

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6123 OF 2022

Chaya Rajendra Fulfagar.

...Petitioner.

Versus

The Collector, Pune and Others.

..Respondents.

Mr. Chaitanya Nikte, Sumedh Raikar and Prajit Sahane for the Petitioner.

Ms. M. S. Bane, AGP for Respondent Nos.1, 4 and 5.

Mr. Abhishek R. Avachat for Respondent No. 2.

Mr. Abhijit Khandre i/b Ravindra S. Pachundkar for Respondent No. 3.

CORAM : PRASANNA B. VARALE &
SHRIKANT D. KULKARNI, JJ.

Date : June 22, 2022.

P. C. :

1. Heard learned counsel appearing on behalf of the Petitioner. A detailed order was passed by this Court on 8th June 2022 referring to the issue involved in the petition. Order passed by us reads thus :

"1.Heard learned counsel and learned AGP appearing for the respective parties.

2. The petitioner is the resident of Village Grampanchayat Karegaon. At the instance of respondent No.3- Manoj Jagtap, proceeding was initiated seeking disqualification of respondent No.2-Nagesh Sarjerao Shelar. A copy of dispute presented before the District Collector, Pune, is placed on record at Exhibit-'A'. It was the submission of respondent No.3 before the Collector that respondent No.2 was elected as the member of Grampanchayat from Ward No.4 under a declaration dated 18th January, 2021 is indulged in an act of encroachment over the Grampanchayat property. It was submitted in the dispute that respondent No.2 was not only guilty of an act of encroachment but he himself admitted that he is occupying the said encroached area. Respondent No.3 in support of his case submitted certain documents to the authority.

3. Learned counsel for the petitioner submitted that the District Collector called for a report from respondent No.4-Tahasildar and as per the submission of the learned counsel for the petitioner, respondent No.4-Tahasildar after due enquiry and panchanama prepared a report and submitted the same before the Collector. Learned counsel for the petitioner, then, submitted that when the proceeding reached at the stage of passing of the order, respondent No.3 – objector/disputant submitted an application on 9th March, 2022 and by remaining present personally on the said date on 9th March, 2022, prayed for withdrawal of the objection/dispute and the District Collector, Pune, by recording no objection of the disputant/objector closed the file. Learned Counsel for the Petitioner submitted that the course adopted by the District Collector, Pune, is wholly untenable and unsustainable. Learned counsel for the petitioner submitted that even though the objector/disputant withdrew his dispute/objection, it was the duty of the District Collector, Pune,-competent authority exercising powers under the Maharashtra Village Panchayat Act, 1959 to satisfy himself about the issue of encroachment carried by the elected member of the panchayat. Learned counsel for the petitioner submitted that without recording such subjective satisfaction, the Collector only on 'no objection' of the objector/disputant closed the file and as such, the Collector, Pune, failed to perform his statutory duty. This being the issue involved in the petition, the Registry is directed to issue notice to the respondents returnable on **22nd June, 2022 at 2.30 p.m..**

4. Learned AGP waives notice on behalf of respondent Nos.1, 4 and 5 and Mr. Joshi, learned counsel waives notice on behalf of respondent Nos.2 and 3.

5. The parties are put to notice that the petition would be heard finally on the next scheduled date subject to the convenience of the Court."

2. Learned counsel appearing on behalf of Respondent No.2 vehemently submitted that the petition is not sustainable before this Court on two grounds; firstly, the Petitioner was not a party before the Collector, Pune seeking disqualification of Respondent No.2 at the instance of Respondent No.3–Manoj Jagtap; the second submission of learned counsel appearing on behalf of Respondent No.2 is that in view

of an efficacious remedy available to the Petitioner to challenge the order of Collector as provided under section 16(2) of the Maharashtra Village Panchayats Act, (for short "the said Act") the petition may not be entertained by this Court. On both these counts, we are unable to accept the submissions of learned counsel appearing on behalf of Respondent No.2. At the cost of repetition, we state that initially the Collector, Pune-Respondent No.1 was approached by Respondent No.3 seeking disqualification of Respondent No.2 **under section 14(1)(J-3)** of the Maharashtra Village Panchayat Act. We may refer to the said provision for ready reference :

