

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4703 OF 2018

Ajabrao Bhaskarrao Deshmukh, Balapur, Akola

-vs-

Dhananjay Nagorao Deshmukh and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. Shinde, Advocate for petitioner.

Shri U. J. Deshpande, Advocate for respondent No.1.

Shri A. V. Palshikar, Assistant Government Pleader for
respondent Nos.3 to 5.

CORAM : A.S.CHANDURKAR, J.

DATE : July 03, 2019

The petitioner is aggrieved by the order of disqualification as passed by the Additional Collector under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958 which order has been confirmed by the Divisional Commissioner.

2. The respondent No.1 initiated proceedings seeking disqualification of the petitioner on the ground that he had committed encroachment on Government land despite being elected as Member of the Gram Panchayat. Such application invoking provisions of Section 14(1)(j-3) was filed on 05/07/2017. Reply was filed on behalf of the petitioner denying the aforesaid prayer. In the reply it was stated that the petitioner was in possession since long and that the date when such encroachment was committed was not specified by the respondent No.1. Before the Additional Collector, the Taluka Inspector Land Records (TILR) undertook measurement on 10/10/2017. The said measurement indicated encroachment to some extent committed by the petitioner. The parties then filed their written notes of arguments. According to the petitioner there was no dispute with regard to the measurement that was undertaken

on 10/10/2017. The Additional Collector in the light of such measurement dated 10/10/2017 recorded a finding that the petitioner had committed encroachment. The petitioner was accordingly disqualified as a Member of the Gram Panchayat. The Divisional Commissioner has maintained the said order.

3. Shri S. Shinde, learned counsel for the petitioner submitted that by virtue of sale-deed dated 10/06/1985 the petitioner had purchased land admeasuring 1580 sq. ft from the respondent No.1. He referred to the boundaries indicated in the said sale-deed and submitted that as the petitioner was in possession of the portion purchased by him, there was no encroachment committed. The measurement carried out on 10/10/2017 did not indicate the boundaries as described in the sale-deed and therefore as the petitioner was in possession since the year 1985, he was not liable to be disqualified on the ground that he had committed encroachment. He also submitted that in the light of the affidavit filed on behalf of the respondent No.1, he has sought further instructions from the petitioner but the petitioner has not responded to his communication.

4. Shri U. J. Deshpande, learned counsel for the respondent No.1 supported the impugned order. According to him the measurement carried out on 10/10/2017 which was admitted by the petitioner clearly indicated the encroachment on the public road. He submitted that the area admeasuring 1580 sq. ft. sold to the petitioner did not include part of the public road. Placing reliance on the decision in *Janabai vs. Additional Commissioner and ors. 2018(5) Mh.L.J. 921*, it was submitted that the impugned orders do not call for any interference.

Shri A. V. Palshikar, learned counsel for respondent Nos.4 and 5 also referred to the measurement carried out by the TILR and supported the impugned order.

5. On hearing the learned counsel for the parties and after perusing the material placed on record it is found that the petitioner has not disputed the measurement carried on 10/10/2017. The same indicates his possession on a portion of plot Nos.330, 331 and also a portion of the public road. The sale-deed dated 10/06/1985 when considered along with all boundaries indicates that portion of the road was not the subject matter of sale and therefore the measurement carried out on 10/10/2017 establishes the petitioner's possession on area excluding the portion purchased by him. Since this measurement was not disputed by the petitioner, both the Authorities were justified in recording a finding that the petitioner had committed encroachment. That finding that the petitioner had incurred disqualification on account of having committed encroachment is in accordance with the law as laid down in *Janabai* (supra).

6. Since the impugned orders have been passed after giving due opportunity to the petitioner and after considering all relevant material there is no case made out to interfere in writ jurisdiction.

The Writ Petition is therefore dismissed with no order as to costs.

JUDGE