

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

WRIT PETITION NO. 2734 OF 2022

Akshay Jitendra Raut Vs. Divisional Commissioner and others

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

Court's or Judge's orders

Mr. N.A.Gawande, Advocate for petitioner
Mrs. M.M.Barabde, AGP for respondent Nos. 1 and 2
Mr. A.M.Tirukh, Advocate for Respondent Nos. 3 and 4
Mr. P.S.Tiwari, Advocate for Respondent No. 5

CORAM : AVINASH G. GHAROTE, J.
DATE : 19/08/2022

1] Mr. Gawande, learned counsel for the petitioner at the outset seeks leave to amend the prayer clause in the petition by inserting a prayer for challenging the order of the Collector dated 30.3.2022 (page 45).

2] Though such addition is opposed by the learned counsel for the respondents, however, considering the nature of the proceedings, the leave is granted. The amendment be carried out forthwith.

3] Heard Mr. Gawande, learned counsel for the petitioner, Mr. Tirukh, learned counsel for Respondent Nos. 3 and 4, Mrs. Barabde, learned AGP for respondent Nos.1 & 2 and Mr. Tiwari, learned counsel for respondent No.5.

4] The petition challenges the order dated 30.3.2022 passed by the learned Collector, whereby the petitioner has been disqualified from the post of Member of the Gram Panchayat Khatgaon, Tq. Murtizapur, Dist. Akola, under Section 14 (1) (j-3) of the Maharashtra Village Panchayat Act and the subsequent order of the respondent no.1 dated 9.5.2022 passed by the Respondent No.1 (page 64), whereby the appeal has been dismissed.

5] Mr. Gawande, learned counsel for the petitioner submits that the entire order of disqualification is based upon the report submitted by the Committee of 4 persons, comprising of the Secretary, Gram Panchayat Khatgaon, the Extension Officer, Panchayat Samiti Murtizapur, the Sectional Engineer, Panchayat Samiti, Murtizapur, and the BDO, Panchayat Samiti, Murtizapur, dated 28.3.2022 (page 44), whereunder it has been opined that the petitioner has made an encroachment on the Government land. It is submitted that the report was given without verifying the title papers of the petitioner in respect of the lands in question, and thus depicts a factually incorrect picture and therefore, the impugned orders are vitiated as they merely rely upon the report.

6] A perusal of the report indicates that it considers three properties viz. Property Nos. 113, 517

and 522, out of which it is claimed that an encroachment has been made in respect of property Nos. 517 and 522.

7] The documents on record indicate that property No. 113 was purchased by the petitioner from one Nalubai under a sale deed dated 12.5.2017 and the extent of the property purchased is 1750 sq.ft. Nalubai in turn had purchased the same from one Gajanan Mahalle by a sale-deed dated 21.3.1995 (Annexure-K, page 92) in which the area is shown as 1750 sq.ft. The report itself indicates that there is no encroachment in respect of this land.

8] Property No. 517 was purchased by the grand-father of the petitioner namely Anandrao by sale deed dated 29.1.1985 (page 115) which indicates the extent of property purchased to be 972 sq.ft., out of which the petitioner by a sale deed dated 3.1.2017 has sold an area of 400 sq.ft to one Bhuru Shah Irshad Shah, leaving him with an area of 575 sq.ft. The report indicates a reverse position, namely that Noor Shah has sold 400 sq.ft., land to the petitioner, which is factually incorrect considering the sale deed dated 03.01.2017, a copy of which has been placed on record (page 124).

9] Mr. Tirukh, learned counsel for respondent Nos. 3 & 4 makes a categorical statement that the entry in the record of the Gram Panchayat mistakenly shows this

area to be only 65 sq.ft., considering which the claim of an encroachment in respect of property No. 517 does not survive.

10] In respect of the third property bearing property no. 522, the same was purchased by the grandfather of the petitioner by sale deed dated 14.2.1982 (pg 136) which was admeasuring 594 sq.ft. The report indicates the petitioner to be in possession of 504 sq.ft out of this area, which again indicates that there is no encroachment in respect of this property also.

11] The above position indicates a very sordid state of affairs. Elected representatives are disqualified on the ground of having made encroachment on the Government land, merely on the basis of a superficial enquiry based on the entries in the Gram Panchayat record and measurements conducted in the absence of the person who is claimed to have committed an encroachment, which is the basis of his disqualification. Such a situation is impermissible in law. In all cases, where the elected representative is sought to be disqualified on the ground of an encroachment having been made by such elected representative on the Government land, it would be necessary for the person/ committee entrusted with the task of submitting a report as to the alleged encroachment, to have first given a notice in writing to the elected representative of the date

and time on which measurement of the property, vis-a-vis the claim of encroachment, is to be conducted, asking such elected representative to remain present during the process of measurement. In case the elected representative, upon notice chooses to remain absent, the work of measurement can then be done in his/her absence. It would also be permissible for such elected representative, in case he so chooses to place before the person/committee entrusted with the task of carrying out measurement so as to determine the existence or non-existence of encroachment, to place documents of title to demonstrate absence of encroachment, which will have to be taken into consideration by the person/committee before submitting his/its report to the Collector in proceedings for disqualification pending before him. The Collector can also examine the documents of title of the elected representative sought to be disqualified, so as to ascertain whether the claim of encroachment as alleged has merits. This would result in genuine claims being entertained and frivolous ones being thrown out.

12] In view of what has been discussed in paras supra, the entire report which has been relied upon by the Collector as well as the Divisional Commissioner to hold that the petitioner has encroached upon the Government land and thereby incurred disqualification is rendered nugatory, as a result of which the impugned orders cannot be sustained. They are accordingly

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quashed and set aside and the complaint filed by Respondent No.5 is accordingly dismissed.

13] The petition is allowed in above terms. No costs.

JUDGE

Rvjalit