

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

Writ Petition (WP) No. 7658 of 2022

Kishor S/o Shehsrao Domke

Versus

Additional Commissioner, Nagpur Division, Nagpur and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri V.G.Dhage, Advocate for the petitioner.

Shri D.P.Thakare, Addl. Government Pleader for
respondent nos. 1 to 3.

Shri B.M.Kharkate, Advocate for the respondent nos. 6
and 7.

CORAM : ANIL S. KILOR, J.

DATED : 8th MARCH, 2023.

Heard.

2. In the present writ petition, the order dated 21st November, 2022 passed by the Additional Commissioner, Nagpur rejecting the appeal preferred by the petitioner against the order of disqualification as Member of Gram Panchayat passed by the Additional Collector on 24th January, 2022, is under challenge.

3. The brief facts of the present case are as under: The petitioner was elected as a member of Gram Panchayat Tondakhairy, Tah. Kalmeshwar, District Nagpur on 26th September, 2018. Thereafter, the respondent nos. 6 and 7 filed an application for

disqualification of petitioner under Section 14(1)(J-3) of Maharashtra Village Panchayat Act, 1958 (in short referred as “VP Act, 1958”) against the petitioner before the Additional Collector, alleging that the petitioner has encroached upon the Government/public land.

4. The petitioner filed his reply and thereby denied all the adverse allegations.

5. Thereupon the Additional Collector heard both the parties and passed the order dated 24th January, 2022, disqualifying the petitioner from the post of member of Gram Panchayat Tondakhairi, Teh. Kalmeshwar, Dist. Nagpur.

6. The petitioner feeling aggrieved by the same preferred an appeal before the Divisional Commissioner, which came to be dismissed vide impugned order dated 21st November, 2022, which is subject matter of the present petition.

7. Shri Dhage, learned counsel for the petitioner submits that both the authorities have failed to consider that the alleged encroachment is not of the petitioner and in the inquiry it is revealed that the petitioner is not residing in the said house constructed over the government land. He therefore submits that in absence of any evidence against the petitioner that, the

petitioner has encroached upon the government or public land, the disqualification is unwarranted.

8. It is further submitted that the proceeding filed by the respondent nos. 6 and 7 for disqualification of the petitioner was out of political rivalry and without any merit. He therefore submits that the order of disqualifying the petitioner is erroneous.

9. He submits that a gift deed was executed by the petitioner in favour of one Shri Nandu Jugi Uikey much before the election and the house alleged to have constructed over the government land was gifted to Shri Nandu Jugi Uikey. Thus, on the date of election and thereafter the petitioner is no way concerned or connected with the said house. He therefore submits that the petitioner has wrongly been disqualified.

10. On the other hand, Shri Thakare, learned Additional Government Pleader supports the order of the Additional Collector and the Additional Commissioner, Nagpur and submits that after considering the material available on record and after recording the reasons in detailed, the Additional Collector has disqualified the petitioner and on finding the observations made by the Additional Collector as just and proper, the Additional Commissioner maintained the order of the Additional Collector. It is

therefore submitted that no legal infirmity has been committed by any of the authorities to disqualify the petitioner.

11. Shri Kharkate, learned counsel for the respondent nos. 6 and 7 points out that the petitioner is not disputing that Shri Nandu Jugi Uikey is his employee and he is residing in the said house which was constructed over the government land.

12. It is pointed out that, even the gift deed executed by the petitioner in favour of Shri Nandu Jugi Uikey is sufficient to show that the said house was constructed by the petitioner on the government land and to escape from the clutches of law and to avoid disqualification, the gift deed was executed. It is submitted that, the electric meter was in the name of the petitioner on the date of election and even thereafter. He therefore submits that the Additional Collector has rightly disqualified the petitioner.

13. In the light of rival contentions of the parties, I have perused the record and the impugned orders passed by the Additional Collector as well as the Additional Commissioner.

