



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

51 WRIT PETITION NO. 4550 OF 2023

Laxman S/o. Piraji Ilag
Age: 30 Years, Occu.: Agri
R/o Balsa Tq. Jintur,
Dist. Parbhani.

... Petitioner

Versus

1. The State of Maharashtra
Through Principle Secretary Rural
Development Department Mantralay, Mumbai.
2. The District Collector, Parbhani.
3. Additional Divisional Commissioner No.1,
Aurangabad Division, Aurangabad.
4. Laxman S/o Rama Dhumal,
Age: 55 Years, Occu.: Agril.
R/o Balsa, Tq. Jintur. Dist. Parbhani.

... Respondents

...
Mr. Mahesh P. Kale, Advocate for the Petitioner
Mr. P. D. Patil, AGP for Respondent Nos.1 to 3.

...

CORAM : KISHORE C. SANT, J.

DATE : 27th November, 2024.

P.C.:

. Heard the learned counsel for the petitioner and the
learned AGP for respondent Nos.1 to 3. In spite of notice of final
disposal, none appears for respondent No.4.

2 The petitioner had raised dispute seeking disqualification of respondent No.4 as member of Gram Panchayat. It is the case of the petitioner that respondent No.4 has made an encroachment on the Government land and thus, has incurred disqualification under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act. Respondent No.4 was elected as a member to Gram Panchayat, Balsa, Taluka Jintur, District Parbhani from Ward No.3. It is the specific case that the entire house of respondent No.4 is constructed on the Government land.

3 Pursuant to filing of the disqualification dispute, the Collector called for the inquiry report. The inquiry officer / Village Development Officer submitted a report. In the report, it is clearly mentioned that the property of respondent No.4 shown to be 320 square feet. However, he is in possession of the land admeasuring 638 square feet. There is also extract 8-A, wherein this fact is revealed. Even in another property i.e. house No.183, it is found that respondent No.4 is in illegal possession of the Government land. House No.183 is of 962 square feet land, whereas the actual possession is of 988 square feet land. About this property also, there is no record available with the Grampanchayat. This report was based on *Panchanama*.

4 The learned Collector, however, held that there is no specific mention about the exact encroachment in the report. It is not mentioned that the encroached portion is from the Government / public land. The inquiry report is vague and dismissed the dispute application.

5 The petitioner thereafter, filed an appeal with the learned Additional Divisional Commissioner, Aurangabad. The learned Additional Divisional Commissioner, Aurangabad also dismissed the appeal holding that the report is vague and it is not specifically pointed out that on which area there is an encroachment and such area is a Government land or public land. Respondent No.4 did not appear before the learned Additional Divisional Commissioner. Even before this Court he has not appeared, though served with notice of final disposal. Thereafter, the petitioner also produced on record some other documents. On production of these new documents, again notice was served on respondent No.4 and still he has not appeared. This Court can safely refer that he is not contesting this petition. This Court has therefore, gone through the documents which are subsequently produced on record by the petitioner. The additional documents are the documents in the nature of communication by the Tahsildar office to the Talathi calling for report, *Panchanama* drawn by the Talathi pursuant to the communication by the Tahsildar. The said

communication is therefore, look into by this Court.

6 Vide communication dated 29th April 2024, the Tahsildar, Jintur directed the Talathi to make an enquiry in the matter of encroachment by respondent No.4 and to submit a report. Pursuant to the said letter, the Talathi submitted report to the Tahsildar alongwith *Panchanama*. The Communication from the Village Development Officer to Tahsildar dated 3rd May, 2024 also clearly shows that there is an encroachment on the Government Gairan land by respondent No.4. Respondent No.4 has constructed the house on Government's land.

7 The learned counsel for the petitioner thus, vehemently argued that when there is clear record in the form of enquiry report supported by *Panchanama*, the Collector and the Additional Commissioner ought to have accepted the case of the petitioner. The authorities, however, overruled this fact and rejected the dispute and appeal of the petitioner. He thus, prays for allowing the writ petition and declare respondent No.4 as disqualified under Section 14(1)(j-3).

8 The learned AGP submits that appropriate orders be passed. He does not dispute the report produced before the authorities and the documents, which are subsequently produced on record in this writ petition.

9 Considering the above and the documents, which clearly show that respondent No.4 has encroached upon the Government land, this Court is convinced that the case is made out to allow the writ petition. In view of the same, the writ petition stands allowed. Respondent No.4 is held disqualified under Section 14 (1)(j-3) of the Maharashtra Village Panchayat Act. The order dated 24st January, 2023 passed by the learned Additional Divisional Commissioner, Aurangabad in ग्रा.पं./अपील/सेल/सीआर-118/2022, is quashed and set aside.

10 Interim application, if any, stands disposed of.

[KISHORE C. SANT, J.]

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