

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

939 WRIT PETITION NO.2933 OF 2023

**VITTHAL RAMRAO SHINDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for the petitioner : Mr.S.S.Thombre
AGP for Respondent-State : Mr.K.B.Jadhavar
...

CORAM : ARUN R. PEDNEKER, J.

DATE : 11.04.2023

P.C. :

1] Heard the learned counsel for the petitioner and the learned AGP for the respondent-State.

2] The notice issued to respondent no.9 is returned unserved as he has refused to accept the notice. As there is urgency in the matter, the matter is taken up for hearing with the assistance of the learned counsel for the petitioner and the learned AGP.

3] The petitioner takes exception to the order dated 23.06.2022 passed by the District Collector, Aurangabad and the order dated 14.02.2023 passed by the Additional Divisional Commissioner, Aurangabad. The petitioner disqualified under Section 14 (1) (j-3) of the Maharashtra Village Panchayat Act, 1958 [for short 'the Act of 1958'] for having encroachment on the government land.

4] The petitioner is elected member of the Grampanchayat, Bhindon, Taluka and District Aurangabad. The election of the said Grampanchayat was held in the month of January, 2021, for the period of five years. The complaint was filed against the petitioner that he has encroached upon the government land and that he be disqualified. It was stated in the said complaint that the petitioner is holding three properties and the petitioner has encroached upon the government land. The Collector issued notices to the petitioner so also called report from the Tahsildar. The Tahsildar conducted enquiry and spot

panchanama was conducted in the said complaint. Report submitted by the Tahsildar indicated that in one of the properties of the petitioner bearing property No.55, there is excess land in occupation of the petitioner i.e. 133 square feet and as such the Collector disqualified the petitioner for having encroached upon the government land of 133 square feet and the order of the Collector was upheld by the Divisional Commissioner i.e. appellate Authority. The petitioner has filed present Writ Petition challenging both the orders.

5] The petitioner contends that property bearing no.55 is purchased by a registered sale deed in the year 1974 and the area of property is mentioned as 570 square feet in the sale deed. However, in the Government record the property which is purchased is shown as 460 square feet. As per inspection report, the property is mentioned as 460 square feet of house and 110 square feet of *ota*. The learned counsel further submits that the purchased property also includes *ota*.

6] However, report of the Tahsildar indicates that there is encroachment of 133 square feet and report does not show that this additional land i.e. 133 square feet is on the government land.

7] The learned AGP submits that since this additional land i.e. 133 square feet of construction [ota] is on the front side of the house and it has to be necessarily on the road and he has also shown photography which is at Page no.71 of the petition where ota is on the front side of the house. He further submits that this additional area has to be necessarily on the government land.

8] However, I cannot accept the submission of the learned AGP at face value, as appropriate finding will have to be rendered that the encroached area i.e. 133 square feet of land in possession of the petitioner is on the government land.

9] In absence of any specific finding in respect of the encroachment on the government, the disqualification

under Section 14 [1] [j-3] of the Act of 1958 cannot be fastened upon the petitioner.

10] In view of the same, the order dated 14.02.2023 passed by the Additional Divisional Commissioner, Aurangabad and the order dated 23.06.2022 passed by the District Collector, Aurangabad are quashed and set aside. The matter is remanded back to the Collector and the Collector to render appropriate finding that the excess area i.e. 133 square feet, which is in possession of the petitioner, is a government land or a public land. Only after such finding being rendered, the petitioner would be disqualified.

11] The parties are permitted to lead the evidence before the Collector to indicate the ownership of the excess land in possession of the petitioner.

12] The Collector to decide the remanded matter as expeditiously as possible, after hearing all concerned parties.

13] The Collector would be also entitled to call for report as regards the ownership of 133 square feet additional area.

14] All contentions are kept open.

15] Writ Petition is disposed of accordingly.

[ARUN R. PEDNEKER]
JUDGE

DDC