

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

917 WRIT PETITION NO. 1697 OF 2020

Dattatraya Rajesaheb Late, **...PETITIONER**
Age-26 years, Occu-Agri-Sarpanch,
R/o. Babhalgaon, Tq. Majalgaon,
Dist. Beed

VERSUS

1. The State of Maharashtra, **...RESPONDENTS**
through the Secretary,
Rural Development and Panchayatraj Department,
Mantralaya, Mumbai-32
2. The Additional Divisional Commissioner No.2
Divisional Commissioner Office,
Aurangabad
3. The District Collector, Beed,
Tq. & Dist. Beed
4. Grampanchayat Babhalgaon,
Tq. Majalgaon, Dist. Beed
Through village Development Officer,
5. Indrajeet Namdeo Late,
Age-32 years, Occu-Agri,
R/o. Babhalgaon, Tq. Majalgaon,
Dist. Beed

Mr. J. M. Murkute, Advocate for the petitioners
Mr. S. G. Kawade, Advocate for the respondent No.5
Mr. A.B. Chate, AGP for the respondent Nos. 1to 4/State

CORAM : N. J. JAMADAR, J.

DATE : 09-04-2021

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith and with the consent of the counsel for the parties heard finally at the state of admission.

2. The challenge in this petition is to the judgment and order passed by the Additional Divisional Commissioner, Aurangabad dated 10-01-2020 whereby, the the appeal preferred by the petitioner under Section 16 of the Maharashtra Village Panchayat Act, 1958 came to be dismissed affirming the order passed by the District Collector in application No. 13 of 2018 dated 26-11-2019 declaring that the petitioner had incurred disqualification (under Section 14(1)(j-3) of the Act, 1958.

3. The petition arises in the backdrop of following facts.

4. In the election held to constitute village panchayat, Babhalgaon, Tq. Majalgaon, Dist. Beed on 07-10-2017, the petitioner came to be elected as Sarpanch of the village panchayat. The respondent No.5- filed an application before the District Collector, Beed under the provisions of Section 16 read with Section 14(1)(j-3) alleging that the petitioner had dismantled the temple of Wadar Samaj situated on property No. 313, Village Panchayat

Babhalgaon and erected a two storey building committing encroachment thereon. The petitioner resisted the application.

5. The District Collector, Beed, post an inquiry, was persuaded to hold that the application for disqualification on the count of having committed encroachment over the government land was worthy of acceptance and, therefore, the petitioner has incurred disqualification under Section 14 (1)(j-3) of the Act, 1958. It seems that the panchanama drawn on 14-10-2018 by Mr. Pawar, the then Gramsevak of village panchayat Babalgaon, to the effect that the property bearing No. 313 stood in the name of Wadar Samaj in the assessment list and on the date of inspection two storey structure was noticed thereat, weighed with the District Collector. It would be contextually relevant to note that the District Collector did not record reasons which persuaded him to hold that the petitioner committed of encroachment over the government land or public property.

6. The petitioner assailed the order passed by the District Collector in an appeal before the Divisional Commissioner, Aurangabad. It seems that initially the Additional Divisional Commissioner called for spot inspection report and pursuant thereto, Gramsevak of the village Babhalgaon had caused spot inspection to be carried out on 30-12-2019 and submitted a report of even date.

7. After hearing the parties and perusal of the material on record the Additional Divisional Commissioner was persuaded to dismiss the appeal by the impugned order dated 10-01-2020. From the perusal of the impugned order it becomes evident that two reasons were factored in by the Additional Divisional Commissioner. One, in the panchanama carried out by the Gramsevak on 14-10-2018 (tendered before the District Collector) it was mentioned that the property bearing No. 313 stood in the name of Wadar Samaj. In the spot inspection two storey structure was noticed thereon. Two, in the assessment list, for the year 2000-2001, the name of Wadar Samaj was initially scored off and the name of petitioner was shown and subsequently again the name of Wadar Samaj was entered. Thus, the Additional Divisional Commissioner affirmed the order passed by the District Collector.

8. Being aggrieved, the petitioner has invoked the writ jurisdiction of this court. By an order dated 24-01-2020 while issuing notice, this court had stayed the disqualification.

9. I have heard Mr. Murkute, learned counsel for the petitioner, Mr. Kawade, learned counsel for the respondent No. 5 and learned AGP for the respondent Nos. 1 to 3.

