

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

WRIT PETITION NO. 3601 OF 2020

Gopalrao Mudgal Bhambere

vs.

Divisional Commissioner, Amravati and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. U. J. Deshpande, Advocate for petitioner.
Mr. N. R. Patil, AGP for respondent Nos.1 and 2.
Mr. D. V. Mahajan, Advocate for respondent No.3.

CORAM : AVINASH G. GHAROTE J.

DATE : 10/10/2022

The petition challenges the order dated 05.10.2020 passed by the Additional Commissioner, Amravati purporting to exercise powers under Section 16(2) of the Maharashtra Village Panchayats Act, 1959 (M.V.P. Act) whereunder the order dated 03.10.2019 (page 57) passed by the Collector directing measurement of the alleged encroachment, has been quashed and set aside.

2. It is contended that the powers under Section 16(2) of the M.V.P. Act would not entitle the respondent No.3 to file an appeal against the

impugned order and therefore the learned Divisional Commissioner held that the impugned order was without jurisdiction and therefore, it was required to be quashed and set aside.

3. Mr. Mahajan learned counsel for the respondent No.3 submits that since the resultant consequence of the order dated 03.10.2019 would be the disqualification, it would be susceptible to challenge.

4. Mr. N. R. Patil, learned AGP supports the contention of the petitioner, in regards so far as the question of maintainability of an appeal is concerned.

5. A perusal of Section 16(2) of the M.V.P. Act indicates that an appeal would lie upon a decision by the Collector, as to whether vacancy has arisen, which would indicate the final order of the Collector under Section 14(1)(j-3) of the M.V.P. Act. The question of vacancy cannot arise at any time prior thereto, much less on account of order dated 03.10.2019 passed by the Collector which merely directs measurement of the alleged encroachment. It is therefore apparent that the order passed by the Divisional Commissioner was clearly without jurisdiction, as no appeal lies against the order dated 03.10.2019 under Section

16(2) of the M.V.P. Act, in view of which, the order dated 05/10/2020 cannot be sustained, the same be quashed and set aside, as a result of which the order 03.10.2019 passed by the Collector stands restored.

6. Accordingly the Writ Petition is allowed.

7. The Collector is directed to expeditiously decide the matter since the term is likely to be over by 24.10.2022. Parties to appear before the learned Collector on **14.10.2022**, who shall decide the matter before **21.10.2022**.

JUDGE