

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

WRIT PETITION NO. 3339 OF 2020

Darasingh Punajaji Pawar Vs. Additional Commissioner, Amravati Division,
Amravati and others

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

Court's or Judge's orders.

Shri P.A. Kadu, Advocate for petitioner.
Ms. M.A. Barabde, AGP for respondent Nos.1 and 2.

CORAM : V.M. DESHPANDE, J.

DATE : JANUARY 22, 2021.

Heard Shri P.A. Kadu, learned counsel for the
applicant and Ms. M.A. Barabde, learned Assistant
Government Pleader for respondent Nos.1 and 2.

(2) The applicant is a Sarpanch of Gram Panchayat, Ardav. The respondent No.3 Anil Pawar filed an application before the Collector, Buldhana to pass order that petitioner has incurred disqualification in view of Section 14(1)(J)(3) of the Maharashtra Village Panchayats Act inasmuch as it was the case of the respondent No.2 that the petitioner has made encroachment on the house property as well as the Government land proceedings were registered as BVD No.14/(1)(J-3)/Aradav/104/2018-19.

(3) The Additional Collector, Buldhana passed an order on 08.08.2019 holding therein that the petitioner has incurred disqualification since he was found to be encroacher. The order was carried in appeal by the petitioner by filling Appeal No.124/BVP-16(2)/Ardav/2019-20. The Additional

Commissioner, Amravati /respondent No.1 dismissed the appeal. Hence, this writ petition.

(4) According to the learned counsel for the petitioner, proper opportunity of hearing was not given to the petitioner to submit his case before the Authority. He submitted that he has not made encroachment and the Gat No.263 is not cultivated by him, but his mother – Bayanabai is cultivating the said land. He submitted that the respondent No.3 and the petitioner has filed a joint pursis for withdrawal of the proceedings before the Additional Collector, Buldhana, inspite of that the Additional Collector passed the order. He, therefore, prayed that the order be set aside by allowing the writ petition.

(5) Per contra, Smt. Barabde, learned Assistant Government Pleader supported both impugned orders.

(6) The proceedings before the Additional Collector, Buldhana were filed by the respondent no.3 on 13.12.2018. Notice was issued on the very same day. From the *Roznama*, which is annexed with the petition shows that the notice of the proceedings was immediately served upon the petitioner and on 07.01.2019 itself the petitioner appeared through his advocate. According to the learned counsel for the petitioner, there was no occasion for the petitioner to file the reply to the proceedings since a joint pursis was filed for withdrawal of the proceedings. It is to be noted here that

the petitioner was knowing what are the charges levelled against him in the disqualification petition on 07.01.2019 itself, since he appeared in the proceedings and filed his appearance through his advocate. Till 17.06.2019 though opportunity was available with the petitioner, he chose not to controvert any of the allegations made against him in the disqualification proceedings. As per the disqualification petition, the petitioner has made encroachment on house property no.305 to the extent of 33 x 33 feet and he has made construction on 22 x 17 feet. It is also the charge against the petitioner that by giving affidavit showing that his name is Prakash Punjaji Pawar, though he has obtained benefit under 'Indira Gandhi Awas Yojana' on name Darasingh Punjaji Pawar. Another allegation against the petitioner was that Gat Nos.262 and 263, though it is Government land, that has been encroached upon by the petitioner and his mother-Bayanbai and they are cultivating over the same.

(7) The Additional Collector has called for the report from the Circle Officer, Talathi. The report is given on 05.01.2019 by the Circle Officer, Talathi and Secretary. The said report shows that there is an encroachment on the house property. Similarly, inquiry was made by the Circle Officer and statement of the petitioner was recorded, which is at page no.22 of this writ petition. In his statement, the petitioner himself stated that his mother has made encroachment on E-class land. The mother of petitioner is

75 years old. What is important to note here is that the statement and the report is dated 05.01.2019 and it was filed on record in spite of that till the decision the petitioner has kept mum and has not raised any objection on the joint report of the Circle Officer, Talathi and Secretary.

(8) In that view of the matter, there is no doubt in my mind that the petitioner has incurred disqualification because of the fact he has made encroachment on the Government land and also on the house property.

(9) The contention of learned counsel for the petitioner is that the complainant – Anil Pawar has filed withdrawal pursis and therefore proceedings ought to have been stopped. In my view, this submission is devoid of any substance since the proceedings for disqualification can even be initiated *suo motu*, even if it is noticed by the authority, that the petitioner has incurred disqualification, if he has committed certain acts which urge disqualification as stated in Section 14 of the Maharashtra Village Panchayats Act. The learned Additional Collector therefore was right, after considering the joint report which was not challenged at all by the petitioner, that petitioner incurred disqualification.

(10) There is no merit in the writ petition. The writ petition is therefore dismissed. No order as to costs.

JUDGE

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