

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1831 OF 2024

Manoj Ramesh Pimple

... Petitioner

V/s.

Ashok Baburao Wade and Ors.

... Respondents

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Mr. Yogita Deshmukh for the Petitioner.

Mr. M. D. Mulla, AGP for the State-Respondent Nos. 2
to 4. and 9 and 10.

Mr. Atul Damle Sr. Counsel a/w Anish Khanderkar i/b
Vasim Siddiqui for Respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 14, 2024

P.C.:

1. The petitioner (Deputy Sarpanch) is challenging order passed by Additional Commissioner dated 29th January 2024 confirming order passed by Collector disqualifying petitioner under Section 14(J)(3) on the ground that the petitioner's father encroached on the government land.

2. The Respondent No.1 filed a complaint with the Collector under Section 14 of Bombay Village Panchayat Act, 1958 alleging that the petitioner encroached on Survey No.160 (Gairan Government Land) and petitioner's father encroached on Survey No.160 (Gairan Land).

3. The Collector issued notice to the petitioner. The petitioner filed a reply raising contention that the petitioner's father and mother were residing separately from the year 2002 in their own property bearing No.712. The ration Card and Gas Cylinder connection forms indicate that the petitioner and his father are residing separately.

4. The respondent No.1 in support of his contention, that petitioner's father encroached on land bearing Survey No. 160 produced on record extract of register maintained by Grampanchayat indicating that the petitioner's father name having encroached on Survey No.160 in the year 1977 and noted in the year 1991. The second document is also similar extract maintained by the Grampanchayat. The third document is a supplementary list of register maintained by the collection of taxes which contains name of petitioner's father as encroacher.

5. The petitioner placed on record three documents to support his defence that petitioner's father residing separately from the petitioner.

a) Separate Ration Cards of petitioner and his family and separate Ration Card containing petitioner's father and mother.

b) The Cards issued by distributor that they are holding separate LPG Cylinders. Both the cards were produced before the Collector indicating that the petitioner and his father are possessing separate LPG Cylinders.

c) Third document is payment of taxes paid by the

petitioner in relation to properties owned by him and properties owned by his father.

6. The Collector disqualified the petitioner under Section 14(J) (3) recording a finding of fact that the documents placed on record by the respondent No.1 indicates that the petitioner's father encroached over the government land. Based on three documents in the form of extract of encroachment register, no fault can be found with the findings of encroachment committed by petitioners father.

7. However, the Collector while disqualifying the petitioner has referred to the specific contention raised on behalf of the petitioner that the petitioner and his father were residing separately from year 2002 and referred to the documents in support of such contention, but failed to consider all three documents referred in paragraph No.5 of this order.

8. For the purpose of disqualifying the elected person, it is necessary for the Collector to consider documents produced by elected person in support of his plea that the encroacher is not residing along with the elected person. It is also necessary for the Collector to record a finding that whether such person continues to be family member of the petitioner. In absence of such consideration, disqualifying elected person is not expected. Therefore, the impugned order passed by the Commissioner and Collector needs to be set aside and the proceedings need to be remanded to the Collector for adjudication on the document produced by the petitioner. Hence, following order:

- i)** The findings recorded by the Collector that the petitioner's father encroached over the government land is confirmed, however the proceedings are remanded to the Collector for consideration of documents produced by the petitioner to show that the petitioner's father was residing separately and he is not family member of the petitioner, referred in paragraph No.5 of this order.
 - ii)** The Collector shall grant opportunity of hearing to the petitioner and Respondent No.1 and thereafter shall pass fresh order based on findings that petitioner's father has committed encroachment over the government land.
 - iii)** Considering the facts of the present case, the Collector shall decide the proceedings within three months from today.
 - iv)** Parties shall appear before the Collector on 26th February 2024 at 11.00 A. M..
- 9.** The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)