



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

960 WRIT PETITION NO. 3246 OF 2023

Sukhdeo Shankar Gaware

VERSUS

The Additional Divisional Commissioner -2 And Others

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Advocate for the Petitioner : Mr. Ravindra Vitthal Gore

AGP for Respondents 1 – 3 : Mr. K S Patil

Advocate for Respondent 4 : Mr. V C Patil (Ashtekar)

Respondent No.5- served.

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : August 08, 2024

ORDER :-

1. Petitioner impugns the order dated 13.12.2022 passed by the Additional Divisional Commissioner-2, Aurangabad in Appeal No.CR-79 of 2022 as well as the judgment and order dated 13.6.2022 passed by the Collector, Aurangabad in Dispute No.CR-192 of 2021 thereby rejecting prayer of petitioner seeking disqualification of respondent no.5 under Section 16 read with 14 (1) (j-3) of the Maharashtra Village Panchayats Act, 1958 (for short hereinafter referred to as MVP Act).

2. Mr. Gore, learned advocate appearing for petitioner submits that, respondent no.5 is the Member of Village Panchayat. She alongwith her husband raised construction of house over the public road. As per Namuna No.8 of property no.198, respondent no.5 owns area to the

extent of 165 of square feet. On representation of petitioner, a panchanama dated 29.7.2021 is drawn by Gramsevak, village Panchayat, Shingi, Tq. Gangapur which records that respondent no.5 has raised additional construction admeasuring 10x12 feet on Government Road. The report alongwith panchanama is submitted by Gramsevak to B.D.O. Gangapur. Mr. Gore, would submit that petitioner filed dispute before the District Collector, Aurangabad under section 14 (1) (j-3) read with 16 of the MVP Act, 1958. The District Collector also caused inquiry into the matter. Accordingly, Extension Officer, Panchayat Samiti, Gangapur submitted the report of inquiry stating that on 25.10.2021 when spot inspection was carried at property bearing no.198, construction as alleged in the complaint could not be noticed, however, prima facie, the evidence depicts that tin shade is removed.

3. According to Mr. Gore, respondent no.5 removed encroachment over the Government road after filing of the dispute, however, panchnama dated 29.7.2021 recorded by the Gramsevak clearly depicts that there was encroachment on public property. Respondent no.5 failed to controvert contents of said panchnama. Consequently, District Collector ought to have declared respondent no.5 to be disqualified to continue as a Member of the Village Panchayat. He would criticize the findings recorded by the District Collector as well as the learned Divisional Commissioner in Appeal under section 16 (2) of the MVP Act.

4. Heard learned counsel appearing for respective respondents.

5. Having considered the submissions advanced by Mr. Gore, learned advocate appearing for the petitioner and on perusal of the reasoning adopted under impugned orders, it appears that petitioner filed election dispute before the District Collector, Aurangabad on the basis of panchanama drawn by the Gramsevak. Apparently, such panchnama is drawn on application made by the petitioner, Upsarpanch of Village Panchayat and a Member is shown as Panchas. Panchnama records existence of construction admeasuring 10' x 12' on Government land by respondent no.5.

6. Pertinently, there is no map of measurement attached to such panchanama. After filing of the dispute before Collector, he directed inquiry. Report of inquiry is submitted by the Extension Officer depicts that on 25.10.2021 at the time of spot inspection, encroachment as alleged was not discernible, however, it records that prima facie possibility of removal of encroachment cannot be ruled out. The learned District Collector, therefore, concluded that there is no concrete evidence as regards to encroachment as alleged by the petitioner. Consequently, declined to entertain the dispute. The Appellate Authority i.e. Divisional Commissioner, Aurangabad also concurred with finding of the District Collector. As such, there is concurrent finding of fact recorded by the Competent Authorities to suggest that

petitioner could not prove his case as regards to alleged encroachment by respondent no.5 on public road.

7. Although, Mr. Gore, strenuously submits that the panchnama dated 29.7.2021 could have been accepted as evidence of encroachment, it is difficult to countenance with his submissions. Firstly, for the reason that said panchnama was drawn prior to filing of the dispute at the instance of the applicant. None of the panchas filed supporting affidavit before the Collector in the dispute. Even, Gramsevak has not filed his affidavit in support of panchnama. Except, so-called report of Gramsevak and panchnama, there is no other material to establish encroachment of respondent no.5 on public road. One line observation in the inquiry report dated 17.11.2021 submitted by Extension Officer posing possibility of removal of encroachment would not be sufficient in a proceeding for disqualification of elected representative. It is trite that unless there is concrete material to establish foundational facts constituting disqualification in terms of section 14 of the MVP Act, elected representative cannot be unseated.

8. In the present case, the learned District Collector as well as the Additional Commissioner on appreciation of material recorded concurrent finding of fact negating claim of the petitioner as regards to encroachment by respondent no.5 on public road. This Court do not find any reason to replace the concurrent finding of fact recorded by the Competent Authorities in exercise of writ jurisdiction under

Article 227 of the Constitution of India. Writ Petition stands dismissed. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

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