

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

WRIT PETITION NO.4469 OF 2022

Shilvant Ashok Raibole

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

Mr. P. S. Patil, Advocate for petitioner.
Mrs. M. A. Barabde, AGP for respondent no.1.

CORAM : AVINASH G. GHAROTE, J.
DATE : 02/08/2022

1. Heard Mr. Patil, learned counsel for the petitioner and Mrs. Barabde, learned AGP for respondent no.1.

2. The petition questions the order dated 6.6.2022 passed by the respondent no.1, whereby the order dated 22.2.2022 of the Additional Collector, Amravati, disqualifying the respondent no.2 has been set aside. The contention is that, the respondent no.2 is an encroacher on the land Gut No.20, which is categorized as E-Class which is government land and therefore, the respondent no.2 had incurred disqualification under Section 14 (1)(J-3) of the Maharashtra Village Panchayat Act. It is contended that though there was an inspection report at the behest of the Additional Collector, which would indicate an encroachment by respondent no.2, which is the basis of the order by the

learned Additional Collector, the same has been ignored by the respondent no.1, as a result of which, the impugned order stands vitiated. A perusal of the report dated 3.3.2021 (page 21) indicates that the same is in the absence of the respondent no.2 and it does not indicate that before the inspection the respondent no.2 was ever noticed for any purpose whatsoever. That apart, the report is in generalized terms and merely indicates that the land of Gut No.20, is being cultivated by the respondent no.2 and her brother. Since the said report, does not indicate the respondent no.2 being noticed, no reliance can be placed thereupon. That apart, there is no entry in any Government records of the respondent no.2 being in occupation of this land in spite of the fact that it is alleged that it is being cultivated by the respondent no.2 and her brother. There is not even a single notice issued by the Gram Panchayat or any other authority, to the respondent no.2 claiming that there was an encroachment by her on the land of Gut No.20 and the same should be removed. Even after the report dated 3.3.2021, there is nothing on record to indicate that any action subsequent thereto has been taken to establish any encroachment by the respondent no. 2 upon the land of Gut No.20. That being the position, in my considered opinion, the order of the respondent no.1 dated 6.6.2022 cannot be faulted with. Since respondent no.2 is sought to be disqualified on the ground of having committed encroachment on Government land, the factum of

encroachment has to be unequivocally demonstrated and established before such disqualification can be ordered. *Janabai Vs. Additional Commissioner and others, 2018(5) Mh.L.J. 921* upon which reliance has been placed by Mr. Patil learned counsel for the petitioner, is of no assistance, for the reason that in the instant matter the alleged encroachment of the respondent no.2 upon the land of Survey No. 20 has not been established. I, therefore do not see any merit in the petition, the same is accordingly dismissed. No costs.

JUDGE

Sarkate