

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

WRIT PETITION NO. 4188 OF 2023

Sagar s/o. Mohan Kamble,
Age: 29 years, Occu. Agri.,
R/o. Taj, Tq. Karjat,
Dist. Ahmednagar.

.. PETITIONER

VERSUS

- 1] The Additional Divisional Commissioner,
Nashik Division, Nashik.
- 2] The District collector,
Ahmednagar.
- 3] Tahsildar, Karjat,
Tq.Karjat, Dist. Ahmednagar.
- 4] Gramsevak, Group Grampanchayat
Talwadi/Taj, Tq. Karjat,
Dist. Ahmednagar.
- 5] Nanansaheb s/o. Laxman Pandule,
Age: 38 Years, Occu. Agril.
R/o. Taj, Tq. Karjat,
Dist. Ahmednagar.

.. RESPONDENTS

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Mr.R.R.Karpe, Advocate for the petitioner
Mr.K.B.Jadhavar, AGP for the respondent-State
Mrs.S.M.Zaware, Advocate for the respondent no.4
Mr.A.S.More, Advocate for the respondent no.5

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CORAM : ARUN R. PEDNEKER, J.

Reserved on : 18.04.2023
Pronounced on : 20.04.2023

JUDGMENT :

1] By the present Writ Petition, the petitioner is challenging the order dated 28.03.2023 passed by the Additional Commissioner, Nashik Division, Nashik in Grampanchayat Appeal No. 140/2022, thereby confirming the order dated 30.08.2022 passed by the District Collector, Ahmednagar in Grampanchayat Dispute Application No. 90/2021, disqualifying the petitioner under Section 14 (1) (j-3) of the Maharashtra Village Panchayats Act, 1958 [for short 'Act of 1958'], for having encroached on the government property.

Briefs facts leading to filing the present Writ Petition is as under:

2] The election of the respondent no. 4 [Grampanchayat] was undertaken on 15.01.2021 for the period of five years i.e. 2021-2026. The election results were declared on 18.01.2021. The petitioner got elected from Ward No.1, which is reserved for Scheduled Caste. After elections of the petitioner, a dispute was filed under

Section 14 (1) (j-3) of the Act of 1958 by the respondent no.5 alleging that the petitioner has encroached on the property bearing No.44/3, belongs to the State Government, by making permanent construction and entry is taken in the Grampanchayat record of the above encroachment. The petitioner and his mother have committed encroachment on the property bearing No.382 by making house construction and entry to that effect has also been recorded in the Grampanchayat record.

3] In response to the complaint, the Collector had called for report, so also, the petitioner filed its reply specifically stating that the property bearing No.44/3 is not in existence of the Grampanchayat record, and therefore, there can be no encroachment on the property bearing No.44/3, so also, as regards the property bearing No.382 is concerned, Gharkul under Indira Awas Yojna was sanctioned on the said property and the petitioner's mother has been staying in the said property and the said property is in the name of the mother of the petitioner. Thereafter,

the Collector, taking into consideration the report submitted by the Block Development Officer, disqualified the petitioner for having encroachment upon the government land.

4] The order of the Collector has upheld by the appellate authority i.e. Divisional Commissioner, Nashik. The petitioner has challenged the said before this court in the present Writ Petition.

5] It is the contention of the petitioner is that the property bearing No.44/3 is not in existence and there is wrong record of the property in the Grampanchayat. As regards property bearing No.44/3, the respondent / complainant contends that there is typographical error in the dispute application and that the petitioner is in possession of property bearing No.84/3 and encroachment is on the property bearing No.84/3. However, the petitioner is disqualified for having made encroachment on the property bearing No.44/3 as per the notice and final order.

6] The reply of the petitioner also indicates that

the property bearing No.44/3 is not in existence of the grampanchayat record and the inspection report and spot panchanama is not in respect of the property bearing No.44/3.

7] In the report submitted by the Gramsevak dated 01.04.2022, it is clearly indicated that the petitioner is in occupation of the property bearing No.84/3 and there is no reference to the property bearing No.44/3 in the said report. The record produced along with reply of the respondent no.5 also indicates that the petitioner is in possession of the property bearing No.84/3 as per Grampanchayat record.

8] As regards property bearing No.44/3 is concerned, the petitioner was put on notice that he has encroached upon property bearing No.44/3 and he is disqualified for having encroachment upon the property bearing No.44/3 and the said property is not in existence in the name of the petitioner.

