

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

902 WRIT PETITION NO.5860 OF 2022

IRSHAD LIYAKAT MULANI
VERSUS
THE DIVISIONAL COMMISSIONER AND OTHERS

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Advocate for Petitioner : Mr. Kulkarni Sanket S.
AGP for Respondents/State : Mr. K.B. Jadhavar
Advocate for R/4 : Mr. Sachin Deshmukh h/f. Devadatt Deshmukh
Advocate for R/6 : Mr. K.N. Shermale
Advocate for R/5 : Mr. A.P. Deshmukh

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CORAM : M.G. SEWLIKAR, J.
DATE : 6th September, 2022

PC.:-

Heard.

2. The petitioner contested the election of Panch / Member for Gram Panchayat, Ter, Tq. & District Osmanabad. Respondent no.2 also contested the election for the post of Sarpanch from other political party. The respondent no.2 was declared elected as Sarpanch.

3. A complaint was filed with the District Collector, Osmanabad for disqualification of respondent no.2. Respondent nos.2 and 3 made a complaint against the petitioner. It was alleged that the petitioner has made encroachment on Government land i.e. gavthan land. Respondent no.1-

District Collector without hearing the petitioner passed the order *ex parte* directing the Deputy C.E.O., Zilla Parishad, Osmanabad to make primary inquiry and submit the report as per the original complaint. The learned Authority without giving proper opportunity to the present petitioner straightway decided the complaint and passed the impugned order of disqualification of the petitioner as Member of Gram Panchayat. Learned counsel submits that the petitioner is residing in his ancestral property at Ter. The petitioner is residing separately from his father. He has made no encroachment on any land leave alone the Government land. The learned Collector, Osmanabad disqualified the petitioner as Member of Gram Panchayat. Against this decision the petitioner preferred appeal before the Divisional Commissioner, Aurangabad challenging the elections of Members of Gram Panchayat. The Divisional Commissioner, Aurangabad also dismissed the appeal of the petitioner. The petitioner is, therefore, impugning this decision by way of this petition.

4. I have heard Shri Kulkarni learned counsel for the petitioner, learned AGP Shri Jadhavar for respondent nos.1 and 2, learned counsel Shri Deshmukh for respondent nos.4 and 5 and learned counsel Shri Shermale for respondent no.6.

5. Learned counsel for the petitioner Shri Kulkarni submits that no

evidence was produced before the Collector to show that the petitioner made the encroachment. The report of the BDO shows that it was prepared two months before the alleged complaint. The said report was prepared without giving notice to the present petitioner. He submits that just to take revenge this complaint has been filed.

6. Learned counsel for the respondent nos.4 and 5 Shri Deshmukh submits that the Gram Panchayat has prepared extension list showing the persons occupying the Government land. He submits that at serial no.145 name of the petitioner appears to be of an encroacher. He further submits that in the appeal memo the petitioner admits that he has committed encroachment not on the Government land but on the Wakf property. He submits that this admission is a clear evidence of his encroachment. He further invited attention of this Court to a communication made by the Wakf to the Police Inspector stating therein that the petitioner has made encroachment in the graveyard. He, therefore, submits that there is ample evidence to show that the petitioner has made encroachment over the Wakf property. Instead of making any comment on the merits of the matter, it will be appropriate to direct the Collector to get the land measured through the SLR to decide whether the petitioner has made encroachment over the Government land. The SLR shall measure the land after giving notice to the

concerned parties. The Collector after receipt of report from the SLR shall decide the proceedings before it within two months. Learned AGP submits that in the inquiry regarding encroachment made by the BDO the petitioner did not remain present deliberately and therefore the same was conducted in his absence.

7. Accordingly, the matter is remanded to the Collector. The orders of the Divisional Commissioner and the Collector are set aside. The Collector shall decide the matter within two months from the date he receives the report from the SLR about the encroachment. Writ Petition is disposed of. No costs.

[M.G. SEWLIKAR, J.]