14. After going through the record, there is no dispute that the house in dispute is constructed over a government land and the said house was gifted by the

petitioner to his employee Shri Nandu Uikey vide gift deed dated 21st July, 2018.

15. There is sufficient evidence available on record to show that on the date of election and after the election, the electric meter fitted in the said house was in the name of the petitioner.

16. Thus, there is ample evidence available on record which shows that the petitioner has encroached upon the government land and constructed the house over the said land. It is also apparent that, to escape from the clutches of disqualification, document namely gift deed was prepared in the name of his employee Nandu Uikey, on 21st July, 2018.

17. The Hon'ble Supreme Court of India in the case of Janabai Vs. Additional Commissioner and others¹, has held thus:

12. In Sandip Ganpatrao Bhadade v. Commissioner, Amravati, the authorities below had held that the elected candidate was an encroacher being in occupation of the government land. The High Court, elaborating the scheme of the Act and the purpose of the provision, ruled thus:-

16. In view of the aforesaid meaning of the terminologies "to encroach", "encroachment", "encroacher" and "encroached", whoever resides in the property or any portion thereof, which is an encroachment upon the Government land or public property, can be said to have "encroached" upon it and becomes an "encroacher". Whether such an encroachment is

1 (2018) 18 SCC 196

jointly with others and/or individually, either at one time or at different times remains hardly of any significance as he becomes liable to be removed and prosecuted under Section 53 of the said Act. Whether a person has become liable to be removed and/or prosecuted under Section 53 of the said Act from the Government land or public property, becomes a real test of attracting disqualification under Section 14(1)(j-3) of the said Act. If the answer is in the affirmative, the disqualification is incurred.

17. In view of the aforesaid position, the provision of Section 14(1)(j-3) of the said Act is attracted even in a case where a member of a Panchayat resides in the property or any portion thereof, which is an encroachment upon the Government land or public property. The question as to whether any other person or a member of a family has already made an encroachment, loses its significance and as soon as a member or proposed member joins such act, he cannot escape from the clutches of disqualification under Section 14(1)(j-3) of the said Act. The question framed is answered accordingly.

18. If an intention of the Legislature is to prevent an encroachment upon the Government land or public property by a person, who is deemed to be a "public servant" under Section 184 entitled to enjoy all privileges attached to it under Section 180 of the said Act, can it be said that such an intention of the Legislature be defeated by adopting circuitous way of occupying the property, which is an encroachment on the Government land or public property. The answer would obviously be in the negative, for two main reasons - (i) the act, which is prohibited directly, cannot be promoted or encouraged indirectly to defeat the object and purpose of such prohibition, and (ii) it would

amount to promoting or encouraging the conflicting interest, necessarily resulting in the disqualification under Section 14(1)(j-3) of the said Act.”

18. In the teeth of above referred observations of the Hon’ble Supreme Court of India, I revert back to the facts of the present case. In the list published by Village Officer in respect of the encroacher on the government land in village mouza Tondakhairi, Teh. Kalmeshwar, Dist. Nagpur, of survey nos. 212, 214, 219, the name of the petitioner was appeared at serial number 78. The said list shows that the petitioner has encroached over the government land survey no.214.

19. The revenue record of survey no.214 clearly demonstrate that the said land belongs to government.

20. At the same time gift deed executed by the petitioner in the name of Nandu Jugi Uikey about the house in question supports the case of the respondent nos. 6 and 7 that the house constructed over the said land was constructed by the petitioner and he is in possession of the same through his employee. The gift deed appears to be executed to escape from the clutches of disqualification.

21. Thus, in view of sufficient evidence showing that the petitioner is an encroacher, merely because petitioner himself is not staying in the said

house will not help the petitioner to escape from disqualification.

22. In the circumstances, I do not find any merit in the challenge raised by the petitioner to the order of disqualification passed by the Additional Collector and maintained by the Additional Commissioner. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]

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