9] The Hon'ble Supreme Court in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others** reported in [2012] 4 SCC 407 has held at para nos.35, 36 and 37 as under:

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (vide Jyoti Basu v. Debi Ghosal, Mohan Lal Tripathi v. District Magistrate, Rae Bareilly and Ram Beti v. District Panchayat Raj Adhikari].

36. In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional

circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency / electoral college is also deprived of representation by the person of their choice.

37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like “no confidence motion”, etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period.

10] In the case of **Sunil Daulat Patil Vs. The State of Maharashtra & others** in Writ Petition No.3419 of 2013, decided on 04.12.2013 held at para nos.14 and 15 :

14. Upon careful perusal of the contents of the notice, which was issued to the petitioner under Sections 7 and 36 of the said Act, it is abundantly clear that there is no mention of any specific charges-points, which are required to be answered by the petitioner. This Court in the case of **Pratiba Sanjay Hulle Vs. Additional Collector & others** reported in **2010(4)Bom.C.R.700**, more particular, in para No. 36 held that, 'to enable Sarpanch to raise proper defence and explain sufficient cause for his failure to perform any statutory function, he must be informed essentially as regards his failure meaning thereby he must be communicated the specific charges.'

15. In the facts of that case, the allegation was that the petitioner therein i.e. Sarpanch, did not perform his statutory obligation as envisaged under Sections 7 and 36 of the said Act. This Court taking into consideration the fact that the specific charges were not communicated to the petitioner therein, held that enquiry and the order passed against the petitioner therein is vitiated.

11] Thus, in view of the law lay down in the case of **Ravi yashwant Bhoir [supra]** and **Sunil Daulat Patil [supra]** that the charges has to specific and disqualification of elected member is a serious issue, in the instant petition, since notice was issued to the petitioner that he has encroached upon the government land i.e. property bearing No.44/3 and the petitioner cannot be held liable for having encroachment upon the property bearing No.84/3.

12] Thus, the finding of the authority that he has encroachment upon the property bearing No.44/3 is perverse and is set aside.

13] However, it is left to the authorities to raise specific charges against the petitioner for having made encroachment upon the property bearing No.84/3.

14] As regards the property bearing No.382 is concerned, Gharkul under Indira Awas Yojna was sanctioned on the said property and that Gharkul scheme

can be sanctioned on private as well as Grampanchayat land. The Collector, so also, the Appellate Authority have not examined the effect of Gharkul Yojna being sanctioned and the petitioner is in possession of the property on account of Gharkul Yojana sanctioned on the plot. The authorities have not rendered finding that in spite of allocation of the Gharkul scheme on the plot, the property continues to be a government property or that the petitioner is an encroacher over the property.

15] The learned counsel for the respondent no.5 submits that the property on which Gharkul is sanctioned is a Government property as such the petitioner continues to be an encroacher of the said property. Since the said aspect of the matter has not been dealt with by the authorities below and admittedly Gharkul Yojna is sanctioned on the said plot and the petitioner occupation under Gharkul Scheme is sanctioned by the authorities, it is necessary to render finding that after sanctioning of the Gharkul scheme on the plot which is in occupation of the petitioner, that the

petitioner continues to be in encroachment over the government property or public property.

16] In view of the same, the order dated 28.03.2023 passed by the Additional Commissioner, Nashik Division, Nashik in Grampanchayat Appeal No. 140/2022 and the impugned order dated 30.08.2022 passed by the District Collector, Ahmednagar in Grampanchayat Dispute Application No. 90/2021 are quashed and set aside. The matter is remanded back to the Collector to render appropriate findings as regards occupation of the petitioner on the plot No.382, whether the petitioner continues to be an encroacher or he has right to occupy the same under Gharkul Yojna sanctioned by the Government and is not encroacher of the said land. The petitioner can be disqualified only after he is held to be an encroacher on the government land and that he is in occupation on the land bearing No.382 is that of encroacher.

17] Liberty is also granted to the respondents if the respondents desire to make an application for

disqualification of the petitioner for having encroached upon the property bearing No.84/3.

18] The Collector to decide the remanded matter after conducting appropriate enquiry following due process, as expeditiously as possible and an endeavour be made to complete the process within 3 months of the receipt of this judgment.

19] The Writ Petition is disposed of in above terms.

[ARUN R. PEDNEKER]
JUDGE

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