*"14. Disqualifications:- (1) No person shall be a member of a panchayat or continue as such, who -
(a)
(b)
....
(j-3) has encroached upon the Government land or public property;
....."*

3. Respondent No.1-Collector, Pune in his order states that on receipt of application seeking disqualification of Respondent No.2, an opportunity of hearing was granted to the parties by issuing notice. In response to the said notice, the Applicant (Respondent No.3 herein) remained present before the Collector on 9th March 2022. On discussion with the Applicant (Respondent No.3 herein), Respondent No.3 submitted before the Collector that when he had a personal discussion

with Respondent No.2, he found that Respondent No.2 had not committed any breach of the conditions referred to in section 14. Respondent No.3 submitted before the Collector that as such he is not inclined to continue the proceedings as no grievance subsists against Respondent No.2 and the application be filed (meaning thereby "the proceedings be closed."). The Collector then referring to the submission of Respondent No.3, arrived at the conclusion that there is no reason for continuing the proceedings and file needs to be closed.

4. The perusal of reasoning assigned by the Collector indicates that the Collector failed to record his own reasons and only on the satisfaction of Respondent No.3, thought it fit to close the file. It is interesting to note that Respondent No.1 arrived at the satisfaction on discussion with Respondent No.3 only. The collector being an authority under the said Act and exercising the powers under the said Act, in a matter where the serious consequences are contemplated to in the nature of unseating of a member who incurs disqualification. The provision of the said Act, i.e., section 14(1)(j-3), indicates that a finding of the authority on the issue, namely, disqualification on the ground of encroachment over a government land or public property is required. Needless to state that the District Collector is the custodian of government lands or the public properties. As such the Collector is

expected to form an opinion and arrive at the subjective satisfaction on his application of mind and scrutiny of material, if needed.

5. In the present case, the Collector without considering all these aspects has chosen an easy way to close the file. Even considering the nature of proceedings before a quasi-judicial authority, it is the consistent view of this Court that in the orders passed by the quasi-judicial authorities, the orders must indicate the application of mind by the authority and the authority is expected to assign reasons, though the reasons may be in brief. However, the important factor is the reflection in the order is application of mind by the authority concerned, which is completely missing in the order passed by the Collector in the present case.

6. Learned counsel appearing on behalf of Respondent No.2 though made other submissions on the second aspect, namely, the efficacious remedy available to the Petitioner in the nature of an appeal before the State Government as provided under section 16(2) of the Act, the perusal of the said provision clearly indicates that the duty is cast upon the authority, i.e., the Collector to decide the said question, and the provision further states that any person aggrieved by the decision of Collector may, within a period of fifteen days from the date of such decision, appeal to the Commissioner, and the order passed by the

Commissioner in such appeal shall be final. Thus, the remedy of an appeal though certainly provided, it is against the decision of Collector.

7. learned counsel appearing on behalf of the Petitioner submitted that as the disqualification of Respondent No. 2 is sought for on the ground of encroachment over the government land, and Respondent No. 3 has withdrawn his complaint, the petitioner is ready to step in the shoes of Respondent No. 3 so as to continue the proceeding and the collector, Pune be directed to decide the proceedings on its own merits. As we are of the opinion that the order of the collector dated 1st April 2022 impugned in the petition is unsustainable, we permit the Petitioner to continue the proceedings, thought it was initiated at the instance of Respondent No.3 by setting aside the order dated 1st April 2021 passed by the Collector, Pune. We direct Respondent no.1 (Collector, Pune) to decide the proceeding afresh, as early as possible and in any case not later than eight weeks from the date of receipt of a copy of this order. The Collector to hear the proceedings afresh. The Collector may also call for the necessary record from the subordinate authorities.

8. With the aforesaid directions, the writ petition is disposed of .

9. At this stage, learned counsel appearing on behalf of

Respondent No. 2 prayed for grant of stay to the order passed today by this Court. Considering the reasons assigned by us referred to above, we are unable to grant stay to the order passed by us today. The prayer for grant of stay is, therefore, rejected.

[Shrikant D. Kulkarni, J.]

[Prasanna B. Varale, J.]