

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2896 OF 2022

1. Shri. Mahadu Dattatraya Bhosle
Age: 50 years, Occupation: Agriculture

2. Shri. Ramesh Chandrabhan Pawar
Age: 32 years, Occupation: Agriculture

3. Shri. Jankiram Giridhar Pawar
Age: 35 years, Occupation: Agriculture

4. Shri. Narayan Kamaji Bhosle
Age: 48 years, Occupation: Agriculture

All residents of: At Village Muli,
Taluka Gangakhed, District Parbhani

... Petitioners
[Orig. Applicants-Respondents]

Versus

1. The State of Maharashtra
Through the Additional Divisional Commissioner,
Aurangabad Division, Aurangabad

2. The Collector,
Parbhani, District Parbhani

3. Smit. Satyabhama Shrihari Bhosle
Age: 62 years, Occupation: Agriculture

4. Shri. Khobraji Ganpatil Bhumre
Age: 60 years, Occupation: Agriculture

5. Sau Rukminibai Khobraji Bhumre
Age: 55 years, Occupation: Agriculture

6. Sau Sunita Kisan Bhosle
Age: 45 years, Occupation: Agriculture

Respondent Nos.3 to 6 residents of: At village Muli,
Taluka Gangakhed, District Parbhani

... Respondents
[Org. Opponents-Appellants]

...
 Mr. M. S. Kulkarni, Advocate for the Petitioners
 Mr. A. S. Shinde, AGP for Respondent Nos.1 & 2
 Mr. A. B. Girase, Advocate for Respondent Nos.4 & 5
 Mr. D. S. Bagul and Mr. P. D. Bachate, Advocate for Respondent Nos.3 & 6
 ...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 22.02.2023

PRONOUNCED ON : 28.03.2023

JUDGMENT :

1. The petitioners impugned the judgment and order dated 25/01/2022, passed by respondent No.1/Additional Divisional Commissioner, Aurangabad, in Appeal No.जा.क्र.2021/ग्रा.पं./अपील क्र.1/सिआर-83, by which, a common order dated 25/11/2021 passed by respondent No.2 / District Collector, in Petition No.03/2021 and R.O.R. Petition No.12/2021 has been quashed and set aside with further directions to remand the matter for rehearing before the District Collector, Parbhani.

2. The petitioners had approached before respondent No.2 / Collector seeking disqualification of respondent Nos.3 to 6, who are elected Members of Village Panchayat, Muli, Taluka Gangakhed, District Parbhani. It is the contention of the petitioners that respondent Nos.3 to 6 and their family members are residing jointly. They have encroached upon the government property bearing Gat No.5. An illegal construction has been raised by them and they are in the occupation of encroached property. They do not hold any legal right to continue possession over the government property. The petitioner contends that respondent nos.4 to 6 contested an election of Muli Grampanchayat. They are declared as elected Members of the said Grampanchayat. Pertinently, respondent No.3 is declared as elected Sarpanch in the general elections conducted in the year 2021. Respondent Nos.3 to 6, being Sarpanch and Members of Grampanchayat failed to take

steps for removing the encroachment. On the contrary, they are committed to save such illegal constructions. According to the petitioners, respondent Nos.3 to 6 have incurred disqualification under Sections 14(1) (J-3) of the Maharashtra Village Panchayats Act, 1958 [hereinafter referred to as 'the Act' for short].

3. The two petitions filed before respondent No.2 / Collector on behalf of the petitioners were registered as Petition No.3/2021 and R.O.R. Petition No.12/2021. The respondent No.2 / Collector issued notices to respondent Nos.3 to 6 and after giving an opportunity of being heard, respondent No.2 / Collector proceeded to decide the petitions. Pertinently, respondent No.2 / Collector had invited a report from the Subordinate Officer i.e. Block Development Officer, Gangakhed to confirm the averments in the petition regarding the encroachment made by respondent Nos.3 to 6 or their family members. The respondent No.2 / Collector, after hearing the parties and considering the evidence tendered into service by the respective parties, vide judgment and order dated 24/11/2021, allowed the petitions and declared that respondent Nos.3 to 6 have incurred disqualification in terms of Section 14(1) (J-3) of the Act. The aggrieved respondent Nos.3 to 6 preferred an appeal before respondent No.1/Commissioner invoking the provisions of Section 16(2) of the Act assailing the decision of respondent No.2/Collector. The proceeding was registered as Appeal No.जा.क्र.2021/ग्रा.पं./अपील क्र.1/सिआर-83. The petitioners were given notices of the appeal. The respondent Nos.3 to 6 filed an application praying for leave for production of additional evidence in tune with Order 41 Rule 27 of the Civil Procedure Code. The documents like death certificate of ancestors and Village Form No.8 were sought to be placed on record. The respondent No.1 / Commissioner, after hearing the parties, vide judgment and order dated 25/01/2022, partly allowed the appeal, thereby setting aside the judgment and order passed by respondent No.2 / Collector, in Petition No.3/2021 and R.O.R. Petition No.12/2021 with further directions to consider the report of

