by the petitioner to the office of Superintendent of Land Records speaks of voluntary knowledge to the petitioner about the alleged measurement.

5 With the assistance of the respective counsel, I have perused all these documents.

6 The objection raised by the petitioner on 18/04/2016 does not specify, particularly the date which is fixed for measurement and the fact that the petitioner was served with notice of such measurement including the measurement report.

7 Apart from above, other documents which are relied upon by the respondent so as to infer that the petitioner was put to notice cannot be in categorical terms infer that the petitioner was having knowledge of alleged measurement and he has intentionally avoided measurement of the land.

8 Apart from above, there is no material on record to infer that the documents which are formed to be a basis for exercising powers under Section 44 of the Act ordering disqualification of the petitioner were made available to him during the course of such inquiry which has given rise to passing order of disqualification.

9 In the aforesaid background, in my opinion, both orders impugned are not sustainable and as such petition is liable to be allowed.

10 In the aforesaid background, the learned counsel for the respondent-complainant has also taken telephonic instructions and would urge that in case if this Court is inclined to show indulgence, respondent shall appear before the Collector i.e. Competent Authority who has to deal with the issue of disqualification at the first instance. He also assures that all the relevant documents which are relevant for the purpose of supporting his case will be made available to the petitioner on the first date of hearing before the Collector.

11 As such, the petition stands allowed in terms of prayer clause (b).

12 The petitioner and respondent undertake to appear before the Collector i.e. Competent Authority who is empowered to deal with the issue of disqualification under the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 on 24/06/2019.

13 Fresh notices to the parties to the petition as such are dispensed with. This Court expects said Authority to pass appropriate order in the matter, after ensuring the service of the documents to the petitioner, as expeditiously as possible and in any case not beyond period of 3 months from the date of appearance. Needless to clarify that since the order of disqualification is set aside by this Court, necessary consequences in the law shall follow.

[NITIN W. SAMBRE, J.]