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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

7 WRIT PETITION NO. 3600 OF 2024

MADHAV DATTRAM SHINDE

....Petitioner

VERSUS

**THE STATE OF MAHARASHTRA THROUGH PRINCIPAL
SECRETARY AND OTHERS**

.....Respondents

Mr. Sachin Joshi, Advocate h/f Mr. S. C. Yeramwar, Advocate for
the petitioner

Mrs. M. L. Sangit, AGP for the respondents/State

Mr. Syed Parekh, Advocate h/f Mr. S. b. Pulkundwar, Advocate
for respondent No.4

Mrs. Maya R. Jamdhade, Advocate for respondent No.5

CORAM : S. G. MEHARE, J.

DATE : 08th APRIL, 2024

P. C.

1. Issue notice to the respondents.
2. Learned APP waives service of notice for the respondents/State.
3. Mr. Parekh, learned advocate waives service of notice

for the respondent No.4.

4. Mrs. Jamdhade, learned advocate waives service of notice for respondent No.5.

5. Heard the learned advocate for the petitioner, learned APP for the respondents/State and learned advocates for the contesting respondents.

6. Learned advocate for the petitioner has referred to the findings of the learned Collector and documents produced in the case. Referring to all documents the learned counsel for the petitioner vehemently argued that everything has been established against respondent No.5. There was material evidence against the respondent No.5 that they have encroached upon the Government land. He discarded the evidence of respondent No.5. Even then the learned Additional Commissioner granted interim stay to the impugned order of the learned Collector. There was no ground to grant stay.

Respondent No.5 thus take the advantage of his position. Hence, the impugned order granting stay to the impugned order of the learned Collector declaring respondent No.5 disqualified is against the principle of law. Hence, the petition may be allowed.

7. Learned APP supports the order of the interim stay. She would submit that the prima-facie issues, involved in the case have been considered. The matter is not finally adjudicated and interregnum arrangement has been made till deciding the issues involved in the case.

8. Learned advocate for respondent No.5 submits that there is no case of encroachment. Main allegation is that the construction has been made in the contravention of the by laws. PWD is not concrete that their lands have been encroached upon. Its report was that the house has been constructed violating the building and control line. PWD is not owner of the land, where the petitioner's father allegedly constructed the house. She further argued that before submitting the report by

the PWD, notices were not served upon the respondents. It was an ex-parte report. Opportunity was not granted to him to explain or at least to know what the PWD did. She also argued that respondent No.5 has a specific defense that he has been separated from his family since long. However, the learned Collector has gone into observing that evidence of partition has not been placed on record. It may be a family arrangement of which, no evidence is required. However, the other documents placed on record to prima facie show that he is not residing with his father have been incorrectly interpreted. The learned Additional Commissioner considered the issues involved in the case and satisfied that respondent No.5 has a prima-facie case to grant stay. Granting interim stay is not deciding the appeal on merit. However, the order of the learned Collector is also not final, it is subject to appeal. Respondent No.5 has right to appeal and point out the illegalities committed in the impugned order of the learned Collector.

9. Considering the facts of the case and the issues

involved in the case, the court is of the view that the learned Additional Commissioner has considered the issue involved in the case and passed a reasoned order. Granting interim stay is not the disposal of the appeal. However, the parties to the litigation have a right to seek the stay to the impugned judgment and order. Normally stay is granted where there are arguable issues and defense is probable. Exactly the learned Additional Commissioner has applied this principle while granting interim protection. By way of impugned order of interim protection, rights of the petitioner are not finally decided. The appeal would be heard on merits. Coming to the court against interim stay shows the level of political revelry. Be that as it may, the court did not find substance in the petition. Hence, it deserves to be dismissed.

ORDER

a] The writ petition stands dismissed.

b] It is clarified that the learned Additional Commissioner should not influence by the observations recorded by this court as those are recorded only for the purpose of deciding this petition.

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c] No order as to costs.

[S. G. MEHARE, J.]

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