

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

WRIT PETITION NO. 3767 OF 2022

Mohan Sukhdeo Ghungarde,
Age : 50 years, Occ.: Agril,
R/o: Paithan kheda,
Tq.Paithan, District : Aurangabad.

...PETITIONER

V E R S U S

- 1) The Additional Divisional
Commissioner, Aurangabad,
Division : Aurangabad.
- 2) The Collector, Aurangabad
Tq. & Dist. Aurangabad.
- 3) The Block Development Officer,
Panchyat Samiti, Aurangabad.
- 4) The District Social Welfare Officer,
Auragnabad.
- 5) Sajjan s/o Kashinath Bhujang,
Age; 67 years, Occ; Agril,
R/o; Paithankheda,
Tq. Paithan, District; Aurangabad.

...RESPONDENTS

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Advocate for the Petitioner : Mr. Ravindra V. Gore
A.G.P. for the Respondent Nos. 1 to 4/State : Mr. K.B.Jadhavar
Advocate for Respondent No. 5 : Mr. Y.V. Kakade
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CORAM : KISHORE C. SANT, J.

Date for reservation : 02.08.2023

Date of pronouncement : 07.10.2023

JUDGMENT [PER : KISHORE C. SANT, J.] :

1. The present petition arises out of proceedings under the Maharashtra Village Panchyat Act, (for short “the Act”) initiated by the petitioner by filing a dispute before the learned Collector, Aurangabad, under Section 16 (2) of the said Act, with an allegation that 5th respondent is disqualified for being a member of the Grampcnahyat. The learned Collector allowed the dispute holding respondent No. 5 as disqualified. The Additional Divisional Commissioner, Aurangabad in an appeal reversed the judgment of the learned Collector holding that respondent No. 5 has not incurred disqualification and allowed the appeal.

2. The facts in short are that the Respondent No. 5 came to be elected to the post of Member in an election to the Grampanchyat, held in January, 2021 from the general seat. Respondent No. 5 had contested the said election against the present petitioner. After the elections were held, petitioner filed a

dispute with an allegations that the 5th Respondent has encroached upon the Government land bearing property No. 248, a plot of 33 x 33 feet. It is alleged that thereby he has incurred disqualification. It is further alleged that for the said plot and to his house respondent No. 5 has taken illegal connection of the electricity.

3. The learned Collector heard the parties and allowed the dispute. The learned Collector has held that respondent No. 5 has incurred disqualification. The learned Collector recorded the findings on the basis of report of the learned Tahsildar and held that respondent No. 5 has encroached upon the Government land bearing Grampanchyat No. 248 and 279 and declared him disqualified.

4. Being aggrieved by the judgment of the learned Collector, respondent No. 5 filed an appeal before the Additional Divisional Commissioner. The Additional Divisional Commissioner reversed the findings recorded by the learned Collector holding that the father of respondent No. 5 was allotted a tenement in the 'Gharkul Scheme' through the Social Welfare Department. The said scheme was implemented for the homeless persons. It is further held that respondent No. 5 was found to be eligible to get benefits of

the scheme. The land was properly allotted by the authorities. The house of the respondent No. 5 is in the land Gut No. 11, ad-measuring 63R and the said is in possession of respondent No. 5. It is held that since the land was allotted to the respondent No. 5 under the 'Gharkul Scheme', it cannot be treated to be an encroachment. The Additional Divisional Commissioner, thus, allowed an appeal by his judgment and order dated 14.02.2022 and the same is under challenge in this Writ Petition.

5. The learned Advocate Mr.R.V.Gore, for the petitioner/original disputant submitted that both properties i.e. Grampanchyat No. 248 and 279 belonged to the Government. The possession of respondent No. 5 over the said properties is not in dispute. The learned Additional Commissioner has not properly appreciated the facts.

6. The learned Advocate Mr. Kakade, for respondent No. 5 submits that the learned Collector had failed to appreciate that the alleged encroachment is not in fact an encroachment. The said plot was duly allotted to the father of respondent No. 5 in the year 1962-63. That time the age of respondent No. 5 was only 7 to 8 years. After the death of his father, the land was recorded in the

name of respondent No. 5 in the year 2006, therefore there is no question of committing an encroachment by Respondent No. 5 on the Government land. He submits that the possession of the respondent No. 5 is permissive possession and cannot be said to be an encroachment and prayed for rejection of the petition.

7. The learned AGP supported the order passed by the learned Additional Divisional Commissioner.

8. From the record this Court finds that on the land Gut No. 279, the Government is shown in the owners column and the same is shown in possession of the respondent No. 5. The Tahsildar received report that except form No. 8 there is no record in the name of respondent No. 5. In an inquiry two elderly neighbours gave statement that the landed property bearing No. 248 was allotted to the father of the respondent No. 5 being land-less person. The panchanama also records this fact.

9. This Court finds that there was an encroachment on the above lands by the respondents. This finding is recorded on the basis of report of the Tahsildar. Whereas, the learned Commissioner on the basis of same record has specifically recorded that the

properties No. 348 and 279, are the lands belonging to the Government. It is held that the Tahsildar however, has not verified the documents of the 'Gharkul Scheme' in respect of allotment of the houses to the landless persons. In the Grampanchyat record, in the property register, there is entry that the land is received from the Tahsildar, Paithan in 1978. The said entry further shows that the lands were transferred and used for allotment of houses to the landless persons. There is also record showing that in 1983 the land was given to the respondent No. 5 as landless labour for construction of house, in land Gut No. 11, given plot No. 7 ad-measuring 10 x 20 mtrs in land Gut No. 11. It is further observed that the said property forming part of the land ad-measuring 63 Are that was used for the 'Gharkul Scheme'.

10. This Court finds that there is record of allotment of these lands to the landless persons long back in the year 1965-66. It is also seen that the learned Tahsildar had allotted land of 10 x 20 mtrs. in Gut No. 11 in favour of respondent No. 5. When there is record of allotment of land under the above scheme, in such case, the person in possession of said property cannot be said to be an encroacher. In form No. 8, the property No. 248, the name of

father of respondent No 5 is shown as possessor. Thus, considering all these circumstances, this Court finds that it is certainly not a case whether respondent No. 5 can be said to be an encroacher.

11. This Court, thus, finds that the learned Additional Divisional Commissioner has not committed any mistake. In this case possession of the land cannot be labelled as an encroachment, more so when there is record showing that the possession is long standing possession and is on the basis of allotment made under the scheme of the Government. It is seen that the plot was allotted in the year 1963, when the petitioner was minor. So far as the other plot is concerned, the same is allotted in the year 1983, also under the 'Gharkul Scheme'. In view of the same, it cannot be said that respondent No.5 has incurred disqualification. This Court finds that there is no merit in the petition.

12. The Writ Petition stands dismissed.

(KISHORE C. CHANT)
JUDGE