

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

WRIT PETITION NO. 3032 OF 2019

1. Mahadeo s/o Bhagwat Khatawkar,
Age : 45 years, Occu. - Agriculture,
Sarpanch, Village Ter,
Tq. And District Osmanabad **...PETITIONER**

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Rural and Water Conservation,
Mantraalaya, Mumbai
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad
3. The Collector,
District Osmanabad.
4. Tahesildar,
Osmanabad, Osmanabad,
5. Village Development Officer,
Grampanchayat, Ter,
Tq. Osmanabad, District Osmanabad
6. Raviraj s/o Balasaheb Chougule
Age : 34 , Occ : Nil
R/o Ter, Tq. & Dist. Osmanabad
7. Padmakar s/o Bhagwanrao Fand
Age : 34, Occ. Nil
R/o Ter, Tq. Osmanabad
District Osmanabad. **...RESPONDENTS**

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Advocate for Petitioner : Ms.Pradnya Talekar h/f.
Talekar & Associates
AGP for Respondent Nos. 1 to 4 : Mr.S. S. Dande
Advocate for Respondent No. 5 : Mr. S. P. Brahme h/f.
Mr. Sanket N. Suryawanshi
Advocate for Respondent No. 6 : Mr. R. D. Raut h/f.
Mr. Akhilesh C. Tripathi
Advocate for Respondent No.7 : Mr. Sanket S. Kulkarni
...

CORAM : S. G. DIGE, J.

DATE : 07.07.2022

JUDGMENT :

. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. By this petition, the petitioner has challenged the impugned orders dated 22nd September 2018 passed by the District Collector, Osmanabad and 21st January, 2019 passed by the Additional Divisional Commissioner, Aurangabad, whereby, the petitioner has been disqualified for the post of Sarpanch of Ter, Tq. & Dist. Osmanabad under section 14(1) (j-3) of the Maharashtra Village Panchayats Act (For short, “the Act”).

3. The brief facts of the petition are as under :-

The petitioner was duly elected Sarpanch of village Ter Taluka and District Osmanabad. The complaint was filed against the petitioner by respondent Nos. 6 and 7 stating that the petitioner has encroached in government gairan land 1273 and put up irregular construction on it. After receiving complaint, the Collector called reports from the concerned authority. Considering reports on record and submissions of the petitioner and respondent nos.6 and 7, the Collector by impugned order dated 22.09.2018 disqualified the petitioner from the post of Sarpanch. The petitioner challenged the order of the Collector by way of appeal before Additional Commissioner, Aurangabad. The Additional Commissioner rejected the appeal of the petitioner by order dated 21.01.2019. The said orders are under challenge .

4. The learned counsel for the petitioner Miss. Talekar submits that, the complaint was initially filed on the ground that there is near about 700 sq. ft. construction (i.e. 64 sq. mtr.) on Government Gairan land in Gut No. 1273. However, in enquiry, it was clarified that the land of the

petitioner is not in Gut No. 1273, rather it was converted in city survey being C.T.S. No. 1148, and the predecessor in title of the petitioner, was allotted the land by a Government order, way back in the year 1970. The learned counsel submits that no doubt that out of 97 Sq. mtr., land in question, there is some construction to the extent of 60-65 sq. mtr. however, it is neither in government gairan land at Gut no.1273 as seen from the boundaries of the land given by the complainant as well as the measurement sheet and map by the land records office. Nor, is the land of the petitioner adjacent to the land at Gut no.1273. Without calling for a report from the land records office, the respondents, acting under the political pressure, have undertaken a lopsided enquiry and relying on the measurements by the revenue officers, without any expertise, the petitioner is disqualified.

5. The learned counsel submits that the District Collector under Section 16(2) is merely supposed to verify, if any vacancy arises owing to disqualification suffered under Section 14, meaning thereby there is no jurisdiction with the Collector for adjudicating whether the disqualification is

actually incurred. The learned counsel submits that only on a settled question of disqualification, the Collector is to take further steps under section 16. In a question of disqualification under section 14(1)(j-3), it was expected for the Collector to take action only in case there was a clear order as to the title of the petitioner by a Civil Court, after proper adjudication. There being an allotment order in favour of the predecessor in title of the petitioner and clear record available with the Superintendent of Land Records office, this is not a case where the Collector could have undertaken action under section 16. It is the contention of the learned counsel for the petitioner that in question of disqualification under section 14(1)(j-3), it was expected for the Collector to take action only in case, there was a clear order as to the title of the petitioner by a civil court, after proper adjudication.

6. The learned counsel submits that in similar cases where other members of the same Gram Panchayat were sought to be disqualified on this count, the matter was referred to the Land Records authorities and their reports were sought, since many parts of the village Ter have been converted into

city survey numbers and the record of allotment and measurement is with the office of Land Records. The petitioner was unfairly treated only owing to political pressure against him.

7. The learned counsel submits that, the petitioner was framed for political reasons and deprived of a democratically elected post on malafide considerations. Therefore, the learned counsel for the petitioner submits that by allowing the petition the petitioner may be reinstated as Sarpanch.

