



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.19104 OF 2024

Sharad Babaso Navale

... Petitioner.

Versus

The Grampanchayat Valivade

Through Gram Vikas Adhikari Valivade and Ors.

... Respondents.

Mr. Prathamesh Bhargude i/by Mr. Aditya Raktade a/w. Ms.Aarti Shah, for the Petitioner.

Mr. Drupad Patil a/w. Mr.Dheeraj Patil for the Respondent No.2.

Ms. Dhruti Kapadia, AGP for the Respondent Nos.3 to 5-State.

Coram : Sharmila U. Deshmukh, J.

Date : December 20, 2024

P. C. :

1. By this Petition, the challenge is to the order dated 5th December, 2024 passed by the Divisional Commissioner upholding the order of the Collector disqualifying the Petitioner, who was a member of the Village Panchayat.

2. The facts of the case are that a complaint came to be filed by the Respondent No.2 seeking disqualification of the Petitioner under Section 14(1)(J-3) of the Maharashtra Village Panchayats Act ["Village Panchayats Act"] alleging encroachment on the Government property being House Property No.61. The other

ground on which the disqualification was sought was that the alternate land which was granted to the Petitioner in lieu of the earlier property being affected by flood has been sold by the Petitioner's father to a third party. The Collector by taking into consideration the panchanama which showed. RCC construction and the assessment extract which showed the name of Petitioner's father and grandfather as the occupant and the State Government as the owner, came to a conclusion that there was encroachment, which finding has been upheld by the Divisional Commissioner.

3. Mr. Bhargude would point out that the panchanama notes existence of RCC construction and that it appears to have been constructed prior to two years and is not in possession or occupation of any other person. He would further point out that the panchanama records that on the said property for the last 15 to 20 years, the Petitioner's father was not residing. He submits that based on the assessment extract reflecting the name of Petitioner's father, which was not to the knowledge of the Petitioner, the Collector as well as the Additional Commissioner has disqualified the Petitioner. He would further point out that the Divisional Commissioner has come to a finding that the Petitioner and his father are residing together by considering the electoral roll

in respect of House No.511. He points out to the property card to show that the property bearing House No.511 is owned by some Jagtap family and therefore, he assails the said factual erroneous findings. He would further point out from the additional compilation of documents, the assessment extract to show that the Petitioner and his father are residing separately.

4. *Per contra*, Mr. Patil, learned counsel appearing for the Respondent No.1 would submit that the panchanama makes it clear that there is a RCC construction on the plot which was handed over to the State Government being flood affected plot. He submits that the assessment extract shows the name of the father and there is a clear finding of the Divisional Commissioner that the Petitioner and his father are residing together in House No.511. He submits that the additional compilation has been tendered in Court today and seeks time to take instructions and file an affidavit-in-reply.

5. *Prima facie*, the panchanama indicates some RCC construction however, it was required to connect the RCC construction with the Petitioner's father and thereafter, shown the Petitioner to be continued beneficiary of the said encroachment. *Prima facie*, from the material which has come on record, there is no

cogent material to either connect the Petitioner's father with the said construction except the assessment record and neither any material to show that the Petitioner was residing with his father in a joint family and that he is a continued beneficiary of the said encroachment.

6. In light of the above, *prima facie* case for grant of ad-interim relief is made out. Till the next date, interim relief in terms of prayer Clauses (b) and (c).

7. List the Petition for further consideration on **27th January, 2025**. Affidavit in reply to be filed on or before 13th January, 2025. Rejoinder, if any, on or before 20th January, 2025. Mr. Patil, learned counsel waives notice for Respondent No.2. Learned AGP waives for the Respondent Nos.3 to 5.

8. In addition to Court notice, the Petitioner is permitted to serve the Respondents by private notice by all permissible modes of service and to file affidavit of service before the next date.

[Sharmila U. Deshmukh, J.]