

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

WRIT PETITION NO. 3486 OF 2023

Prakash Mahadeorao Khandare

— Vs. —

The Additional Commissioner, Amravati and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N.A.Gawande, Advocate for petitioner
Ms. T.H.Khan, AGP for respondent Nos. 1 & 2.
Mr. H.V.Dhage, Advocate for respondent No.4

CORAM : AVINASH G. GHAROTE, J.

DATE : 07/06/2023

1] Heard Mr. Gawande, learned counsel for the petitioner.

2] The petition challenges the order dated 25.07.2022 passed by the Additional Collector Amravati under the provisions of Section 14(1)(j-3) of the Maharashtra Village Panchayat Act disqualifying the petitioner as the member of the Gram Panchayat Anjangaon Bari, Tq. and Dist. Amravati, for having encroached upon the Government land admeasuring 970 sq.ft (pg. 44). An appeal there against before the Additional Commissioner has been rejected by the order dated 5.5.2023 (pg. 56).

3] Mr. Gawande, learned counsel for the petitioner does not dispute that initially the father of the petitioner was the encroacher of the Government land admeasuring 1470 sq.ft. After the demise of the father of the petitioner, an application came to be made to the Village Development Officer for regularization of the encroachment. The empowered committee in that regard by the order dated 21.1.2020 had regularized 500 sq.ft of land out of the encroached 1470 sq.ft. One of the conditions of the order of regularization was that the balance land would be handed over to the Gram Panchayat (pg.27). It is contended that this land was handed over the Gram Panchayat, for which reliance is placed upon the application dated 25.10.2020 (pg.30) and so also the report of the Secretary of the Gram Panchayat, which is quoted in the order dated 25.7.2022 passed by the Collector (pg.38). It is also submitted that subsequently the balance land of 970 sq.ft is also regularized in favour of the petitioner by an order dated 25.3.2021. It is therefore submitted that there is no encroachment at all and therefore, the impugned orders cannot be sustained.

4] Mr. H.V.Dhage, learned counsel appearing for respondent no.4 opposes the contentions and supports the impugned orders.

5] In view of the order dated 21.1.2020 of the empowered committee, it is no longer in dispute that the father of the petitioner was an encroacher over the Government land admeasuring 1470 sq.ft, out of which, after his demise, upon the application of the mother of the petitioner, the encroachment to the extent of 500 sq.ft., was regularized with the condition that the balance area of 970 sq.ft should be handed over to the Gram Panchayat. The application dated 25.10.2020, however, does not indicate such handing over to have been done. It only speaks that the said area had been cleared for the purpose of handing over. The report of the Secretary of the Gram Panchayat which has not been placed on record, however, as quoted in the order dated 25.7.2022, does not also indicate handing over of this encroached portion of 970 sq.ft to the Gram Panchayat. It merely states that at a subsequent point of time, subsequent to the election of the petitioner as a member, by the order dated 25.3.2021, the encroachment over this portion of 970 sq.ft., has been regularized. The very fact that

there is an order of regularization of this 970 sq.ft would indicate that the encroachment upon this land continued, otherwise there could not have been any regularization at all.

6] In that view of the matter, it will have to be held that the encroachment over 970 sq.ft. of land continued even after the order of the empowered committee dated 21.1.2020 and was in existence on the date of filing of the nomination by the petitioner. In view of this position, I am not inclined to interfere in the impugned orders. The petition is therefore, without any merits and is dismissed. No costs.

JUDGE

Rvjalit