

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1021 WRIT PETITION NO.10267 OF 2023

MAYABAI PRASHANT AHIRE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY AND
OTHERS

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Advocate for Petitioners : Mr. Prashant P Giri a/w Mr. V. B. Jadhav
AGP for Respondents-State : Mrs. R. P. Gour
Advocate for Respondent No.4 : Mr. S. R. Dheple
Advocate for Respondent No.5 : Mr. G. V. Wani

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CORAM : ARUN R. PEDNEKER, J.
DATE : 17/10/2023

PER COURT :

1. Heard the learned Advocate for the petitioners. The petitioners are challenging the common order dated 11/01/2023 passed by the District Collector, Jalgaon in Dispute Application No.39 of 2022 and impugned order dated 06/07/2023 passed by the learned Additional Commissioner, Nashik Division, Nashik in Appeal No.06 of 2023, whereby the petitioners are disqualified as the members of the Grampanchayat, Hivarkheda (T.Va) Taluka Jamner, District Jalgaon.

2. Brief facts of the case are as under :-

The petitioners are elected as members of the Grampanchayat,

Hivarkheda (T.Va), Taluka Jamner, District Jalgaon, and are elected in the general election held for 2020 to 2025. The dispute was filed against the petitioners /elected members for having encroached upon the Government property, and that they be disqualified under Section 14 (1) (j-3) of the Maharashtra Village Panchayat Act. A common report was called by the Collector from Gramsevak for all the elected members. Pursuant to the directions of the Collector, the report dated 14/10/2021 was submitted by the Gramsevak to the Deputy Chief Executive Officer, Zilla Parishad, Jalgaon, whereby the petitioners are shown to be the encroachers. Based on the report submitted by the Deputy Chief Executive Officer, Zilla Parishad, Jalgaon, the Collector has disqualified the petitioners.

3. As regards the petitioner No.1 – Mayabai w/o Prashant Ahire is concerned, she is disqualified for having encroached upon property No.285 of an area of 63 x 51 square meter and a constructed premises on the said area whereby the owners column is mentioned as Government and the occupant is Rajiv Suratsing Patil, the earlier owner of the property. Thereafter, the name of Prashant Yuvraj Ahire is shown by virtue of Gramsabha Resolution No.5, dated 29/08/2014, and thereafter, the name of the petitioner No.1 has

continued. For the land being is owned by the Government and the petitioner is occupying the same, the Collector has disqualified the petitioner No.1 and the order has been upheld by the Appellate Authority.

4. The learned Advocate appearing for the petitioner No.1 submits that he has never applied for the change of mutation entry in his name and the Gramsabha has passed a Resolution without his appropriate application in that regard.

5. It appears that in the order apart from the report received from the officer, there is absolutely no discussion as to how the petitioner No.1 is liable to be disqualified and whether the petitioner is occupying the premises and response of the writ petitioner is not taken into consideration while passing the order. There is a mere quotation of the report and the submissions of the petitioners are not taken into consideration. As regards petitioners No.2, 3 and 4 are concerned, the report indicates that they are occupants of the property which was originally allotted under the Indira Awas Yojana to some other persons. Thereafter, the petitioners No.2, 3 and 4 has come in occupation of the said premises. However, there is no

discussion as to how the petitioners who have come in possession of the properties which were granted under the Indira Awas Yojana are disqualified under Section 14 (1) (j-3) of the Maharashtra village Panchayats Act, 1958. Mere quoting the report and based on report, the Collector has passed the impugned order without taking into consideration responses of the concerned petitioners, and thus prejudice is caused to the petitioners as their submissions are not recorded by the Collector.

6. The learned Advocate appears for the respondents/complainant, so also the respondent No.4 has also not been able to point out any submissions being taken into consideration of the petitioners while passing the impugned order.

7. In view of the same, I deem it appropriate to set aside the impugned orders and remit the matter back to the Collector to decide it afresh.

8. The Collector may take the report given into consideration, however the responses of each of the petitioners has to be also taken into consideration while passing the order. The Collector also

may pass independent order in each of the matters as common order make it difficult, specifically to consider the objection of each of the elected member.

9. The collector is directed to decide the matter afresh expeditiously. The parties to appear before the Collector on 27/10/2023 so as to enable the Collector to fix the further dates in the matter.

10. With the directions as above, the writ petition is disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.