

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

51 WRIT PETITION NO.942 OF 2022

RAJDHAR PRAKASH AHIRE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. S. S. Thombre h/f Mr. Karad Murlidhar S.
AGP for Respondents-State : Mr. K. B. Jadhavar
Advocate for Respondent No.10 : Mr D. K. Rajput
Advocate for Respondent Nos.7 to 9 : Mr. C. D. Biradar
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CORAM : ARUN R. PEDNEKER, J.

Date of Reserving the Order : 27/02/2023

Date of Pronouncing the Order : 06/03/2023

ORDER :

1. By the present writ petition the petitioner is challenging the validity of the order dated 05/01/2022, passed by the Additional Divisional Commissioner, Aurangabad rejecting the appeal filed by the petitioner against the order of disqualification dated 28/10/2021, passed by the District Collector, Aurangabad for holding the post of member of the Grampanchayat, Nagad, Taluka Kannad, District Aurangabad.

2. Brief facts of the petition can be summarized as under :-

The general elections to the Grampanchayat, Nagad were held in

the month of February, 2020 for the period of 5 years. In the said elections, the petitioner contested from the reserved caste category and was elected as a Member of Grampanchayat and subsequently the petitioner was elected as Sarpanch of the Gramapanchayat Nagad. The respondent No.10 filed a complaint before the District Collector, Aurangabad i.e. respondent No.3 stating therein that the father of the petitioner had made encroachment on the Government property and the petitioner is also the resident of the same encroached property.

3. In pursuant to the said complaint filed by the respondent No.10, the petitioner has appeared in the matter and submitted that he has not made any encroachment on the government property and he was residing separate from his father since 2019 and he is residing in a rented house. He further submitted that the alleged encroached house by the father of the petitioner was allotted under the Gharkul scheme under the Indira Avas Yojana. An inquiry was conducted by the Circle Inspector and accordingly the panchanama was prepared in presence of panch witnesses, and in the panchanama it was stated that financial assistance was provided under the Gharkul Scheme to the father of the petitioner in the year

2005-2008 under the Indira Avas Yojana. The payment under said Gharkul scheme was granted in the name of the petitioner's father. The Circle Inspector accordingly submitted a report to the Tahsildar on 05/04/2021. Further, the Tahsildar submitted a report to the District Collector on 07/06/2021. On the report submitted by the Circle Inspector, the Collector disqualified the petitioner. The same was challenged by the petitioner before the appellate authority. The appellate authority by the impugned order dismissed the appeal filed by the petitioner. It is the contention of the petitioner that the petitioner is non-suited on the ground that the father of the petitioner has encroached upon the Government land and the petitioner is also in possession of the same land, and as such, the petitioner is held to be disqualified.

4. The learned Advocate for the petitioner submits that the land was awarded to the uncle of the petitioner in the year 1975 under the Indira Avas Yojana, and thereafter, the same was received in inheritance by the father of the petitioner as the uncle died without issue.

5. The learned Advocate for the petitioner has taken me through

the scheme of the Indira Avas Yojana wherein in Clause 4 it is provided that the land of 100 square meter would be allotted under the scheme and construction of 200 square meter is permitted on the same land. He submits that once the property was allotted way back in the year 1975, it cannot be said that the petitioner has encroached upon the government land.

6. Per contra, the learned Advocate for the respondent No.10 submits that there is no proper allotment of the land. Although there may be allotment of the funds for construction on the land under the Gharkul Scheme. He submits that under the Maharashtra Land Revenue Code and the Relevant Rules, the allotment has to be done by the authority under the Act and Rules procedure under the Act has to be followed. In the instant case, the petitioner's father has encroached on the government property, and thereafter, he was granted an allotment of funds for construction of the house. He further submits that the petitioner is also encroacher on the said property. In view of the same, he contends that the order passed by the authority is proper.

7. On perusal of the Judgments passed by the authorities below,

relying upon the Judgment of Hon'ble Supreme Court in the case of *Janabai Vs. Additional Commissioner and others, reported in 2018 (5) Mh.L.J. 921*, the authorities have proceeded on the basis that in the event there is any encroachment by the family member and that the elected member is also an occupant or the holder of that property, then the elected member is disqualified being an encroacher of the property. However, there is no discussion in the impugned Judgment on the aspect of the allotment of land under the Indira Avas Yojana in the year 1975 to the uncle of the petitioner and the effect of the allotment of land under the Indira Avas Yojana in terms of Clause 3/4 of the Scheme i.e. whether the construction of the petitioner's father on the land granted under the said scheme is illegal and amounts to encroachment. Further, if the allotment is under the scheme whether the occupation of the petitioner would continue to be on encroached land.

8. The learned Counsel's submission that the construction under the Gharkul Scheme has to be on a land owned by the person who constructs under the Scheme and the construction cannot be on the Government land without the land being validly allotted, also needs to be examined viz-a-viz the above contention of the petitioner with

reference to Clause 3/4 of the Indira Avas Yojana.

9. The petitioner has also taken me through the documents indicating that the allotment of the land was done in the year 1975 to Popat Puja, who the petitioner claims to be the uncle of the petitioner. The petitioner has also produced on record payments made under the Gharkul Yojana for the allotment of house to the father of the petitioner.

10. The record produced by the petitioner indicates that money was received by the father of the petitioner under the Indira Avas Yojana for construction. Prima facie it is also clear that the uncle of the petitioner was allotted a plot under the Indira Avas Yojana, which ultimately was inherited by the petitioner's father. All the above issues will have to be gone into detail before an elected member is disqualified.

11. In the case of *Ravi Yashwant Bhoir Vs. District Collector, Raigad and others*, reported in (2012) 4 Supreme Court Cases 407, the Hon'ble Supreme Court has held that unsetting an elected member is a very serious issue and there has to be sufficient

evidence to unseat a publicly elected person.

12. In view of the same, the impugned orders dated 05/01/2022 passed by the Additional Divisional Commissioner, Aurangabad and order dated 28/10/2021 passed by the District Collector, Aurangabad are quashed and set aside. The matter is remitted back to the Collector to render findings as to the nature of the possession of the petitioner, qua the alleged encroached land. The Collector to examine the aspect of allotment of land to the petitioner's family and only after holding that the land continues to be a government land and the petitioner's possession (if any) over the government land is in a nature of an encroachment that the petitioner can be disqualified.

13. Writ petition is partly allowed with above direction.

(ARUN R. PEDNEKER, J.)

14. At this juncture, the learned counsel appearing for the respondent submits that the Collector be directed to decide the

proceedings as expeditiously as possible and in any event within a period of two (02) months from today.

15. The parties are directed to appear before the Collector on 21.03.2023. The Collector to decide the proceedings within two (02) months thereafter.

(ARUN R. PEDNEKER, J.)

vj gawade/-.