10. Mr. Murkute, learned counsel for the petitioner urged that the authorities below committed a grave error in entering a finding that the petitioner has committed encroachment over the

government land or public property. Attention of the court was invited to the assessment list for the year 1991-1992, wherein the property bearing No. 359 was shown in the name of petitioner's father. Whereas in the assessment list for the year 2001-2002, property bearing No. 313 was entered in the name of Wadar Samaj temple. The description of the property, particularly the boundaries thereof, in both the assessment list are identical. In this context, Mr. Murkute, banked upon the spot inspection report dated 30-12-2019 wherein it is categorically mentioned that the property entered at Sr. No.359 in the assessment list of 1991-1992 and property at Sr. No.313 in the assessment list of 2001-2002 is one and the same. The said report further records that no temple is reflected in the boundaries of the properties entered at Sr. Nos. 311,313 and 320, adjacent to property bearing No. 313.

11. Mr. Murkute, learned counsel, strenuously urged that despite having called for a fresh spot inspection report, the Additional Divisional Commissioner committed a patent error in not at all advertng to the said report dated 30-12-2019 and misdirected himself in basing his finding on the panchanama prepared by Gramsevak on 14-10-2018. Therefore, the impugned order deserves to be quashed and set aside, urged Mr. Murkute.

12. In contrast to this, thus, Mr. Kawade, learned counsel for the respondent No.5-original complainant would urge that the authorities have arrived at a finding of fact that the petitioner has

committed encroachment over the property entered in the name of Wadar Samaj and constructed two storey structure thereon. In exercise of writ jurisdiction this finding of fact cannot be interfered with, urged Mr. Kawade.

13. I have given anxious consideration to the rival submissions. Two, facts assume critical significance. One, there is a report of Gramsevak dated 30-12-2019 which records in clear terms that the property bearing No.359, in the assessment list of 1991-1992, and the property bearing No.313, in the assessment list of 2001-2002, is one and the same. In the assessment list of the year 1990-1991 the property No.359 was entered in the name of father of the petitioner. Two, the existence of temple is not reflected in the assessment list of adjoining properties apart from property bearing No.313, in the assessment list of 2001-2002. The question that would warrant consideration is whether the temple existed in property No.313. It does not appear that the authorities below have adverted to this aspect of the matter adequately.

14. The impugned order, does not indicate that the Additional Divisional Commissioner had taken into account the report dated 30-12-2019, which was called for by the said authority. Instead the appellate authority proceeded to base its finding on the panchanama which was drawn by the Gramsevak on 14-10-2018. Had it been a case that the property No.359, in the assessment list of 1991-1992, was not recorded in the name of

father of the petitioner, different considerations would have come into play. In the face of the report that the property No.359, in the assessment list 1991-1992, and property No. 313, in the assessment list 2001-2002 is one and the same property, it was incumbent upon the appellate authority to consider the said report and thereafter arrive at a legitimate finding. Non consideration of this vital material warrants exercise of writ jurisdiction of by this court as the appellate authority can be said to have failed to take into account relevant material.

15. In the aforesaid view of the matter, I am persuaded to remit the matter back to the appellate authority for a fresh consideration after providing an opportunity of hearing to the parties.

16. Having regard to the nature of controversy, it is necessary to direct that the appeal be decided afresh as expeditiously as possible and, preferably, within a period of three months from the date of appearance of the parties before the appellate authority.

17. Hence, the following order.

ORDER

- i. The petition stands allowed.

ii. The impugned order passed by the Additional Commissioner, Aurangabad on 10-01-2020 dismissing the appeal and affirming the order passed by the District Collector, Beed dated 26-11-2019 stands quashed and set aside.

iii. The appeal stands restored to the file of the Divisional Commissioner, Aurangabad.

iv. The Divisional Commissioner, Aurangabad shall decide the appeal afresh after considering the spot inspection report dated 30-12-2019 and other material on record and providing an opportunity of hearing to the concerned parties, as expeditiously as possible and, preferably, within a period of three months from the date of appearance of the parties before the Divisional Commissioner, Aurangabad without being influenced by any of the observations made by this court.

v. The parties shall appear before the Divisional Commissioner, Aurangabad on 20-04-2021.

vi. All the contentions of all the parties are kept open for consideration.

vii. The disqualification shall stand stayed till the

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decision of the appeal by the Divisional Commissioner.

viii. Rule made absolute in aforesaid terms.

ix. No costs.

x. All the concerned to act upon an authenticated copy of this order.

[N. J. JAMADAR, J.]

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