

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

WRIT PETITION NO. 3427 OF 2019

Ashok alias Baban s/o Sheshrao Khadse
vs.
Nandu s/o Murlidhar Mapari and others

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

Court's or Judge's Orders.

Mr. R. L. Khapre, Senior Advocate a/b. Mr. A. S. Shukla,
Advocate for petitioner.
Mr. A. M. Ghare, Advocate for respondent No.1 & 2.
Mr. K. L. Dharmadhikari, AGP for respondent Nos.3 & 4.

CORAM : MANISH PITALE J.

DATE : 28/06/2021

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Heard learned counsel for the petitioner.

3. By this writ petition, the petitioner has challenged orders passed by the respondent Nos.3 and 4, under the provisions of the Maharashtra Village Panchayats Act, 1959.

4. The respondent No.3 i.e. the Collector passed impugned order dated 29/10/2018, holding that the petitioner stood disqualified to hold the post of Sarpanch for village Dhanora (Kh.) Taluka and District Washim, under Section 14(1)(j-3) of the aforesaid Act, as he had encroached upon Government land.

5. The appeal filed by the petitioner against the said order stood dismissed by the impugned order dated 08/04/2019 and the present writ petition came to be filed challenging the said orders.

6. While issuing notice on 03/05/2019, this Court directed that during the pendency of this writ petition, no steps would be taken to fill the vacancy caused by the removal of the petitioner.

7. Mr. R. L. Khapre, learned Senior Counsel along with Mr. A. S. Shukla, Advocate, appearing for the petitioner submitted that in the present case, findings rendered by the respondent Nos.3 and 4 were based on a document which was prepared behind the back of the petitioner and that on this sole ground, the impugned orders stand vitiated. It was submitted that at the relevant time, the person holding the regular post of Talathi of the village had

gone on leave and the officiating Talathi had prepared a spot inspection report dated 06/09/2018, wherein it was recorded that the petitioner had indeed encroached upon part of Government land. By inviting attention to the said document, the learned Senior Counsel submitted that it was admittedly prepared behind the back of the petitioner and without any notice to him. It was then brought to the notice of this Court that the impugned order passed by respondent No.3 Collector holding that the petitioner was disqualified, was based on the said document, as was evident from the conclusions arrived at by the said respondent.

8. According to the learned Senior Counsel appearing for the petitioner, there was material on record to show that the petitioner himself had approached the authorities regarding the said encroachment for which certain persons were responsible. It was also submitted the petitioner had challenged the finding of the officiating Talathi before the Sub Divisional Officer, who had directed the Tahasildar to conduct an inquiry. It was submitted that the inquiry by way of recording of statements of persons was still under way when the impugned orders were passed by respondent Nos.3 and 4. On

this basis, it was submitted that impugned order deserves to be set aside.

9. Mr. K. L. Dharmadhikari, learned AGP appeared on behalf of respondent Nos.3 and 4. He could not dispute that the spot inspection report prepared by the officiating Talathi on 06/09/2018, was prepared without notice to the petitioner.

10. Mr. Ghare, learned counsel appeared on behalf of the respondent Nos.1 and 2, submitted that the documents now sought to be relied upon on behalf of the petitioner were not placed before the authorities below and that the petitioner could not be permitted to rely upon the same.

11. Having heard the learned counsel for the rival parties and upon perusal of the material on record, it appears that there is substance in the contention raised on behalf of the petitioner that the crucial document in the present case i.e. the spot inspection report dated 06/09/2018, prepared by the officiating Talathi, was prepared without notice to the petitioner. This document is clearly adverse to the interest of the petitioner and in the absence of notice to him, the said document loses its significance. A perusal of the document shows that while there are

signatures of some witnesses and that of the officiating Talathi, the presence of the petitioner is not evident. There is also nothing on record to show that the officiating Talathi issued notice to the petitioner before undertaking such an exercise.

12. A perusal of the impugned order passed by the respondent No.3 Collector shows that the said respondent has indeed relied upon the spot inspection report dated 06/09/2018, prepared by the officiating Talathi behind the back of the petitioner, while holding that he stood disqualified for allegedly having encroached upon Government land. The respondent No.4 dismissed the appeal without appreciating this aspect of the matter, and confirming the finding that the petitioner stood disqualified under Section 14(1)(j-3) of the aforesaid Act.

13. The present Writ Petition deserves to be partly allowed only on the aforesaid sole ground of the petitioner not having been put to notice by the officiating Talathi, while preparing the spot inspection report dated 06/09/2018. Such a document could not have been relied upon by respondent Nos. 3 and 4 to reach adverse findings against the petitioner on the question of disqualification under Section 14(1)(j-3) of the aforesaid Act.

14. Although the learned Senior Counsel for the petitioner has referred to other material to indicate how the petitioner could not be held responsible for the alleged encroachment of Government land, this Court refrains from making any comment upon the same, as it would be appropriate for the matter to be remanded back to the respondent No.3 Collector for fresh consideration.

15. In view of the above, Writ Petition is partly allowed.

16. The impugned order dated 29/10/2018, passed by respondent No.3 Collector and order dated 08/04/2019 passed by respondent No.4 Divisional Commissioner are quashed and set aside.

17. The matter is remanded to the respondent No.3 Collector for consideration afresh. The said authority is directed not to rely upon the aforesaid spot inspection report dated 06/09/2018. The petitioner would be at liberty to place on record, additional documents before the respondent No.3 Collector. The said respondent is expected to inquire into the allegation levelled against the petitioner by calling for appropriate material from subordinate authorities in order to verify whether there is any

substance in the allegation made against the petitioner.

18. Needless to say, the respondent Nos.1 and 2 would be at liberty to join the proceedings before the respondent No.3 Collector and to place material on record, which they deem appropriate for proper resolution of the controversy.

19. The parties shall appear before the respondent No.3 Collector on **19th July, 2021.**

JUDGE