8. The learned counsel for the petitioner relies upon the judgments in the cases of *Hasham Abbas Sayyad Vs Usman Abbas Sayyad and others* reported in (2007) 2 SCC 355 and *Zuari Cement Limited Vs. Regional Director, Employees' State Insurance Corporation, Hyderabad and others* reported in (2015) 7 SCC 690.

9. It is contention of learned counsel for respondent Nos. 6 and 7 Shri Kulkarni and Shri Raut that the Collector has

passed order by considering all reports on record. The sufficient opportunity was given to the petitioner. At the time of measurement and panchanama, the petitioner was present. It has come on record that there is encroachment. The Grampanchayat record shows that there is encroachment of 00.03 R. The petitioner has not produced any receipt of construction permission of house nor produced receipt of payment of house taxes before the concerned authority. All the points raised by learned counsel for the petitioner have been put up for the first time before this Court. The pleadings of the petitioner before the Collector and Commissioner was in respect that the petitioner was not family member of Dattu Gyanba Kumbhar and he was not residing in that house.

10. Learned counsel further submits that in the case of Shri Kamble specific mentioning was there regarding measurement of land through land survey officers, hence it was sent to land record officers. There is no bar in the land revenue code to measure the land through Talathi. Learned counsel further submits that petitioner had also filed complaint against other Grampanchayat members regarding

encroachment on the government land. The learned counsel requested for dismissal of petition. The learned counsel relied on the judgment in the case of *Janabai Vs. Addl Commissioner, Civil Appeal No. 6832 of 2018, (Arising out of S.L.P (Civil) No. 24212 of 2017), decided on 19.09.2018.*

11. It is contention of learned counsel Shri. Brahme for respondent No. 5 that this Court has very limited scope under Article 227 of the Constitution of India, the orders passed by the Collector and Additional Commissioner are legal and valid. Being the officer of revenue department the Talathi can measure the land. The orders are passed by the lawful authorities. All the points raised by the petitioner were not put before the Collector or the Additional Commissioner.

12. The learned AGP Shri. Dande for respondent Nos. 1 to 4 submits that the orders passed by the Collector and the Additional Commissioner are as per the provisions of law and after giving sufficient opportunities to all the parties.

13. I have heard all the learned counsel. Perused the

order passed by the District Collector. The Collector has passed the order on the basis of the report of the Block Development Officer, Osmanabad, Gram Sevak Village, Ter, Dist. Osmanabad, Talathi Village Ter, Dist. Osmanabad . In the order the Collector has observed that report of Gram Sevak, Talathi and Block Development Officer are contradictory, hence the matter can be fixed for examination in chief and cross-examination, but it appears from record that it was not done and the impugned order was passed. The report of Block Development Officer shows, there is encroachment on 9760 Sq. meter land whereas the Talathi's report shows encroachment is on 00.03 guntha.

14. The Collector further held that the petitioner's family member has encroached on Government land, hence the petitioner is liable for disqualification.

15. It is pointed out by the learned counsel for the petitioner that in a similar matter of disqualification of a member of Gram Panchayat Ter, on ground of encroachment

on public land, the office of the District Collector, Osmanabad had called a report from the Deputy Superintendent, Land Records, Osmanabad prior to taking any decision.

16. It appears from the record that on 17.12.2017, the complaint was made against Shri Shrimant Aba Kamble on the ground that Shri Kamble has encroached on Gram Panchayat land. The Deputy Chief Executive Officer, Osmanabad had called report from Block Development Officer, Panchayat Samiti, Osmanabad. The Block Development Officer had given report stating that there is entry of grand father of Shri Shrimant Kamble in city survey office and there is P.R. card and Sanad in his name, hence whether Shri Shrikant Kamble has encroached on public land or not can be decided after taking report of the Land Record office.

17. Accordingly, the Deputy Superintendent of Land Record, Osmanabad given report stating that there is no

encroachment by Shri. Kamble on public land.

18. It is contention of the learned counsel for the petitioner that the petitioner's case is identical like Shri. Kamble. There is entry of petitioner's cousin grand father in PR. record. The learned counsel further submits that the Land Records office has issued letters in favour of the petitioner which shows that the petitioner has not encroached on Gairan land.

19. Admittedly the Government has given land to the petitioner's cousin grand father. His name is entered in PR. Card. Perused the letters issued by the Land Record Office dated 17.06.2019, 16.10.2020 and measurement report dated 04.12.2019. These letters and measurement report show that there is no encroachment by Shri Keshav Khatawkar (petitioner's brother). It is significant to note that the Block Development Officer, Osmanabad has given report in petitioner's case and same office of Block Development Officer, Osmanabad has given opinion in Kamble's matter to

call report from the Land Record Office. It shows contrary stand taken by the Block Development Officer, Osmanabad.

20. The letters issued by the Land Records Office to the petitioner's brother are after passing of the order by the Collector. For the first time, by way of affidavit in reply, the petitioner has mentioned this fact before this Court.

