

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

8 WRIT PETITION NO.13682 OF 2019

SHRIHARI SIDRAM YADAV
VERSUS
GOPAL CHANDRAKANT SINGARE AND OTHERS

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Advocate for Petitioner : Mr. V.V.Bhavthankar.
AGP for Respondents-State : Mr. A.M.Phule.
Advocate for Respondent No.1 : Mr. T.G.Gaikwad.

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CORAM : V. K. JADHAV, J.
DATE : 06.01.2020

ORDER :-

1. Heard finally with consent at admission stage.
2. The petitioner had contested the Gram Panchayat election of village Bardapur, Taluka Ambajogai, District Beed for the post of Member. Respondent No.1 – original complainant had also contested the Gram Panchayat election for the post of Member against the petitioner. The petitioner got elected and respondent No.1 was defeated in the said election held in the month of October – 2017. Respondent No.1 – original complainant had filed complaint / application before the Collector, Beed against the petitioner contending

therein that the petitioner has incurred the disqualification as provided under Section 14 (j-3) and thus sought declaration in terms of provisions of Section 16 (1) of the Maharashtra Village Panchayats Act. It has been alleged in the complaint that the petitioner has made encroachment over the Government land by making construction of his house over it. The learned Collector, Beed after giving an opportunity of hearing to both the sides, by judgment and order dated 14.08.2019 disqualified the petitioner in terms of provisions of Section 14 (j-3) read with Section 16 of the Maharashtra Village Panchayats Act. Being aggrieved by the same, the petitioner has preferred an appeal under Section 16(2) of the Maharashtra Village Panchayats Act before the Divisional Commissioner, Aurangabad and the Divisional Commissioner, Aurangabad by judgment and order dated 30.09.2019 dismissed the appeal and confirmed the order passed by the Collector, Beed dated 14.08.2019. Hence, this Writ Petition.

3. The learned counsel for the petitioner submits that respondent No.1 – original complainant with ill intention and in order to harass the petitioner had filed the false complaint / application under Section 14 (j-3) against the petitioner for

having incurred the disqualification by encroaching upon the Government land by making construction of house over it. The learned counsel submits that the petitioner is residing in land Survey/Gut No.55 situated at village Bardapur in a constructed house and he is not residing in a land Survey/Gut No.58, which is a Government land. There is no entry of his house in land Survey/Gut No.58 as alleged by the respondent No.1 – original complainant. The learned counsel submits that the water tap connection was given to his house situated in land Survey/Gut No.55, which is adjacent to the Government land Survey/Gut No.58. The learned counsel submits that the copy of the Namuna No.8 of house No.2218 in Survey/Gut No.55 is placed on record. It indicates that the petitioner has his residential house in Survey/Gut No.55 having the house property No.2218. The learned counsel submits that the learned Collector has called upon the Circle Officer to visit the spot and locate the house of petitioner. The Circle Officer prepared the panchnama of the house of the petitioner herein. It is clear from the said report that the petitioner's house is not situated in land Survey/Gut No.58. Even though the Circle Officer has recorded the statement of the villagers, however,

none of the villager has specifically stated about the house of the petitioner situated in the land Survey/Gut No.58. The learned counsel submits that the authorities below have not considered this material aspects of the case and passed the impugned orders.

4. The learned counsel for respondent No.1 – original complainant submits that the petitioner resides in a constructed house situated in a Survey/Gut No.58, Navin Vasti (Zopadpatti), Bardapur. At the time of filing of the nomination, the petitioner has given his address. The petitioner's name appeared at serial No.813 in the voters list and thereafter his wife's name appeared at Serial No.814, his son's name appeared at Serial No.815, his daughter-in-law's name appeared at serial No.816, another son's name appeared at Serial No.817 and thereafter another daughter-in-law's name appeared at Serial No.818. All these persons reside in the house No.1127, which is situated in Survey/Gut No.58, as shown in the voters list. The learned counsel submits that the copy of Namuna No.8 showing house No.2218 in Survey/Gut No.55 produced for the first time before the Divisional Commissioner, Aurangabad and it was not produced before the

Collector, Beed. The learned counsel submits that there is a clear evidence about the encroachment over the Government land by making construction of the residential house thereon. The learned counsel submits that while preparing the panchnama, the Circle Officer has recorded the statement of one neighbour Shaikh Ibrahim Mohammad Rasul, who has stated in his statement that the petitioner resides in the house situated in Survey/Gut No.58 i.e. the Government land. The learned counsel submits that both the authorities below have rightly considered this aspect and held that the petitioner incurred the disqualification in terms of provisions of Section 14 (j-3). There is no substance in the Writ Petition. Writ Petition is liable to be dismissed.

5. I have also heard the learned AGP for the respondent-State.

6. I have carefully gone through the orders passed by the authorities below. I have also gone through the report submitted by the Circle Officer, Bardapur, dated 21.05.2018. It has been specifically stated in the said report that on his spot visit, recorded the statement of certain witnesses. It is clear

from the said report that the present petitioner has made construction of his house over the portion of the Government land Survey/Gut No.58 and one Sangita Yadav and the witnesses have given the statement to that effect. It has been stated by some of the witnesses that one Chandrashekhar Shrihari Yadav i.e. the son of present petitioner is residing in the said house. The petitioner for the first time has submitted before this Court that his son is residing separately by making construction of his residential house and he has no concerned with his residential house. In order to substantiate the same, the petitioner has placed on record the copy of Namuna No.8 of the house No.2218. The learned counsel submits that the petitioner resides in land Survey/Gut No.55 and in Namuna No.8, 'Exh.B' clearly demonstrate the same. It appears that the petitioner after he elected as a Gram Panchayat Member mutated his name about the house No.2218 shown to have been constructed over land Survey/Gut No.55. The learned Collector has given reference to the report submitted by the Executive Engineer, Maharashtra State Electricity Department wherein it has been specifically stated that the petitioner has installed the electric meter in his house situated in the

Government Zopadpatti, Bardapur since 1988. It also clearly appears from the report of the Circle Officer that the petitioner resides in his house situated in the Government land Survey/Gut No.58. So far as the said Zopadpatti is concerned, on the basis of the documents received from the Land Record Office, Ambajogai along with village map, it appears that the said Zopadpatti is situated in the Government land Survey/Gut No.58. I find no substance, in the submissions made on behalf of the petitioner for the first time i.e. the son is residing in the Government land by making over the construction of his own house and he resides separately from the petitioner. The voters list indicates otherwise. In view of the same, I do not find any substance in this Writ Petition. Both the authorities below have rightly held that the petitioner has incurred the disqualification in terms of the provisions of Section 14 (j-3). Hence, I proceed to pass the following order :

ORDER

The Writ Petition is hereby dismissed.

(V. K. JADHAV, J.)

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