

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 10695 OF 2022

1. Rupesh Yuvraj Patil,
Age-25, Occup-Agri & Sarpanch.
2. Tukaram Sakharam Tayede,
Age-66, Occu- Agri & Up-Sarpanch.
3. Rekhabei Dnyaneshwar Tayede,
Age- 40, Occu- Agri & Member.
4. Madhuri Yogesh Chaudhari,
Age-32, Occu-Agri & Member,

All R/o. At Post. Raypur, Tq. Raver,
Dist-Jalgaon.

... **Petitioners**
(Ori. Respondent No.1 to 4)

Versus

1. The State of Maharashtra,
The Collector Jalgaon,
Mantralaya Mumbai - 32.
2. The Additional Commissioner,
Nashik Division Nashik.
3. Gramsevak, Grampanchayat Raypur,
Tq. Raver, Dist. Jalgaon.
4. Manohar Laxman Patil,
Age-50 years, Occu- Agri,
R/o. At Post Raypur, Tq. Raver,
Dist. Jalgaon.

... **Respondents**
(Respondent No.4 is complainant)

...

Mr. Ajay G. Talhar, Advocate for Petitioners.

Mr. N. T. Bhagat, AGP for Respondent Nos.1 to 3.

Mr. Nirmal R. Dayama, Advocate for Respondent No.4.

...

CORAM : **SANJAY A. DESHMUKH, J.**
RESERVED ON : 07th August, 2023.
PRONOUNCED ON : 07th November, 2023.

J U D G M E N T :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 This petition is directed against the impugned order dated 28th September, 2022 passed by the learned Additional Commissioner, Aurangabad in Grampanchayat Appeal No.99 of 2022, which was dismissed. This appeal was filed against the order dated 19th July, 2022 passed by the learned District Collector in Grampanchayat Dispute No.6 of 2021. The petitioners were held disqualified as they encroached over the Government land situated at village Raypur, Taluka Raver, District Jalgaon.

3 The petitioners contended that they have not encroached

over the alleged properties owned by the State Government. Prior to taking up action for declaring them as encroachers and held them disqualified from election of 15th January, 2021, no proper inquiry was held by the respondents about encroachment by giving notice to the petitioners. The principles of natural justice were not followed. The petitioners were not given an opportunity to explain as to whether there is existence of encroachment or not. Thus, no notice was given to the petitioners prior to submitting report of alleged encroachment. They prayed for setting aside the order dated 19th July, 2022 passed by the learned District Collector in Grampanchayat Dispute No.6 of 2021 and consequential order dated 28th September, 2022 passed by the learned Additional Commissioner, Aurangabad in Grampanchayat Appeal No.99 of 2022.

4 The learned counsel for the petitioners submitted that notice was not given to the petitioners prior to inquiry report of the alleged encroachment. Opportunity was not given to them. No measurements were carried out of the alleged encroached property. All these facts show that the authorities below did not follow the principles of natural justice. He is relying upon the case laws, namely, ***Ashok alias Baban s/o Sheshrao Khadse Vs. Nandu s/o Murlidhar Mapari and others***, dated 28th June, 2021 passed by this Court at

Nagpur in Writ Petition No.3427 of 2019, in which in paragraph Nos.11 and 12 it is held as under:-

“11. Having heard the learned counsel for the rival parties and upon perusal of the material on record, it appears that there is substance in the contention raised on behalf of the petitioner that the crucial document in the present case i.e. the spot inspection report dated 06/09/2018, prepared by the officiating Talathi, was prepared without notice to the petitioner. This document is clearly adverse to the interest of the petitioner and in the absence of notice to him, the said document loses its significance. A perusal of the document shows that while there are signatures of some witnesses and that of the officiating Talathi, the presence of the petitioner is not evident. There is also nothing on record to show that the officiating Talathi issued notice to the petitioner before undertaking such an exercise.

