

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

WRIT PETITION NO. 663/2020

Ankush Himmatrao Kadu...Versus... District Collector, Washim and ors

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

Court's or Judge's orders

Mr. N.J.Patil, Advocate for petitioner
Ms. H.Jaipurkar, AGP for Respondent Nos. 1 and 2
Mr. Sandip Andhare, Advocate h/f Mr. A.V.Band, Advocate for Respondent No.4

CORAM : AVINASH G. GHAROTE, J.

DATE : 20/12/2021

Heard Mr. Patil, learned counsel for the petitioner, learned AGP for respondent Nos.1 and 2 and Mr. Andhare, learned counsel for Respondent No. 4. None for Respondent No.3.

The present petition challenges the order dated 19.7.2019 passed by Respondent No.1, accepting the plea that the petitioner has committed encroachment on Government land and therefore stands disqualified under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act. This finding has been confirmed by Respondent No.2 in an appeal.

Mr. Patil, learned counsel for the petitioner submits that the petitioner has no concern with the property No. 179 and therefore the findings rendered by the authorities below are not based on facts. He submits that though Respondent No.1 by its communication dated

13.5.2019 directed the Respondent No. 3 to place a report/panchnama on record along with the relevant record, what was placed before the learned Respondent No.1 was only the Gav-Namuna No. 8, which indicates that property No.179, was owned by the Government and was occupied by Himmatrao Kadu, the father of the petitioner, which was an incorrect position, according to him. He therefore submits that the authorities below could not have held the petitioner to be an encroacher and disqualified under the provisions of Section 14(1)(j-3) of the said Act. He submits that in case there was really an encroachment, the authorities ought to have taken action under Section 53 of the said Act for removal of the same and the fact that this has not been so done, would indicate the absence of encroachment. He therefore submits that the impugned order cannot be sustained.

Learned AGP opposes the petition by contending that a finding has been rendered by Respondent No.1 that the petitioner who is unmarried is living jointly with his father and therefore, forms a joint family. She further submits that the very purpose of Gav-Namuna No.8 is to record the encroachment made on the Government land and therefore when the entry in this regard, in respect of property No. 179 was already taken on 11.6.2018, it was necessary for the petitioner to have place on record the documents which would indicate that the property did not belong to him and he had no concern

with the same.

Mr. Andhare, learned counsel for respondent No.4 supports the contention of learned AGP.

A perusal of the Form No. 8 would indicate that property No. 179 belongs to the Government and is occupied by Himmatrao Laxmanrao Kadu and Mrs. Sunanda Kadu. Admittedly, Himmatrao Kadu is the father of the petitioner. The order of the Collector categorically records that while filing his nomination form, the petitioner himself has stated that he is the possessor of property/House No. 179 as per the Tax Receipt No. 43. The Form No. 8 from 2015 to 2019 shows that the property is owned by the Government and is occupied by the father of the petitioner. It also records that the petitioner as well as his parents form a joint family. The order also records the extent of encroachment made upon property No. 179 by the father of the petitioner, which is East-West 5.50 meters and North-South 4.60 meters, total 25.30 square meters. It also records that in property register, the said encroachment is shown since 2012 onwards. It is further material to note that in the memo of appeal filed by the petitioner before the Divisional Commissioner/Respondent No.2 challenging the order of the Collector, in para 3 a specific statement has been made that the land and the property bearing No. 179 were the ancestral properties of Himmatrao Kadu, which would indicate that the right has been claimed upon the property

No. 179, which admittedly belongs to the Government. When learned counsel for the petitioner was asked to point out any document which would indicate title of the petitioner or his father to property no.179, he is unable to do so. The entire position as discussed above has also been taken into consideration by Respondent No.2 in his order dated 21.12.2019.

In so far as the contention that since no powers have been exercised by the authorities under Section 53 of the MVP Act for removal of any encroachment and therefore, it would indicate that there was no encroachment whatsoever, the argument does not appeal to me for the reason that non-exercise of power under Section 53 of the MVP Act would not mean non-existence of the encroachment.

In view of the above discussion, I do not find any infirmity in the orders passed by Respondent No. 2. The petition is without any merits and same is accordingly dismissed.

JUDGE

rvjalit