

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 1819 OF 2024

Pankaj Dashrath Adhav ...Petitioner  
*Versus*  
Jagdish Deoram Kurhe & Ors ...Respondents

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Ms. Kavita Anchan, for the Petitioner.  
Mr. Pratik B. Rahade, for Respondent No.1.  
Mr. S.D. Rayarikar, AGP, for Respondents Nos. 3 & 4-State.

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CORAM AVINASH G. GHAROTE, J.  
DATED: 11<sup>th</sup> June, 2024

PC:-

1. Heard the learned Counsel for the Petitioner.
2. The Petition questions the order dated 22.09.2023 passed by Additional Comissioner setting aside the order of disqualification of Respondent No. 1 under section 14 (1) (j-3) of the Maharashtra Village Panchayats Act, 1958. The learned Additional Collector by his order dated 17.5.2023 had disqualified Respondent No. 1 under section 14 (1) (j-3) of

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the Maharashtra Village Panchayats Act, 1958, on the ground that an area admeasuring 44 x 22 has been encroached by Respondent No. 1, which has been upset by learned Additional Commissioner.

3. The learned Counsel for the Petitioner submits that the order dated 17.5.2023 passed by the Additional Collector is correct as it takes into consideration the position of the Petitioner having encroached upon the land bearing Property No. 175/2, which was adjacent to Property No. 175/1 of the Petitioner and therefore the finding of the learned Additional Commissioner, contrary thereto is not justified.

4. Perusal of the order of Additional Collector dated 17.5.2023 indicates that the dimensions of the property which is claimed to be encroached by Respondent No.1 are absent.

5. That apart it does not mention as to in whose name Property No. 175/2 which is claimed to have been encroached has been recorded. For the purpose of Section 14 (1) (j-3) of

the Maharashtra Village Panchayats Act, to apply it is necessary that the property in respect of which encroachment is alleged, is either Government property or Public property.

6. To demonstrate this, an appropriate entry in the Grampanchayat records in that regard has to be placed on record. The order of the learned Additional Collector does not indicate that the land bearing Property No. 175/2 has been recorded as Government property. On the contrary it records that in the Form 8 maintained for the concerned Grampanchayat, Property No. 175/2 Property admeasuring 44 x 22 in the year 2006-2007 has been recorded in the name of Respondent No.1. This being the position, unless anything else was brought on record, a finding that this was Government property could not have been rendered by him.

7. The impugned order dated 22.09.2023 of the Additional Commissioner records that since the year 1985-86 till 1991-92, the property which is now numbered as 256 and 257 which relates to the original Property No. 175 stands

recorded in the name of the father of Respondent No. 1, which was continued for the year 1998-99 also.

8. In that view of the matter, I do not see any reason to interfere in the impugned order dated 22.09.2023 passed by the Additional Collector, as there is no material on record brought to my notice to arrive at a conclusion that Property No. 175/2 was either Government property or public property, which is the basic requirement for the applicability of section 14 (1) (j-3) of the Maharashtra Village Panchayats Act, 1958.

9. The petition is therefore dismissed. No costs.

**(AVINASH G. GHAROTE, J)**