

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

987 WRIT PETITION NO.13266 OF 2022

BABAN S/O NAMDEV UGLE
VERSUS
THE ADDITIONAL DIVISIONAL COMMISSIONER AND OTHERS

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Advocate for Petitioner : Mr.R.G.Nirmal h/f Mr. Gangakhedkar S.S.
AGP for Respondents-State : Mr. K. B. Jadhavar
Advocate for Respondent No.4 : Mr. G. J. Karne
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CORAM : ARUN R. PEDNEKER, J.
DATE : 12th April, 2023

ORAL :

1. Heard learned Counsel for the petitioner, learned AGP and the learned Advocate appearing on behalf of respondent No.4.
2. The petitioner was elected as member of Village Panchayat Kapurkheda, Taluka and District Hingoli, in the year 2021 and later on elected as Sarpanch of the Village Panchayat.
3. A complaint was filed against the petitioner under Section 14 (1) (j-3) of the Maharashtra Village Panchayat Act, 1958 seeking his disqualification for having encroached upon the Government land. Notices were issued in the matter, the reports were called from the concerned authorities.
4. In pursuance of the notices issued, the Extension Officer, Panchayat Samiti, Hingoli prepared a report that the petitioner is in occupation of house

property on 780 Square Feet of land and there is excess land on 247 Square feet covered by compound of which there is no record mentioned. Based on the report of the Extension Officer, the Chief Executive Officer, Zilla Parishad, Hingoli submitted his report to the Collector, wherein he has mentioned that the petitioner is in occupation of 247 Square feet and there is no village record of this lands in the Namuma No.8 of Village Panchayat as owned by the petitioner. As such, an inference is drawn that the same is on an encroached land. However, the report submitted by both these authorities does not show that the additional 247 Square Feet of land occupied by the petitioner is Government land or a public property. Also the defence of the petitioner before the authority is that the area in the compound belongs to a relation Ms. Sarika Sanjay Ugale.

5. There is no proof produced that the land which is found to be encroached by the petitioners is a Government land or a public property. The disqualification under Section 14 (1) (j-3) of the Maharashtra Village Panchayat Act, 1958 is incurred only if the elected member who has encroached upon the Government land or a public property. In the absence of any positive proof and finding that the land which has been encroached by the petitioner is owned by the Government or the encroachment is on a public land, the disqualification under Section 14 (1) (J-3) of the Maharashtra Village Panchayat Act, 1958 is misplaced.

6. In view of the same, the orders passed by both the authorities are set aside. The matter is remitted back to the Collector to take further evidence as regards the ownership of the land which are in possession of the petitioner. The Collector to decide the matter as expeditiously as possible. With above directions, the writ petition is disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.