Block Development Officer, Panchayat Samiti, Gangakhed and other relevant aspects of the matter and pass a fresh order.

4. The learned Advocate Mr. M. S. Kulkarni appearing for the petitioners would submit that respondent No.1 / Commissioner has passed a cryptic order and also has remanded the matter for fresh hearing to respondent No.2 / Collector without recording justifiable reason for remand. He would submit that without indicating the reason in support of the remand order, the order passed by respondent No.2 / Collector has been set aside and the matter is directed to be decided afresh. He would urge that no reason is discoverable in the order so as to send back the matter to respondent No.2 / Collector. He would urge that statutory authority, while exercising the appellate jurisdiction, will have to follow the procedural aspects. If remand order is to be passed, it is expected to record the reason for such order with further direction to the Lower Authority to pass an order considering the particular aspects of the matter. He would further urge that though the respondents have tried to place certain documents on record of respondent No.1 / Commissioner during the pendency of appeal, such documents are not relevant to decide the controversy. He would also urge that respondent No.2 / Collector has passed the order referring to the documentary evidence as well as legal submissions advanced by the parties. The respondent No.1 / Commissioner was required to consider the grounds of appeal judiciously and not in slipshod manner, in which, it has been done.

He would urge that the remand order passed by respondent No.1 may be quashed and set aside restoring back the order passed by respondent No.2 / Collector regarding disqualification of respondent Nos.3 to 6.

5. The learned AGP Mr. A. S. Shinde appearing for respondent Nos.1 & 2 supports the impugned order passed by respondent No.1/Commissioner stating that the matter is remanded for fresh consideration of entire record.

Both the parties are at liberty to advance their submissions. No prejudice is caused to the contesting parties. Hence, no interference is required under Article 227 of the Constitution of India invoking writ jurisdiction of this Court.

6. The learned Advocate Mr. A. B. Girase appearing for respondent Nos.4 & 5 also supports the order passed by respondent No.1 / Commissioner. He would submit that respondent No.2 / Collector had recorded erroneous reasons while disqualifying the respondents. He would submit that the documentary evidence on record clearly demonstrate that the respondents are not the encroachers on the government property. The report of the Subordinate Officer as well as the inquiry report submitted by the Block Development Officer, Panchayat Samiti, Gangakhed clearly show that the respondents have not encroached upon the Grampanchayat land as alleged. He invited attention of this Court to the order passed in **Writ Petition No.7320/2021 in the matter of Yashwant Jivlya Gavit & Others Vs. Bakaram Fatesing Gavit & Others dated 13/07/2022**. He would also invite attention of this Court towards observations made by the Supreme Court of India in the matter of **Janabai Vs. Additional Commissioner and Others** [Civil Appeal No.6832 of 2018] to urge that the continued possession and sharing of the property is essential to incur the disqualification in terms of Section 14(1) (J-3) of the Act. In the present case, no material is brought on record to indicate that the respondents are sharing the premises constructed on the encroached land along with the relatives.

7. The learned Advocate Mr. D. S. Bagul and learned Advocate Mr. P. D. Bachate appearing for respondent Nos.3 and 6 vehemently supported the impugned order of remand. They would submit that the reasoning adopted by respondent No.2 / Collector while regarding disqualification against respondent Nos.3 & 6 is erroneous and is contrary to the well settled legal position. They would submit that certain documents are tendered by way of

an additional evidence before respondent No.1 / Commissioner in appeal. In light of those documents, reconsideration of entire matter is necessary. They would justify the remand order even for that purpose.

