

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

WRIT PETITION NO. 8923 OF 2023

Shaikh Mujahid Shaikh Hussain .. Petitioner
Age. 36 years, Occ. Agriculture,
R/o. Pimparkhed, Tq. Chalisgaon,
District Jalgaon.

Versus

1. The State of Maharashtra .. Respondents
Through its Secretary,
Rural Development Dept.,
Mantralaya, Mumbai – 32.
2. The Additional Commissioner,
Nashik Division, Nashik.
3. The District Revenue Collector,
Jalgaon, Dist. Jalgaon.
4. The Gram Panchayat Pimparkhed,
At Pimparkhed, Tq. Chalisgaon,
Dist. Jalgaon, Through it's
Village Development Officer.
5. Shekh Dalfharoj Shekh Allauddin
Age. 72 years, Occ. Agriculture,
R/o. Pimparkhed, Tq. Chalisgaon,
Dist. Jalgaon.

Mr.PV. Barde, Advocate for the petitioner.
Mr.K.B. Jadhavar, AGP for the respondent/State.
Mr.Bhushan Mahajan, Advocate for respondent No.5.

CORAM : KISHORE C. SANT, J.
DATED : 25.07.2023

PC :-

01. Heard learned Advocates for the parties. By consent taken up for final disposal at the stage of admission.

02. The petitioner has challenged an order passed by the learned Additional Commissioner, Nashik dated 19.07.2023 granting stay to the order passed by the learned Collector, Jalgaon holding respondent No.5 disqualified under section 14 (j-3) of the Maharashtra Village Panchayats Act.

03. The facts in short are that respondent No.5 got elected as a member of the Grampanchayat. The present petitioner raised dispute before the learned Collector against respondent No.5 contending that respondent No.5 has committed encroachment on the property No.581 of village Pimparkhed and therefore is disqualified. The learned Collector rejected the said dispute holding that there is no encroachment proved at the instance of the respondent, vide judgment and order dated 11.07.2022. Thereafter, the petitioner filed appeal before the learned Additional Commissioner, Nashik. The learned Additional Commissioner, Nashik vide judgment and order dated

18.04.2023 remanded the matter for fresh inquiry to the learned Collector. It is specifically directed to hold fresh inquiry in respect of the encroachment and pass fresh order.

04. After remand the learned Collector passed order dated 17.07.2023 and allowed the dispute. Respondent No.5 approached the learned Additional Commissioner and prayed for stay by filing the appeal. Pending the appeal, he also prayed for stay to the order passed by the learned Collector. The learned Additional Commissioner by way of the impugned order granted stay to the order passed by the Collector, mainly on the ground that the learned Collector failed to make fresh inquiry on the issues framed by the Commissioner in the order of remand.

05. The learned Advocate for the petitioner challenges the order mainly on two grounds. Firstly, that there was caveat filed by the petitioner and still no notice was given to him before passing the impugned order. Secondly, that under section 16(2) of the Maharashtra Village Panchayats Act, there is no provision of granting interim relief/stay. The order passed by the learned Additional Commissioner is thus without jurisdiction. Third

submission he made that the stay cannot be granted in casual manner in such cases. His further submission is that the stay ought to have been qualified stay. However, in this case the Commissioner has not put any condition upon the respondent. He submits that under such circumstances, he is approaching this Court urgently as now the learned Collector has declared election tomorrow and hence there is urgency.

06. The learned Advocate for respondent No.5 justifies the order passed by the learned Commissioner. On merits he submits that the Commissioner has considered that the Collector has not held any inquiry after remand, though it was specifically directed in the earlier order remanding the matter. He submits that the Commissioner has also considered that there was caveat filed by the petitioner. However, still considering the merits, he rightly passed the order. He submits that the elected member could not have been disqualified in such casual manner and all these aspects are rightly considered by the learned Commissioner.

07. The learned AGP also supports the order passed by the learned Commissioner. He submits that considering this matter, it would be desirable to make order passed by the learned Commissioner, subject to outcome of the appeal pending before the Commissioner, which is scheduled to be heard on 11.08.2023.

08. Having heard the parties, this Court finds that the Commissioner has rightly considered that though there is caveat, however, in the facts of the case, it was necessary to pass order immediately. On merits it does appear that the learned Commissioner has applied his mind to the facts of the case. Keeping that in mind he has passed order by discussing as to why stay order is passed. At this stage this Court finds substance in the submissions of the petitioner that when a person is disqualified, stay could not have been granted without putting any condition. For that purpose he has rightly relied upon judgment in the case of Indira Nehru Gandhi Vs. Raj Narain reported in AIR 1975 SC 1590. He also places reliance on the judgment in the case of Bajrang s/o. Majohar Sonavane & Ors. Vs. The State of Maharashtra & Ors., reported in 2018 (5) All MR 12. In both these judgments, when interim reliefs were granted, those were made subject to certain conditions. He has also produced

on record copy of interim order passed in Writ Petition Nos.4323 and 4339 of 2011. In such circumstances, this Court had granted stay subject to condition that the petitioner shall not take part in the proceedings of the Municipal Council. In those matters, the petitioners were restrained from taking part in the business of the council.

09. Here the question is about an opportunity to contest the election. If the elections are held without participation of the respondent, he will lose opportunity to contest the election. At the same time it would be necessary to put condition that in case if the Commissioner decides against respondent no.5 he shall vacate the seat immediately. This Court, therefore, finds following order will meet the ends of justice:-

ORDER

- i) The writ petition is allowed.
- ii) The order passed by the learned Additional Commissioner dated 19.07.2023 is modified by putting condition that the participation of respondent No.5 in the election dated 26.07.2023 shall be subject to outcome of the appeal pending before the learned Additional Commissioner, Nashik.

- iii) The learned Additional Commissioner, Nashik to decide the appeal on next date i.e. on 11.08.2023 and in any case before 31.08.2023.
- iv) The writ petition is accordingly disposed off with no order as to costs.

[KISHORE C. SANT, J.]