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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2944 OF 2019

Mr. Devraj Pandit Patil .....Petitioner

V/s.

The State of Maharashtra and others .....Respondents

Mr. Rahul Vitthal Shinde for the Petitioner
Mr. S. H. Kankal AGP for respondent nos. 1 to 3
Mr. Anant Vadgaonkar for respondent no. 5

CORAM : NITIN W. SAMBRE, J.

DATE : JUNE 18, 2019.

P.C.

Heard learned respective parties.

2 Petitioner preferred a complaint against respondent no. 5 alleging that after she was elected as a member of Grampanchayat, she continued to stay with her son-respondent no. 6. The petitioner further claim that the son defaulted in payment of taxes as the demand is raised against respondent no. 6-son on 30/09/2017 and 29/11/2017 was not honoured.

2 The respondent-Collector in exercise of powers under Section 14 (1) (h) Explanation 2 of the Maharashtra Village Panchayat Act (Hereinafter referred to as 'the Act' for the sake of brevity) ordered disqualification of the respondent no. 5 which is upset by the Additional Commissioner in an appeal under Section 16 (1) (2) of the Act by the order impugned dated 21/02/2019. As such, this petition.

3 The learned counsel for the petitioner submits that the finding of fact recorded by the Appellate Authority are contrary to the evidence on record. He would invite attention of this Court to an address mentioned in the ration card issued in favour of respondent nos. 5 & 6, gas consumer registration number as both i.e. respondent nos. 5 & 6 are getting gas supply on subsidised rate, the fact that they are residing in the same house and satisfaction of the requirement under Section 129 (1) & 129 (2) of the Act.

4 According to the learned counsel, the report submitted by

Agricultural Extension Officer through Block Development Officer was never made available nor the contents of the saids report are tested and analyzed in the backdrop of aforesaid evidence. He sought quashing of the order impugned passed by the Additional Commissioner and prayed for maintaining the order passed by the Collector thereby disqualifying respondent no. 5.

5 *Per contra* the learned counsel for respondent nos. 5 & 6 who is supported by the learned AGP would urge that once the Appellate Court has recorded finding of fact upon appreciation of evidence, this Court is not supposed to substitute its views under Article of 227 of Constitution of India in supervisory jurisdiction. A further submission is, finding of fact that respondent nos. 5 & 6 are separate in mess can be inferred from the two separate ration cards as is rightly done so in the impugned order particularly in paragraph 5.2 and 5.3. As such, according to them, petition is liable to be dismissed.

6 Considered rival submissions.

7 Perusal of the order impugned *prima facie* reflects that Explanation 2 to Section 14 (1) (h) of the Maharashtra Village Panchayat Act provides as under:

> "*Explanation 2 – For the purposes of clause (h) -*
>
> *(i) a person shall not be deemed to be disqualified if he has paid the amount of any tax or fee due, prior to the day prescribed for the nomination of candidates;*
>
> *(ii) failure to pay any tax or fee due to the Panchayat by a member of an undivided Hindu family, or by a person belonging to a group or unit the members of which are by custom joint in estate or residence, shall be deemed to disqualify all members of such undivided Hindu family or as the case may be all the members of such group or unit".*

8 The said explanation particularly sub clause 2 *prima facie* speaks of incurring disqualification by a member who is residing in a joint family and the person in whose name the house property stands and the bill of demand of tax is raised, has failed to honour the same pursuant to provisions of Section 129 (1) & 129(2) of the

Act.

9 If aforesaid explanation is applied to the facts of the case in hand, particularly having regard to the two ration cards issued in favour of respondent nos. 5 & 6, what is noticed is, the address of respondent nos. 5 & 6 and gas consumer numbers are same, which fact is lost sight of by the Appellate Authority. Apart from above, the fact remains that it is not the case of the respondent nos. 5 & 6 that there is a partition and such partition is given effect by metes and bounds on the revenue record and are also separate in mess.

10 Apart from above, the alleged report submitted by the Agricultural Extension Officer through Block Development Officer though is referred to by the Appellate Authority, however, contents therein are neither discussed nor analyzed in the backdrop of aforesaid evidence.

11 In the aforesaid background, it is difficult for this Court to sustain the order impugned dated 21/02/2019 passed by the Appellate Authority as same is pervert. That being so, the order

impugned dated 21/02/2019 passed by the Additional Commissioner reversing the order of disqualification passed by the Collector on 30/11/2018 is hereby quashed and set aside.

12 The Appeal stands restored to file of Additional Commissioner before whom the parties agree to appear on 15/07/2019 with respective written notes of arguments. The parties will be entitled to have inspection of the record of the Appeal including that of record before the Collector in relation to the order of disqualification. It is expected of the Appellate Authority to decide the Appeal after giving opportunity of hearing within period of two months thereafter.

13 Petition as such stands partly allowed in the above terms.

14 Needless to clarify that the stay order of disqualification passed by Appellate Authority shall continue to operate till the decision of Appeal.

[NITIN W. SAMBRE, J.]