



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12345 OF 2023

Shaikh Mujahid Shaikh Hussain
VERSUS
The State Of Maharashtra Through
Its Secretary And Others

- Mr. P. V. Barde, Advocate for the Petitioner
- Mr. S. B. Jadhav, AGP for the Respondent Nos. 1 to 3/State

CORAM : KISHORE C. SANT, J
DATE : SEPTEMBER 04, 2024

PER COURT :

1. Petitioner had filed a dispute before the Commissioner under Section 16 of the Maharashtra Village Panchayat Act (for short '**the Act**') against Respondent No. 5 alleging that Respondent No. 5 has incurred disqualification under Section 14 (J) of the Act. The Collector by its judgment and order called for a report from the Block Development Officer (for short '**BDO**'). The BDO specifically submitted report dated 11.10.2021 stating that the Respondent No. 5/Sarpanch has committed encroachment on the land of the village panchayat and on the State Highway and

thus, has incurred disqualification. Learned Collector by order dated 11.07.2022 rejected the dispute/application holding that no encroachment is found as per the report of the BDO.

2. Petitioner, therefore, approached the Commissioner by filing Grampanchayat Appeal No. 106/2022. The Additional Commissioner, Nashik Division, Nashik by order dated 18.04.2023 remanded the dispute/application no. 04/2022 with direction that fresh enquiry be held by calling the measurement report from the land records. After the remand, the Collector again conducted an enquiry and observed that the Respondent No. 5 has committed encroachment on the public land. This observation was on the basis of a report submitted by the Chief Executive Officer, Zilla Parishad, Jalgaon and allowed the dispute. The said order came to be challenged by Respondent No. 5 before Commissioner. The Commissioner granted stay to the order passed by the Collector.

3. This Petitioner filed Writ Petition No. 8923/2023. This Court by order dated 25.07.2023

disposed of Writ Petition directing Additional Commissioner to decide the Appeal on 11.08.2023 itself or before 31.08.2023. Learned Commissioner thereafter decided the Appeal on 31.08.2023 and again remanded the matter back to the Collector for fresh enquiry. It is observed that alleged encroachment by Respondent No. 5 is not proved beyond doubt and, therefore, a fresh enquiry is necessary.

4. Learned Advocate for the Petitioner vehemently argued that the learned Commissioner cannot remand the matter to the Collector. Considering the provisions of Section 16 of the Act, there is no power vested with the Commissioner to remand the matter back to the Collector as Civil Procedure Code is not applicable to the proceedings before the Collector and the Commissioner in the matter of disqualification under Section 14. It was necessary for the Commissioner to decide the Appeal finally. In case, Commissioner finds that material is necessary to be considered, it is open to the Commissioner to call for report from the concerned authority by himself. He submits that the

dispute application was filed on 29.06.2021. Now it is more than three years, the term of Respondent No. 5 only five years.

5. In support of his contentions, learned Advocate for Petitioner relied upon the judgment in the case of Vasantrao Vishwanathrao Mane and Others vs. Apparao Baibanna Sidore and Others, 2008 (2) Bom.C.R. 662. The Court held that in the proceedings under Section 72, 50 and 58 under the Bombay Public Trust Act, Civil Procedure Code is not applicable and thus, there is no power available to the District Judge or to Charity Commissioner to remand proceedings. In case of Gaffar Sattarkhan Pathan and Ors Vs. Marutrao Tatyaba Sarpate and Anr, 2012 (5) Bom.C.R. 183 this Court held that no power of remand is available to the Charity Commissioner. In case of Sushilkumar Kamalnarayan Jaiswal (Pitariya) vs. Awtarsingh s/o. Jawaharsingh Taneja, 2023 (4) All.M.R. 594 this Court held that it is not a healthy practice to remand a case to Trial Court, unless it is absolutely necessary to do so. The power of remand be exercised only in rare situation.

Thus, even when the power is available, as submitted by the learned Advocate, the Court should not remand the matter unless it is absolutely necessary. The further judgment in case of *Sirajudheen vs. Zeenath and Others, 2323 DGLS (SC) 190* wherein the Hon'ble Supreme Court has held that merely because a particular evidence which ought to have been before the Court is not adduced, the Appellate Court cannot adopt the soft course of remanding the matter. Further judgment is relied in the case of *Vishwas Laxman Bhagat vs. Devendra Gana Bhagat and Others, 2016 (4) Mh.L.J. 178.* The Division Bench of this Court held that the nature of enquiry under Section 16(2) is in the nature of summary enquiry and no procedure is laid down to conduct such enquiry. It is held that the Collector, therefore, has to follow the principles of natural justice and fair play. The another judgment is relied upon in case of *Suvarna Prakash Patil vs. Anil Hindurao Powar and Others, 2004 (1) All.M.R. 61,* wherein this Court held that it is the duty of the authorities to make enquiry and to find out whether disqualification is legal. The duty of the complainant is only to

indicate that the default has taken place.

6. Learned AGP submits that since the earlier order passed by the Commissioner clearly stipulated that Collector should reconsider the report of DILR by calling the same and also directed to call for a report from DILR, and then to consider the matter of disqualification. Collector did not undertake this exercise and, therefore, Commissioner remanded the matter back. No illegality is committed.

7. None for other Respondents though they are served and appeared through Advocate.

8. Considering the above, this Court find that the Commissioner if at all was of the opinion that a report of proper measurement needs to be considered for the purpose of deciding the disqualification, it was open for the Commissioner to call the same by himself and to give an opportunity to both the sides. It is clear from the record that the Commissioner has passed order of remand for the second time, it is necessary to keep in mind that these proceedings are summary in

nature. Secondly, to deal with the disqualification of a person on the post of Sarpancha and Up-Sarpanch which has particular tenure, it is necessary to put an end to the dispute in shortest possible time and, therefore, the manner of enquiry provided is summary enquiry. Remanding the matter even for second time would only delay the decision on merits. The Commissioner himself can call for the record from the office of DILR by issuing specific directions about the measurement etc. For that purpose remanding the matter for second time was not necessary. This Court thus finds that Commissioner could have disposed of the Appeal by himself by avoiding other technicalities.

9. Looking to the judgments cited before this Court, it is clear that there is also no power vested with the Commissioner to remand the matter as Civil Procedure Code is not applicable. What is necessary is only to observe principles of natural justice which leads proper opportunity of hearing provided to the parties. In view of above, following order:

O R D E R

- (a) Grampanchayt Appeal No. 110/2023 is remanded back to the Commissioner.
- (b) Learned Additional Commissioner to decide the Appeal on the basis of available material. In case, Commissioner feels that report from DILR/TILR in respect of measurement is necessary, he may call the same directly from the appropriate authority for consideration of the Appeal.
- (c) Learned Commissioner is requested to decide the Appeal as early as possible and in any case by 31st December, 2024.
- (d) With this, Petition stands disposed of.

(KISHORE C. SANT, J.)