

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

**98 WRIT PETITION NO.4783 OF 2023
WITH WP/4750/2023**

**GANESH LAXMAN MOTE AND ANOTHER
VERSUS
THE ADDITIONAL COMMISSIONER AURANGABAD AND OTHERS**

...
Advocate for Petitioners : Mr. S.P. Urgunde
AGP for Respondents 1 & 2 : Mr. B.V. Virdhe
Advocate for Respondent 3 : Mr. S.S. Kazi
...

**CORAM : ARUN R. PEDNEKER, J.
DATED : 03/10/2023**

PER COURT :

1. Heard the learned counsel for respective parties.
2. The petitioners, who are members of Gram Panchayat of village Mhaismal, Tal. Khultabad, District Aurangabad, are disqualified for having encroached on the Government land. It appears that in the enquiry, which was conducted, the Collector has called for the spot inspection report, so also the statements from the petitioners. Petitioners have given statements that they have not encroached upon the Government land and spot inspection was carried out in their absence.
3. The affidavit filed by the learned AGP is taken on record. The learned A.G.P. has taken me through the spot inspection report, which was filed on record to demonstrate whether the petitioners were present while spot inspection was carried on. There is no evidence produced to show that the petitioners were present while preparing the spot inspection report.
4. The learned counsel for the petitioners submits that spot inspection has been carried in their absence and spot inspection reports are prepared by the Tahsildar, who is not competent to carry out the inspection.

5. In view of the above, the impugned order dated 5th April, 2023 passed by the Additional Commissioner Aurangabad in Appeal No. 2022/GP/Appeal/CR. 119 and order dated 10th October, 2022 passed by the learned Collector, Aurangabad in Gram Panchayat Dispute No. 41/2021 are quashed and set aside. Matters are remanded back to the Collector for fresh hearing.

6. It is further directed that spot inspection is to be conducted by the T.I.L.R., Aurangabad as he is competent to prepare spot inspection, after giving notice to all the parties. Spot Inspection Report to be submitted by T.I.L.R. within two weeks from the date of appearance of the parties before the Collector. On receipt of report from the T.I.L.R., the Collector to complete the proceedings within twelve weeks after giving opportunity of hearing to all the parties.

7. Parties to remain present before the Collector on 11.10.2023 and no further request to adjourn the matter shall be entertained. All contentions are left open.

8. In view of the fact that I have quashed and set aside the orders passed by the authorities below, petitioners are permitted to function as Panchayat members until final order passed by the Collector.

9. It is further clarified that the present order passed is only on the ground that petitioners were not present at the time of spot inspection. The Collector while passing order shall not be influenced by any observations made by this Court in the present order and the Collector to decide the matters independently.

[ARUN R. PEDNEKER J.]

ssc/