

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

WRIT PETITION NO. 4515 OF 2023

Chagan Gaba Khandare

.. Petitioner

Versus

The Additional Commissioner,
Nashik Division, Nashik and others

.. Respondents

Mr. Yogesh B. Bolkar, Advocate for the Petitioner.

Mr. K. B. Jadhavar, AGP for Respondent Nos. 1 and 2.

Mr. V. P. Raje, Advocate for Respondent No. 3.

CORAM : KISHORE C. SANT, J.

DATED : 01st AUGUST, 2023.

P. C. :-

. Heard learned advocates for the parties. Taken up for final disposal by consent of the parties.

2. The petitioner is aggrieved by the order passed by the learned Collector allowing the dispute filed against him by respondent No. 3. The respondent No. 3 had raised the dispute before the learned Collector as the petitioner has incurred disqualification to become a member of the Grampanchayat on two grounds, first is non submission of caste claim and second, on the ground of the committing encroachment on the Government/public land. So far as question of caste validity certificate is concerned, the learned Collector has rightly

considered that in view of extension granted to submit the caste validity certificate after election no question remains. The learned Collector, however, considered the ground of encroachment under Section 14 (1) (j) of the Maharashtra Village Panchayats Act. By considering the report of the Deputy Engineer, Public Works Department, Sub Division Shindkheda of Zilla Parishad wherein, it is reported that, the petitioner has done encroachment on the public / Government land. There is also report submitted by the Gramsevak of Grampanchayat, Padhawad. The learned Collector further recorded that, during the course of hearing the petitioner himself has accepted that, there is an encroachment committed by him held in favour of respondent No. 3 and passed an order disqualifying the petitioner.

3. The petitioner thereafter approached the learned Additional Commissioner, Division Nashik by filing an appeal No. 114/2022. The learned Additional Commissioner by judgment and order dated 23.03.2023 dismissed the appeal of the petitioner. The petitioner is thus before this Court.

4. Learned advocate for the petitioner submits that, after the dispute is filed it is expected of the learned Collector to follow certain procedure and to come to a decision on the basis of enquiry and the reports. He submits that, in this case the learned Collector has merely

considered whatever material was produced before him and has not directed any enquiry and did not call for any report. There is no independent enquiry held by the DSO. The report of the Deputy Engineer cannot be considered as it is not for the purpose of deciding the disqualification proceedings. Learned advocate relies upon the following judgments.

(i) Ravi Yashwant Bhoir Vs. District Collector, Raigad and others reported in (2012) 4 SCC 407.

(ii) Janabai Vs. Additional Commissioner and others reported in (2018) 18 SCC 196.

(iii) Mahadeo Vs. State of Maharashtra, Through Principal Secretary and others reported in 2022 SCC Online Bom. 1440.

(iv) Savita Ramdas Jadhav Vs. The Divisional Commissioner and others in Writ Petition No. 390/2022.

(v) Jayabai Kishor Patil Vs. The Divisional Commissioner and others in Writ Petition No. 8004/2018.

5. By relying upon these judgments, learned advocate for the petitioner submits that, to make a public representative to unseat is a serious thing. The enquiry conducted in casual manner. The learned Collector has to properly conduct the enquiry and call for report. He further submits that, in this case the report of the Deputy Engineer is dated 27.08.2021 whereas, the dispute is filed after that. Thus, the report cannot be considered for the purpose of decision of dispute by

the learned Collector. The learned Collector could not have relied upon the report which is prepared prior of lodging of the complaint. Even the report dated 01.12.2021 submitted by the Grampanchayat also could not have been relied upon. He thus prays for quashing and setting aside the impugned judgment.

6. Learned advocate for respondent No. 3 vehemently opposes the petition. He submits that, proper opportunity was given to all the parties. During the course of hearing the petitioner admitted that, he has committed encroachment and the same is considered by the learned Collector and the learned Commissioner. For the purpose of Section 14 (1) (j-3) of the Maharashtra Village Panchayats Act what is required to be seen is only the fact of encroachment. If the documents on record to show that a person has committed an encroachment that itself is sufficient to disqualify a person from holding any elected post in village panchayat.

7. Learned A.G.P. also submits that, the learned Collector has rightly considered the matter. Before the learned Collector there was material produced to sufficiently establish that the petitioner has committed encroachment. He further submits that, the finding on this issue being a finding of fact, this Court need not interfere with the same in writ petition. He further submits that, there is no case that no proper

opportunity was given to the petitioner by the authorities. He also prays for rejection of the petition.

8. Having considered the submissions and the material on record this Court finds that, the petitioner himself has accepted that, there is encroachment committed by him during the course of hearing of dispute before the learned Collector. The petitioner has not come with the case that, the so called admission is not given by the petitioner. There is also no ground raised in the appeal before the learned Commissioner, nor such ground is raised in the petition stating that the learned Collector has wrongly recorded the admission.

9. Learned advocate for the petitioner submits with the first argument that, the learned Collector ought to have undertaken enquiry and ought to have called for report from the Block Development Officer. He relied upon the proposition about the judgments relied upon by the petitioner, this Court finds that the finding as regards encroachment is necessarily a finding of fact. The proceeding contemplated before the learned Collector under Section 16 of the Maharashtra Village Panchayats Act is summary in nature. There is no case of the petitioner that he was not heard by the authorities.

10. Considering all the above facts this Court finds that, no case is made out to call for interference at the hands of this Court. The petition is therefore dismissed with no order as to costs.

11. At this stage, learned advocate for the petitioner submits that, there is interim relief granted by this Court by order dated 19.04.2023 and the same may be continued.

12. Considering that, the petitioner is holding the post, though it is opposed by the respondents, the interim relief is continued for a period of three (03) weeks from today.

(KISHORE C. SANT, J.)

PS.B.