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

WRIT PETITION NO. 1807 OF 2021

Ritesh s/o Jaydeo Dehankar,
Aged about 45 years,
Occupation – Agriculturist,
R/o. Shirpur, Gram Panchayat,
Shirpur, Tah. Nagpur (Rural),
District-Nagpur. .. Petitioner

.. Versus ..

1] Additional Commissioner,
Nagpur Division, Nagpur.

2] The Additional Collector, Nagpur
District, Civil Lines, Nagpur.

3] The Tahsildar, Nagpur (Rural),
District-Nagpur.

4] The Sub-Divisional Officer, Nagpur
(Rural), District-Nagpur.

5] Secretary, Gram Panchayat, Shirpur,
Tah. Nagpur (Rural),
District-Nagpur.

6] Gourishankar s/o Maroti Gajbhiye,
Aged about 55 years,
Occupation-Sarpanch,
R/o. Shirpur, Tah. Nagpur (Rural),
District-Nagpur. .. Respondents

Shri A.R. Ingole, Advocate for the petitioner,
Ms N.P. Mehta, AGP for respondent nos.1 to 4,
None for respondent no.5 though served,
Shri B.S. Dhandale, Advocate for respondent no.6.

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CORAM : N.B. SURYAWANSHI, J.
DATED : 11.10.2021.

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the parties.

2. The petitioner, by the present petition is challenging the order dated 05/04/2021, passed by respondent No.1-Additional Commissioner, Nagpur in B.V.P. Appeal No.22 of 2019-20 (Annexure-F), by which the disqualification of respondent No.6 passed by respondent No.2-Additional Collector, Nagpur was set aside.

3. The petitioner filed application before respondent No.2-Additional Collector claiming that respondent No.6, who is elected as Sarpanch of Gram Panchayat Shirpur, has incurred disqualification under section 14(1)(j-3) of the Maharashtra

Village Panchayats Act, 1958 (hereinafter referred to as "said Act"). Pursuant to the said proceedings, enquiry was conducted by respondent No.3-Tahsildar, Nagpur. In the enquiry, it was revealed that respondent No.6 since last 20 years has encroached upon gaothan land (30 X 30 =900 sq.ft.) by constructing a house. The said construction was raised in the year 1999-2000 and from the year 2009-2010 tax on the same was assessed as 'imala kar' on account of encroachment, in the name of respondent No.6 as per the assessment list dated 21/01/2009. Thereafter, the name of respondent No.6 was removed and his wife's name was entered in the list of encroachers maintained by the gram panchayat. Respondent No.6 and his family are residing in the said house encroached upon the government land since last 20 years. Thus, respondent No.3 reported to respondent No.2-Additional Collector that it is proved that respondent No.6 and his family have encroached on the government land.

4. After considering the report and hearing the parties, respondent No.1-Additional Collector passed an order thereby disqualifying respondent No.6 in terms of section 14(1)(j-3) of the said Act vide order dated 23/10/2019.

5. Being aggrieved by the order of disqualification, respondent no.6 filed appeal bearing B.V.P.Appeal No.22/2019-20 before the Additional Commissioner. By the impugned order, respondent no.1-Additional Commissioner allowed the appeal and set aside the disqualification order passed by respondent No.2-Additional Collector. In the impugned order Respondent no.1-Additional Commissioner has observed that the Government had reserved the gaothan land for residential purposes. Therefore, the construction made as an encroachment on the said reserved residential area by respondent No.6 is illegal. However, it is further observed that the Government ought to have granted lease of the said land to the persons, who have encroached on the said reserved land. If the Government had sanctioned the lease and if respondent No.6 had constructed beyond the lease area, it could have been said that respondent No.6 had encroached on the Government land. However, in the present case such encroachment is not revealed. Hence, respondent no.1- Additional Commissioner allowed the appeal.

6. The fact of encroachment on the part of respondent no.6 is proved on record. The report of respondent no.3 confirms that since last 20 years by constructing a house, the

respondent no.6 has encroached on the open gaothan land, which is reserved for residential purposes by the Government. For the said encroachment, tax was assessed in the name of respondent no.6. Thereafter, by deleting the name of respondent no.6, his wife's name was substituted. It is also a matter of record that respondent no.6 and his family are residing in the encroached house since last 20 years. Once having come to the conclusion that construction made by respondent No.6 on the land i.e. gaothan land reserved for residential purposes is illegal and is an encroachment, respondent No.1-Additional Commissioner was not justified in allowing the appeal by recording totally erroneous finding. The finding recorded by respondent no.1-Additional Commissioner to the effect that since the land is reserved for residential purposes by the Government, it ought to have granted lease of the encroached land in favour of said person and if lease was sanctioned by the Government and if respondent No.6 had constructed beyond the area leased out to him, then it could have been said that respondent No.6 had encroached on the Government area and no such encroachment appears to be there on record is totally perverse. The said finding is contrary to the record and the same is based on assumptions and presumptions. Respondent no.1-

Additional Commissioner has taken into consideration irrelevant factors and has ignored the relevant factor of encroachment on the part of respondent No.6 on the government land. The impugned order passed by respondent No.1-Additional Commissioner is therefore unsustainable. The order passed by respondent No.2-Additional Collector is a well reasoned order and respondent No.1-Additional Commissioner was not justified in interfering with the said order.

7. For the aforestated reasons, the writ petition is allowed. The impugned order dated 05/04/2021 passed by respondent No.1-Additional Commissioner, Nagpur (Annexure-F), is hereby quashed and set aside.

Rule is made absolute in the above terms. No costs.

(N.B. Suryawanshi, J.)

Gulande