

AGK

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

WRIT PETITION NO.5970 OF 2024

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Ramdas Maruti Dhage

... Petitioner

V/s.

Sandeep Gulab Tambe & Ors.

... Respondents

Mr. Chaitanya B. Nikte with Ms. Esha Malik & Ms.
Ritvija Kale i/by Mr. Prajit S. Sahane for the petitioner.

Mr. Lalasaheb Bandal for respondent No.1.

Mr. J.P. Patil, AGP for respondent Nos.2 to 5 – State.

CORAM : AMIT BORKAR, J.

DATED : MAY 7, 2024

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner challenges order passed by the Additional Divisional Commissioner, Pune Division, Pune rejecting application for stay of order of disqualification dated 11 December 2023 passed by the District Collector, Pune disqualifying petitioner under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958.

2. The petitioner filed statutory appeal before the Appellate Authority. However, by the impugned order, the Appellate Authority has rejected the application for stay.

3. The statutory appeal provided under a Statute enabling disqualified person to challenge order of disqualification would be rendered illusory if the Appellate Authority rejects the application for stay on perfunctory reasons. The result of rejection of application for stay will be that during pendency of the statutory appeal challenging disqualification, the person will be disqualified. To obviate such incongruous situation, in the facts of the case, it is necessary that the Appellate Authority ought to have granted stay and should have fixed the appeal immediately.

4. The question of encroachment being a question of fact, the petitioner is entitled to urge before the Appellate Authority that the finding of fact recorded by the District Collector holding petitioner encroached over the Government property needs to be considered by taking into consideration material produced by both sides. Therefore, in the facts of the case, I am satisfied that the Appellate Authority ought to have granted stay. Hence, following order would meet ends of justice.

a) Impugned order dated 4 April 2024 passed by the Additional Divisional Commissioner, Pune Division, Pune refusing to grant stay is quashed and set aside;

b) During pendency of the appeal, order dated 11 December 2023 passed by the District Collector, Pune in Grampanchayat Dispute Application No.25 of 2021 shall remain stayed;

- c) The Additional Divisional Commissioner shall decide the appeal within six weeks from today;
 - d) Parties shall appear before the Additional Divisional Commissioner on 13 May 2024 at 10.30 a.m.;
- 5.** The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)