

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 1717/2022

Shri. Mangesh S/o Murlidhar Wanjari,
Aged about 23 years, Occu:- Labour,
R/o. At Dhargaon,
Tq. & Dist. Bhandara.

.... PETITIONER

// VERSUS //

1. The Additional Commissioner,
Nagpur Division Nagpur,
Civil Lines Nagpur,
Tq. & Dist. Nagpur.
2. The Collector, Bhandara,
Tq & Dist. Bhandara.
3. Gram Panchayat, Dhargaon,
R/o. At Dhargaon, Tq. & Dist. Bhandara,
acting through its Secretary.
4. Smt. Komal W/o Sharmil Bodele,
Aged Major, Occu:- Member of
Grampanchayat, Dhargaon,
Tq. & Dist. Bhandara.

.... RESPONDENT(S)

Mr. Anil I. Kaware, Advocate for the petitioner
Mr. H.D. Dubey, AGP for respondent nos. 1 and 2
Mr. S.S. Dhengale with Ms. Shreya Jain, Advocates for respondent no. 4
Respondent no. 3 is served

CORAM : A.S. KILOR, J.
DATED : 06/06/2023

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. The reversal of the order of the Collector disqualifying the respondent no. 4 as a Member of Gram Panchayat, Dhargaon by the impugned order dated 31.01.2022 passed by the Additional Commissioner, Nagpur is under challenge in this writ petition.

3. In the year 2021, General Elections were held for Gram Panchayat, Dhargaon. The respondent no. 4 was elected as a Member of the said Gram Panchayat from the Scheduled Caste category reserved for women. The petitioner filed an application for disqualification under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1958 alleging that the record of the Gram Panchayat shows that the mother-in-law of the respondent no. 4, Anusaya Bodele has encroached upon the Government land and the respondent no. 4 and her husband are staying with Anusaya Bodele. It is further alleged that the respondent no. 4 is a member of the joint family of Anusaya who has encroached the Government land.

4. The Collector allowed the application filed by the petitioner and thereby disqualified the respondent no. 4 vide order dated 16.09.2021. The Additional Commissioner vide impugned order dated

31.01.2022 allowed the appeal and set aside the order of the Collector dated 16.09.2021 which is the subject matter of the present writ petition.

5. The learned Counsel for the petitioner submits that in Gav Namuna No. 8 at Sr. No. 49 entry recorded by Gram Panchayat clearly depicts that the mother-in-law of the respondent no. 4 - Anusaya Bodele, has encroached upon the Government land. He further submits that as the respondent no. 4 is residing with her mother-in-law in the said house, the Collector has rightly disqualified the respondent no. 4, whereas, the Additional Commissioner in contravention with law as laid down by the Hon'ble Supreme Court in *Janabai Vs. Additional Commissioner and ors.*¹ allowed the appeal.

6. On the other hand, the learned AGP supports the impugned order passed by the Additional Commissioner and submits that the Additional Commissioner has rightly allowed the appeal as the Additional Commissioner has not found any encroachment made by the respondent no. 4 or her mother-in-law on the Government land.

7. The learned Counsel for the respondent no. 4 has drawn attention of this Court to the various documents, namely, Sanad issued by the Government in the name of Shri Pralhad Asaram Madarkar who is the vendor of the mother-in-law of the respondent no. 4, in whose favour land

1 AIR 2018 SC 5068

in question was allotted by the Government with right to transfer the said land. It is pointed out that in view of the said Sanad, the requisite amount was deposited by Shri Pralhad Asaram Madarkar and thereafter, vide Sale Deed was executed by Pralhad Maradkar in favour of the mother-in-law of the respondent no. 4 on 14.03.2001. It is further pointed out that accordingly mutation entry was carried out.

8. It is further pointed out that in Gav Namuna No. 8, it was wrongly recorded that the mother-in-law of the respondent no. 4 has encroached upon the Government land. Therefore, the application was filed for correction of the said entry.

9. In the light of the above referred documents namely, Sanad, receipt of the amount paid against the said Sanad, Mutation Entry and Sale Deed, he submits that the Additional Commissioner has rightly allowed the appeal and dismissed the application for disqualification. He, therefore, prays for dismissal of the writ petition.

10. In the light of the rival contentions of the parties, I have perused the record and the impugned order.

11. The document, namely, Sanad filed on record clearly shows that the land in question was allotted to one Shri Pralhad Aasaram Madarkar by the Government with the right of transfer. The said Pralhad

Madarkar deposited the requisite amount against the said Sanad and in the year 2001 transferred the said land by executing the Sale Deed in favour of the mother-in-law of the respondent no. 4. Accordingly, Mutation Entry was carried out in the name of the mother-in-law of the respondent no. 4.

12. All the above referred documents shows that the land in question was allotted by the Government and, therefore, it cannot be said that the mother-in-law of the respondent no. 4 has encroached upon the Government land.

13. As far as the document on which the petitioner has relied upon, for correction of the said entry the mother-in-law of the respondent no. 4 has already applied on 06.07.2021.

14. The petitioner has not pointed out any document contrary to the Sanad in favour of Shri Pralhad Aasaram Madarkar, Mutation entry carried out in the name of the mother-in-law of the respondent no. 4. Moreover, after going through the application, it is evident that no material particulars are given in support of the allegations made by the petitioner.

15. The Hon'ble Supreme Court of India in the case of ***Ravi Yashwant Bhoir vs The Collector, District Raigad and ors.***² has held thus:

² 2012(4) SCC 407

“34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office bearer sought to be removed.

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (Vide: Jyoti Basu & Ors. v. Debi Ghosal & Ors., AIR 1982 SC 983; Mohan Lal Tripathi v. District Magistrate, Rai Bareilly & Ors., AIR 1993 SC 2042; and Ram Beti etc. etc. v. District Panchayat Rajadhikari & Ors., AIR 1998 SC 1222).

36. In view of the above, the law on the issue stands crystallized to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office bearer but his constituency/electoral college is also deprived of representation by the person of his choice.

37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like 'No Confidence Motion' etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further

declared disqualified to contest the election for a further stipulated period.”

From the above observations made in the case of **Ravi Bhoir** (supra) strict proof is necessary before disqualifying any elected member of Village Panchayat.

16. In this matter, no proper pleadings are made in the application for disqualification. Further more, no sufficient evidence has been brought on record by the petitioner to show that the mother-in-law of the respondent no. 4 has encroached upon the Government land. In fact, documents filed by the respondent no. 4 shows the fact contrary to the allegations made by the petitioner.

17. In the circumstances, the judgment cited by learned Counsel for the petitioner in the case of **Janabai** (supra), is of no assistance to the petitioner. Accordingly, the writ petition is **dismissed** with no order as to costs.

(JUDGE)