8. After considering the rival submissions advanced by the learned Advocates appearing for the respective parties and also after perusal of the documentary evidence available on record, it appears that respondent No.2 / Collector had relied upon the Grampanchayat record as well as report dated 29/06/2021 submitted by Village Development Officer regarding the inquiry on the point of allegations of encroachment. The respondent No.2 / Collector after giving opportunity of hearing to the concerned parties passed an order dated 25/11/2021 declaring that respondent Nos.3 to 6 have incurred disqualification in terms of Section 14(1) (J-3) of the Act. Thereafter, respondent Nos.3 to 6 preferred an appeal under Section 16 (2) of the Act before respondent No.1 / Commissioner assailing the order of disqualification passed by respondent No.2 / Collector. It is the matter of record that respondent Nos.3 to 6 have tendered some documents in appeal by way of an additional evidence. The learned Advocate Mr. P. D. Bachate appearing for respondent No.6 invited attention of this Court to the documentary evidence that has been placed by way of the additional evidence before respondent No.1 / Commissioner in appeal. It is nothing but a copy of death certificate relating to Kisan Rustum Bhosle along with Form No.8. Such documents can be considered by the Appellate Court along with the evidence, which is already on record.

9. A perusal of the impugned order would show that respondent No.1 / Commissioner, while exercising his appellate powers under Section 16(2) of the Act has proceeded to recorded the submissions advanced by the respective parties and thereafter, given reference to the report submitted by the Gramsevak and recorded his observations pertaining to such record. However, no finding is recorded by him regarding acceptability of such

material or otherwise. In the last line of the order of respondent No.1/Commissioner, it is recorded that for considering the submissions advanced by the parties, the matter be remanded back to respondent No.2/Collector. No reasons are assigned for remanding the matter to respondent No.2 / Collector. The law on the point of the powers of Appellate Court is well settled. The Supreme Court India in the case of **Nadakerappa (since deceased) By LR. And Ors. Vs. Pillamma (since deceased) By LR. & Ors. reported in AIR 2022 SC 1609** has observed thus:

“It is settled law that the order or remand cannot be passed as a matter of course. An order of remand cannot also be passed for the mere purpose of remanding a proceeding to the lower court or the Tribunal. An endeavour has to be made by the Appellate Court to dispose of the case on merits. Where both the sides have led oral and documentary evidence, the Appellate Court has to decide the appeal on merits instead of remanding the case to the lower court or the Tribunal. We are of the view that, in the instance case, the Division Bench has remanded the matter without any justification.”

The Appellate Authority has an ample powers to remand the matter. However, it must record reasons for such action. The mechanical remand order cannot be justified. In the present case, from impugned order no reasons can be gathered. The remand order nowhere reflect that some material evidence missed from consideration of respondent No.2 / Collector or new facts, material placed into service before Appellate Authority require consideration afresh along with the material on record. In that view of the matter, this Court is of the opinion that respondent No.1 / Commissioner ought to have decided the appeal considering the available material and ought to have formed its own opinion regarding correctness or otherwise of the finding recorded by respondent No.2 / Collector on the point of disqualification of respondent Nos.3 to 6.

10. In that view of the matter, writ petition deserves to be allowed with further directions to respondent No.1 / Commissioner to decide the appeal

filed by respondent Nos.3 to 6 on its own merits without influenced by any observations made in the present writ petition. Hence, the following order:

ORDER

(i) The writ petition is partly allowed and the judgment and order passed by respondent No.1/Additional Divisional Commissioner. Aurangabad in Appeal No. जा.क्र.2021/ग्रा.पं./अपील क्र.1/सिआर-83 dated 25/01/2022 is quashed and set aside.

(ii) The respondent No.1/Commissioner shall decide the appeal filed by respondent Nos.3 to 6 on the basis of material available on record, including the additional evidence that has been already tendered by respondent Nos.3 to 6 within a period of two months from the date of this order.

(iii) The interim protection that was granted in favour of respondent Nos.3 to 6 vide order dated 22/12/2021 passed in Writ Petition No.14560/2021 shall remain in force till disposal of the appeal.

(iv) The writ petition is disposed of in the above terms.

(S. G. CHAPALGAONKAR, J.)