



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4074 OF 2022

1. Subhash Sandu Kharat,
age 43 years, Occ. Agri,
R/o Village Ita-Ramnagar,
Taluka Bhokardan,
District Jalna. Petitioner.

Versus.

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The Collector, Jalna,
District Jalna.
4. The Tahsildar, Bhokardan,
Taluka Bhokardan, District Jalna.
5. The Circle Officer, Hasnabad,
Taluka Bhokardan, District Jalna.
6. The Talathi,
Sajja Hasnabad, Ita-Ramnagar,
Taluka Bhokardan, District Jalna.
7. The Gram Sevak,
Gram Panchayat, Ita-Ramnagar,
Taluka Bhokardan,
District Jalna.
8. Dnyaneshwar s/o Asaram Vanarase,
age major, occ. Agri,

R/o Ita-Ramnagar, Tq. Bhokardan,
District Jalna.

Respondents.

...

Advocate for the Petitioner : Mr. Swapnil Joshi & Swapnil
Patunkar I/b J.P. Legal Associates

AGP for Respondents no.1-6 : Mr. P.D. Patil

Advocate for Respondent 7 : Mr. Mr. S.S. Kulkarni

Advocate for Respondent 8 : Mr. Vaibhav B Kulkarni

...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : June 11, 2024

JUDGMENT:-

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The petitioner approaches this Court under Article 227 of the Constitution of India, assailing the order dated 16.2.2022 passed by the Divisional Commissioner, Aurangabad in Appeal No.1/CR-2 as well as the order dated 11.01.2022 passed by the Collector, Jalna in Case No.185 of 2020 thereby disqualifying him as a Member of the village Panchayat under section 14(j-3) r/w section 16 of the Maharashtra Village Panchayats Act, 1958 (for short the Act).

3. Mr. Swapnil Joshi, learned advocate appearing for the petitioner submits that the petitioner was duly elected as a Member of the Village Panchayat Ita-Ramnagar, Tq. Bhokardan, District Jalna in the year 2018. Respondent

No.8, who is political opponent of the petitioner, initiated proceedings under section 16 of the Act asserting disqualification of petitioner in terms of section 14 (j-3), alleging that petitioner encroached on Gayran land in Gut no.138 by raising construction, where he continue to reside alongwith the family. Accordingly, Collector Jalna issued a show cause notice to the petitioner, which is duly replied. The petitioner has specifically denied the alleged encroachment. However, the Collector called report of Extension Officer, Panchayat Samiti and based on contents of the said report, passed the impugned order, holding that petitioner incurred disqualification as alleged. The petitioner, thereafter, approached the Divisional Commissioner, Aurangabad in appeal, which came to be dismissed on 16.2.2022.

4. Mr. Joshi would further submit that entire village Ita-Ramnagar has been rehabilitated on land bearing Gut no.138, which is the Government land. He would submit that in the year 2009, petitioner was sanctioned house under Central Government Scheme namely "Indira Awas Yojana". Accordingly, Village Panchayat passed a Resolution and allotted a plot on the Government land for construction of the house. In deference to such resolution, the petitioner constructed house in the year 2010 on a plot, allotted by the village Panchayat. He would therefore submit that findings recorded by Collector and confirmed by the Commissioner as regards to encroachment on

Government land and consequential disqualification of the petitioner is fallacious. In support of contentions, Mr. Joshi, learned counsel places his reliance on following judgments :-

i. Janabai Vs. Additional Commissioner and others reported in (2018) 18 Supreme Court Cases 196.

ii. Sonali Gajanan Dhepe and another Vs. Additional Divisional Commissioner and others reported in 2023 (4) Mh.L.J. 103.

5. Per contra, Mr. P.D. Patil, learned AGP appearing for respondent nos.1 to 6 and Mr. S.S. Kulkarni, learned Advocate appearing for respondent no.7 supports the impugned order.

6. Having considered the submissions advanced, it can be noticed that, in fact, there is no dispute as regards to the factual matrix. The petitioner has been elected as a Member of the village Panchayat, Ita-Ramnagar in the year 2018. He resides in said village alongwith his family in a house that has been constructed year 2009-2010 on a plot situated at gut no.138. The revenue record clearly demonstrate that land belongs to the Government, petitioner is shown as occupant of the area admeasuring 30 x 21 feet. On 28.10.2009, village Panchayat had passed a Resolution to seek allotment of plot from Government for raising construction of house allotted to petitioner. The record shows that on 27.2.2009 petitioner was sanctioned house under 'Indira Avas Yojana'. Accordingly, the Gramsevak made communication with Tahsildar, Bhokardan seeking

allotment of plot in Gayran land to the petitioner. However, except the communication by village Panchayat, there is nothing to demonstrate that the competent authority made allotment of plot in favour of the petitioner from gut no.138. The construction appears to have been raised under the Government Scheme on Gayran land. The report of Extension Officer, Panchayat Samiti suggests that only with intention to secure the benefit under 'Indira Awas Yojana', Gayran lands were encroached without getting allotment from competent authority. The petitioner appears to be the beneficiary of such illegal act and enjoying construction raised on Gayran land.

7. Although, submission is made that entire village Ita-Ramnagar has been rehabilitated on Gayran land, no evidence is placed on record to show permitting use of Gayran land by the Competent authority for establishment of the village. Perhaps, due to scarcity of the land within the Gavthan, unauthorized allotment of plots on Gayran land appears to be made in connivance with village Panchayat.

8. The learned District Collector considered relevant aspects of the matter and rightly concluded that the petitioner has encroached and continued such encroachment on Government land while he has been elected as a Member of the village panchayat. Disqualification contemplated under section 14(j-3) of the Act squarely attracts in such case. Merely because large number of villagers encroached

in connivance with village panchayat, land would not loose status as a Government land in absence of allotment by the competent authority by following the due process of law. Resultantly, there is no merit in the writ petition. Writ Petition stands dismissed. Rule discharged. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

...

aaa/-f