

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2165 OF 2020

Nathuram Sona Mhaske

...Petitioner

vs.

The State of Maharashtra and Ors.

...Respondents

Mr. Vijay Killedar i/b. Mr. A.R. Kapadnis, for the Petitioner

Mr. Y.D. Patil, AGP for Respondent Nos. 1 and 2.

Mr. J.P. Mahamuni, Sr. Associate present.

CORAM : N. J. JAMADAR

DATE : MARCH 11, 2020

P.C.:

. Heard learned counsel for the Petitioner and the learned
AGP for Respondent Nos. 1 and 2.

2. The Petitioner is aggrieved by an order dated 2nd January, 2020 passed by the Respondent No. 2 – the Divisional Commissioner, Pune Division, Pune on an application for disqualification of the Sarpanch and the members of the village panchayat, Riswad, Tal. Karad, initiated at the instance of Respondent No. 4 Balkrishna Ramchandra Kamble.

3. By the impugned order while dismissing the application for initiation of action under section 39(1) of the Maharashtra Village Panchayat Act, 1958, the Divisional Commissioner directed the village panchayat to take action for removal of unauthorized construction allegedly erected by the Petitioner over a Gavthan land, in accordance with rules.

4. The Respondent No. 4 had alleged that the Petitioner had erected unauthorized structure over Gavthan land despite rejection of the permission to carry out the construction by the village panchayat. On account of their inaction, the office bearers of the village panchayat were liable to be disqualified under section 39(1) of the Act. The Commissioner was of the view that the action under section 39 of the Act was unwarranted as the office bearers of the village panchayat had taken steps for the removal of the alleged unauthorized construction. However, while rejecting the application the Divisional Commissioner has given the aforesaid direction.

5. The learned AGP on instructions submit that the direction contained in clause No. 2 of the impugned order dated 2nd January, 2020 passed by the Divisional Commissioner would be construed as a direction to village panchayat, Riswad to take appropriate action in accordance with law.

6. In the backdrop of the jurisdiction which the Dy. Commissioner was exercising under section 39 of the Act, the Divisional Commissioner was not expected to record a definitive finding as to whether the construction allegedly carried out by the Petitioner is unauthorized and it was erected by encroaching over the Gavthan land. In the impugned order there is reference to the fact that there is dispute as to whether the land on which unauthorized construction is erected falls within the Gavthan or agricultural land.

7. In the aforesaid view of the matter, the instant Petition can be disposed of by directing that the vilalge panchayat, Riswad may independently decide the question of alleged

encroachment and unauthorized construction by the Petitioner and take action in accordance with law. Clause No. 2 of the impugned order passed by the Commissioner shall not be construed as a final adjudication of the question as to whether the Petitioner has encroached upon the Gavthan land and carried out unauthorized construction.

8. With the aforesaid clarification, the Petition stands disposed of.

9. All contentions of the parties are kept open for consideration.

(N. J. JAMADAR, J.)