



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

4 WRIT PETITION NO. 10566 OF 2024

Shivaji S/o Narbaji Sampate.

... Petitioner

Versus

1. The Additional Commissioner,
Commissioner Office,
Chhatrapati Sambhajinagar Division,
At Chhatrapati Sambhajinagar.
2. The Collector, Latur,
Collector Office, Latur,
Tq. & Dist. Latur.
3. Ganpat S/o Bhanudas Sampate.
4. Rangnath S/o Kishanrao Patil.
5. The Gram Sevak,
Gram Panchayat Office,
R/o Mavalgaon, Tq. Ahmedpur, Dist. Latur.

... Respondents

...
Advocate for the Petitioner : Mr. Milind Madhukar Patil.

AGP for Respondent/State : Mr. K. S. Hoke Patil.

Advocate for Respondent Nos.3 & 4 : Mr. V. D. Gunale.

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CORAM : KISHORE C. SANT, J.

DATE : 30th September, 2024.

P.C.:

. Heard the learned counsels for the parties.

2 This petition is directed against an order passed by the

learned Divisional Commissioner rejecting an appeal filed by the present petitioner challenging the judgment and order passed by the learned Collector holding the petitioner disqualified under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act for committing encroachment on the Government or public land.

3 The facts in short are that the petitioner got directly elected as Sarpanch of village Mavalgaon, Tahsil Ahmedpur, District Latur in the year 2023. Respondent Nos.3 and 4 filed complaint to the Collector and sought disqualification of the petitioner. The learned Collector on receipt of the complaint, issued notice to the petitioner. The petitioner appeared and filed his reply.

4 The learned Collector for the purpose of deciding the dispute, directed the DSLR to submit a report by conducting measurement of the property of the petitioner and to find out as to whether there is any encroachment. The DSLR drawn *Panchanama* dated 4th September, 2023, carried measurement etc. and submitted a report vide communication dated 14th September, 2023. The said report was not accepted by the Collector and again directed the DSLR to prepare fresh map. By way of another communication, the DSLR again submitted the earlier map with the report that there is encroachment on the Government Gairan land by the petitioner vide

communication dated 4th April, 2024. The Collector on the basis of report and the material before her held the petitioner disqualified by judgment and order dated 14th June, 2024 in proceedings No.2024/ग्रापंनि/सीआर/01. The petitioner thereagainst preferred an appeal before the learned Divisional Commissioner. The learned Divisional Commissioner confirmed the finding recorded by the learned Collector and rejected the appeal. The learned Divisional Commissioner, in view of the grounds raised by the petitioner, passed a detailed order. He specifically concluded that there is an encroachment on land Gat No.288. The said encroached portion is in the possession of the petitioner. It is specifically observed that while drawing *Panchanama* dated 17th November, 2023, notices were given to all the concerned, including the petitioner. The learned Commissioner also considered that there was also a notice issued by the *Grampanchayat* about the encroachment in the past. However, there is nothing on record as to what steps were taken by the petitioner and also to show that he has removed such encroachment etc. The DSLR had submitted reports and in both the reports, there was finding specifically recorded about the encroachment. Considering all these, the learned Additional Divisional Commissioner rejected the appeal by order dated 29th August, 2024 in proceedings No.२०२४/ग्रामपंचायत/अपील १/सीआर-४१.

5 The learned counsel for petitioner vehemently argued that no proper inquiry was held. The DSLR did not carry the fresh measurement in view of the Collector's order, but submitted the earlier report only. His defence is not at all discussed by the Collector. There is no proper opportunity given to the petitioner etc. He further submits that to make sitting member unseat is a drastic action and it was necessary for the authorities to specifically consider the defence. He relied upon the judgment in case of ***Mangesh S/o Murlidhar Wanjari Vs. The Additional Commissioner, Nagpur Division Nagpur and others (Writ Petition No.1717 of 2022)*** passed by this Court at Nagpur Bench dated 6th June, 2023. In the said case, the petitioner had shown that the land, which was allegedly encroached upon by the petitioner was in fact a land allotted to him and therefore, he cannot be said to be an encroacher. He further relied upon the judgment of the Honourable Supreme Court in case of ***Ravi Yashwant Bhoir Vs. Collector***, reported in, ***2012 AIR SC 1339***. There is no dispute about the proposition that making unseat elected member is a drastic action.

6 Mr. V. D. Gunale, learned counsel for respondent Nos.3 and 4 vehemently opposed the petition. He submitted that the finding of the encroachment is necessarily a finding of fact. In this case, the findings are recorded on the basis of material before the authorities. It is not a case that the finding is without any record. Twice reports from

the DSLR was called. In both the reports, it is clearly stated that the petitioner has committed an encroachment on the land Gat No.288, which happens to be a Gairan land. He, therefore, prays for rejection of the petition.

7 The learned AGP supports the orders passed by the authorities.

8 Considering the submissions, this Court has gone through the reports of DSLR and the map produced by the petitioner. This Court considered both the judgments. On going through the judgments, this Court finds that both the authorities have concurrently held against the petitioner. The learned Commissioner has specifically recorded finding based on material on record. He has also further considered that there was notice given by the Grampanchayat to the petitioner for removing the encroachment. There is nothing produced on record by the petitioner regarding the said notice. There is also nothing on record to show that the said notice was challenged by the petitioner. Instead the petitioner relies upon the construction permission granted to him in the year 2015. The question while considering the case under Section 14(1)(j-3) is as to whether on the date of election the concerned person has committed any encroachment or is found to have made any encroachment. In the

present case, in view of the specific finding recorded by both the authorities based on material, this Court is not inclined to interfere with the finding of facts. There is no perversity pointed out in the judgment except stating that the authorities have not properly considered the defence of the petitioner. On going through the judgment of the Commissioner, it is clear that the Collector has considered all material grounds taken in the appeal and has also applied mind to the material.

9 Considering all above, the writ petition deserves to be dismissed and the same is hereby dismissed. No order as to costs.

[KISHORE C. SANT, J.]

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