



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

WRIT PETITION NO.7108 OF 2024

Shivaji Narbaji Sampate,
Age: 71 years, Occu: Agri,
R/o. Mavalgaon, Tq. Ahmedpur,
Dist. Latur

..Petitioner
(Orig. Appellant)

Versus

1. The Additional Commissioner No. 1,
Chhatrapati Sambhajnagar,
Division, Chhatrapati Sambhajnagar. (Appellate Authority)
2. The Collector, Latur
Dist. Latur. (Orig. Resp. No.1 /Orig.
Authority)
3. Ganpat Bhanudas Sampate,
Age: 53 years, Occu.: Agri & Service,
R/o. Mavalgaon, Tq. Ahmedpur,
Dist. Latur (Orig. Resp. No. 2)
4. Rangnath Kishanrao Patil,
Age: 53 years, Occu: Agri,
R/o. Mavalgaon, Tq. Ahmedpur,
Dist. Latur (Orig. Resp. No. 3)

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Mr. P. R. Katneshwarkar h/f Mr. A. A. Khande, Advocate for
Petitioner.

Mr. S. N. Kendre, AGP for Respondent Nos.1 and 2.

Mr. V. D. Gunale, Advocate for Respondent Nos.3 and 4.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 15th JULY 2024.

ORDER:-

1. The petitioner impugns the order dated 05.07.2024 passed by the Additional Divisional Commissioner, Aurangabad in Case No.2024/GPE/Appeal-01/CR-41 and seeks to grant application filed by him in Appeal against order dated 14.06.2024 passed by the District Collector, Latur in Case No.2024/GPE/CR-01.

2. Mr. Katneshwarkar, learned Advocate appearing for the petitioner submits that the petitioner has been elected as Sarpanch directly from the people. The respondent no.2 is defeated candidate at that election. The respondent nos.2 and 3 filed complaint before the District Collector alleging that the petitioner has constructed house on Government Gayran land Gut No.288. In pursuance of the aforesaid complaint, the petitioner filed detailed reply. The respondent no.2-District Collector directed to cause enquiry to carry measurement through the Superintendent of Land Record. However, the petitioner was not served with the notice and enquiry is conducted behind his back. Based on such enquiry report, the District Collector-respondent no.2 draw the conclusion that the property no.273/85 is situated in Gut No.288 i.e. Government land and passed the order of disqualification against the petitioner. The petitioner filed Appeal before the Additional Divisional Commissioner under Section 16(2) of the Maharashtra Village Panchayats Act, 1958 (for short 'MVP Act, 1958') alongwith application for grant of stay. The Additional Divisional Commissioner again relying upon the same report, rejected the prayer for grant of stay.

3. Mr. Katneshwarkar would further submit that now the Appeal is posted for further consideration on 07.08.2024. The Appeal is continuation of the proceedings instituted before the District Collector. The finality is given to the orders passed by the Appellate Authority. Consequently, the application for stay ought to have been allowed.

4. Per contra, Mr. Gunale, learned Advocate appearing for the respondent nos.3 and 4 submits that there is impeccable evidence demonstrating encroachment of the petitioner on Government land. As per directions of the District Collector, the Deputy

Superintendent of Land Record submitted his report dated 14.09.2023, which clarifies the fact that the petitioner is encroacher on the Government land. The learned District Collector relied upon the report of the measurement submitted by the Deputy Superintendent of Land Record and passed disqualification order in terms of Sections 14(1)(J-3), 16 and 53 of the MVP Act, 1958.

5. Having considered submissions advanced on behalf of the learned Advocates appearing for the respective parties and on perusal of the documents tendered into service before this Court, apparently the petitioner has assailed the order passed by the District Collector before the Additional Divisional Commissioner at Aurangabad. Section 16(2) of the MVP Act, 1958 provides remedy of Appeal against order of disqualification. It specifically stipulates that “any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the Commissioner, and the orders passed by the Commissioner in such appeal shall be final. Apparently, the finality is given to the appellate orders passed by the Additional Divisional Commissioner in the matter of disqualification. Once such an Appellate Forum is provided, all issues of facts and law can be canvassed in the Appeal. The Appeal needs expeditious disposal. However, in such cases, it is expected that the Appellate Authority grant stay to the operation of the order, so that the order passed in the Appeal can be given full effect without any complications falling from the disqualification order.

6. It is pertinent to note here that the petitioner is disqualified under Section 14(1)(J-3) of the MVP Act, 1958. The Appellate Authority requires to scrutinize the material on record with a view to find correctness of the order passed by the District Collector

after hearing all the concerned. It is informed that the Appeal itself is posted for final disposal on 07.08.2024. In that view of the matter, without going into the merits of the matter, it would be appropriate to direct early disposal of the Appeal and stay the operation of impugned order, which is subject matter of Appeal before the Additional Divisional Commissioner at Aurangabad. Hence, the following order:

ORDER

- a. Writ Petition is partly allowed.
- b. The order passed by the District Collector disqualifying the petitioner be kept in abeyance till final hearing and disposal of the Case No.2024/GPE/Appeal-01/CR-41 pending before the learned Additional Divisional Commissioner at Aurangabad, subject to condition that the petitioner shall not seek any adjournment in the proceeding pending before the Additional Divisional Commissioner. The Appeal shall be disposed of without influenced by any observation within a period of four weeks from next date of hearing i.e. 07.08.2024. Parties to co-operate.
- c. Writ Petition is disposed of in aforesaid terms.

(S. G. CHAPALGAONKAR)
JUDGE