21. It is contention of the learned counsel for respondent nos.6 and 7 that the land was measured by the officers of Land Record behind back of the respondent nos.6 and 7. They are not aware about issuance of the letters by the Land Record Department. It is matter of record that, the letters issued by the Land Record Department are after passing orders of the Collector. It is necessary to give opportunity to the respondent nos.6 and 7 who are original complainant to put their side. It needs to be verified by the Collector and take proper decision on it.

22. In the matter of disqualification of elected members when complaint is filed by rival candidate or any person, the concerned authority must be very cautious while passing order. The authority must consider each and every aspect of the matter.

23. In present case, the Collector's approach appears to be casual, when there are contradictory reports of Block Development Officer, Gram Sevak and Talathi and the Collector had observed to record evidence, but avoiding it the Collector has passed the impugned order, which is illegal. The Additional Divisional Commissioner has also not considered this fact and passed the impugned order. Though the record shows there is 0.003 guntha encroachment since last 25 years, but no notice of encroachment was given during that period. In Shrimant Kamble's matter, the report was called from Deputy Superintendent of Land Records, and his matter is finalized.

24. The learned counsel for the petitioner submits

that the District Collector under section 16(2) is merely supposed to verify, if any vacancy arises owing to disqualification suffered under Section 14, meaning thereby there is no jurisdiction with the Collector for adjudicating whether the disqualification is actually incurred.

25. Section 16 of the Act reads as under :-

“Disability from continuing as member : (1) If any member of a *panchayat*

(a) who is elected or appointed as such, was subject to any of the disqualification mentioned in Section 14 at the time of his election or appointment, or

(b) during the term for which he has been elected or appointed incurs any of the disqualifications mentioned in Section 14, he shall be disabled from continuing to be a member, and his office shall become vacant.

(2) [If any question whether a vacancy has occurred

under this Section is raised by the Collector *suo motu* or on an application made to him by any person in that behalf, the Collector shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under sub-section (1) from continuing to be a member.] Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the Commissioner, and the orders passed by the Commissioner in such appeal shall be final:

Provided that no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard.”

26. This section casts duty on the Collector to make enquiry in respect of any application received by him and decide it within sixty days from receipt of application, so it

makes it clear that section 16(2) empowers Collector to make enquiry, it does not lay down any procedure much less the manner in which enquiry is conducted. Rules are not framed for conducting enquiry. The Collector while adjudicating issue of disqualification required to follow the principles of natural justice and fair play. Moreover, section 53 of the Act empowers Panchayat, the Collector and the Commissioner to take action against obstruction and encroachments upon public streets and open sites.

27. Considering the case of Shri Shrimant Kamble wherein the report was called from Land Record Office and considering the peculiar facts of the present case, i.e., contradictory reports of encroachment, no encroachment report and letters issued by Land Record Office in favour of petitioner's brother, but this report and letters are issued after order of the Collector, Osmanabad, Respondent nos.6 and 7, who are original complainants needs to give opportunity to put their side, hence, I find it fit case to remand the matter before the Collector for fresh hearing.

28. In view of the above I pass the following order.

ORDER

- (i) The petition is partly allowed.
- (ii) The orders dated 22.09.2018 and 21.01.2019 passed by the Collector, Osmanabad and the Additional Commissioner, Aurangabad are hereby quashed and set aside.
- (iii) The matter is remanded back before the Collector, Osmanabad for fresh hearing and the Collector shall decide the complaint of respondent nos.6 and 7 afresh and after giving opportunity to all the parties to put their side. The Collector shall verify the record as observed earlier and pass the order on its own merit, as early as possible, preferably within two weeks from receipt of this order.
- (iv) The petition is disposed of in above terms.
- (v) The Rule made partly absolute in above terms.

29. After pronouncement of this judgment learned counsel for petitioner submits that petitioner be put back in

the post of sarpanch as per the order passed by this Court dated 19th June, 2019. This Court (Coram : Ravindra V. Ghuge, J.) by order dated 19th June, 2019 has observed that in paragraph 5 and 6 as under :

“5. Yet I find that it would be appropriate to record in this matter that if eventually, after this petition is decided, it appears that the petitioner has not indulged in any encroachment and respondent Nos. 6 and 7 have abused the process of law, this Court would contemplate imposing costs of Rs. 5,00,000/- (Rs. five lacs only) on each of these original complainants.

6. So also, it be noted that even if a new Sarpanch is elected in the elections scheduled on 23rd June, 2019, no equities would be created in favour of the said Sarpanch and if the petitioner succeeds in this court, the newly elected Sarpanch would be displaced to accommodate the petitioner.”

30. As this matter is not finally decided, hence request of learned counsel for the petitioner cannot be accepted. If the Collector comes to the conclusion that there is no encroachment by the petitioner, then the Collector shall

consider the order passed by this Court dated 19th July, 2019.

31. All the concerned parties are directed to appear before the Collector on 13th July, 2022 at 11.00 a.m.

32. All the parties to act upon authenticated copy of this order.

33. In view of the disposal of this Petition itself, nothing survives for consideration in Civil Application No.6412/2019, hence the same stands disposed of.

(S. G. DIGE)
JUDGE

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shp/-