12. A perusal of the impugned order passed by the respondent No.3 Collector shows that the said respondent has indeed relied upon the spot inspection report dated 06/09/2018, prepared by the officiating Talathi behind the back of the petitioner, while holding that he stood disqualified for allegedly having encroached upon Government land. The respondent No.4 dismissed the appeal without appreciating this aspect of the matter, and confirming the finding that the petitioner stood disqualified under Section 14(1)(j-3) of the aforesaid Act.”

the writ petition by setting aside the impugned orders of the authorities below.

6 The learned AGP for respondent Nos.1 to 3 and the learned counsel for respondent No.4 submitted that there is concurrent findings of two authorities in Dispute as well as in Appeal. The authorities have rightly observed and held that the petitioners have encroached over the Government land and therefore, the petitioners are rightly disqualified by the authorities below. They relied upon the case law, namely, ***Satish Janrao Wankhede Vs. Divisional Commissioner, Amravati Division and others, 2021 DGLS (Bom.) 1382***, in which this Court at Nagpur Bench in paragraph No.14 held as under:

“14. This Court would like to refer to the decision of this Court in respect of disqualification rendered in similar facts in Writ Petition Nos. 3543 and 4522 of 2019, specifically paragraph 14 reads as follows:

“14. In the facts of the present case, if the contentions of the petitioners are to be accepted that since they do not continue to reside in the encroached property, they have not incurred disqualification, then the very object with which the provision of disqualification is made by the legislature would be defeated. The encroachers would encroach on the Government property, enjoy the said property and so as to avoid the disqualification, create a record to

show that they have abandoned that property and/or transferred that property and some other relative is residing there and they are no more in occupation of the same. If this is permitted, the very object of making the provision of Section 14(1)(j-3) of the Act of 1958 would be defeated. In the instant case, it emerges from the record that the husband is an encroacher on the Government property i.e. pandhan road, merely because the wife and husband are not staying in the encroached property, that would not absolve them from incurring disqualification. I do not agree with the submission of the petitioners that since the petitioners are not in occupation of an encroached property, they are not liable to be disqualified.”

The above observations are applicable to the facts of the present case and in the light of the above observations, there is no merit in the challenge raised by the petitioner in the present petition.”

7 Perused the documents filed on record. The respondents have not shown any document disclosing that notice was given to the petitioners prior to conducting the inquiry by the Block Development Officer while determining as to whether there is any such encroachment or not. The objections were raised in both the proceedings before the authorities below by the petitioners that an opportunity was not given to them prior to holding that they have committed encroachment over the Government land and they are

utilizing that property. Thus, the respondents did not follow the principles of natural justice by giving an opportunity to being heard to the petitioners, in view of the ratio laid down by this Court in ***Ashok alias Baban s/o Sheshrao Khadse Vs. Nandu s/o Murlidhar Mapari and others*** (supra) cited by the learned counsel for petitioners.

8 Nobody will dispute the ratio of the case law cited by the learned counsel for respondents in case of ***Satish Janrao Wankhede Vs. Divisional Commissioner, Amravati Division and others*** (supra) that very purpose of the Legislature shall not be defeated. It was held in different facts and circumstances of the case that encroachment was not disputed and the objection of the petitioner member of the Village Panchayat was that he was not residing in that property. Thus, the facts of the present case and the facts in case of ***Satish Janrao Wankhede Vs. Divisional Commissioner, Amravati Division and others*** (supra), are different. Therefore, it is not helpful to the respondents.

9 Considering all these facts and circumstances of the case in hand and the reasons recorded above, the decisions of the authorities below are not legal and correct. The matter deserves to be remanded back for fresh consideration and the decision to the Collector – respondent No.1.

10 Therefore, the following order:-

ORDER

The impugned orders are set aside with following directions:

- i. Respondent No.1 – Collector is directed not to rely upon the report of the Block Development Officer dated 1st November, 2021 and it is expected to inquire into the matter by giving an opportunity of being heard to the petitioners about the alleged encroachment and thereafter, by giving full opportunity of being heard to the parties concerned, hear the matter alongwith necessary documents, if any.
- ii. Thereafter, a fresh decision be taken as to whether the petitioners have committed encroachment or not and they are disqualified or not.
- iii. The writ petition is disposed off accordingly. No costs.
- iv. Rule made absolute in above terms.

[SANJAY A. DESHMUKH, J.]