



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH : NAGPUR**

**Writ Petition (WP) No. 1888 of 2023**

**Naresh Rangrao Yerane**

**Versus**

**Additional Commissioner, Amravati Division, Amravati and others**

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Office Notes, Office Memoranda of  
Coram, appearances, Court's Orders  
or directions and Registrar's order

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Court's or Judge's Order

Shri N.S.Bhelkar, Advocate for the petitioner.  
Shri Shyam Bissa, AGP for the respondent/State.  
Ms. K.N.Jain, Advocate h/f Shri S.S.Dhengale,  
Advocate for the respondent no.4

**CORAM : ANIL S. KILOR, J.  
DATED : 29<sup>th</sup> FEBRUARY, 2024.**

Heard.

2. The election of the Gram Panchayat Shirajgaon, (Mozari) took place in the year 2020-2021 and the respondent no.4 was elected as Sarpanch. Thereafter, the petitioner filed an application under Section 14(1)(j-3) of Maharashtra Village Panchayat Act, 1959, to disqualify the respondent no.4 on the ground of encroachment alleged to have made on the public road.

3. The said application came to be allowed by the Additional Collector, Amravati vide order dated 9<sup>th</sup> November, 2022 and thereby the respondent no.4 was disqualified.

4. The said order of the Additional Collector, Amravati was carried in appeal before the Additional Commissioner, Amravati Division, Amravati, who set aside the order of the Additional Collector, Amravati vide impugned order dated 23<sup>rd</sup> December, 2022.

5. The Additional Commissioner, Amravati after perusal of the record has come to the conclusion that the Additional Collector, Amravati ought to have called the report of the Tahsildar as far as the construction of the respondent no.4 is concerned, in light of objection raised by the petitioner to the report submitted by the Village Development Officer.

6. The Additional Commissioner, Amravati further expressed his view that, the construction in question ought to have got measured through Deputy Inspector, Land Records to determine the issue of encroachment on the Government road. It has also been observed that a request of report from the Tahsildar in this regard was also made but it was not considered by the Additional Collector, Amravati.

7. In the above referred backdrop, the Additional Commissioner, Amravati has observed that it is not safe to rely upon the document namely Gaon Namuna No.8. Hence, I am of the opinion that, the Additional Commissioner, Amravati has not committed any error to record the above findings as the matter relates to disqualification and since it is a well settled law that, no elected member can be removed, unless there is sufficient material available on record against him establishing the case of disqualification.

8. However, the Additional Commissioner, Amravati, in the above referred backdrop, has committed an error in not remanding the matter back to the Additional Collector for the above referred purpose, in order to determine the area of the construction of the respondent No.4, through any competent authority so as to find out whether there is any encroachment made by the respondent no.4 on the Government road.

9. The Additional Commissioner, Amravati instead of remanding the matter, allowed the appeal by setting aside the order of disqualification.

10. Hence, I am of the opinion that to find out whether the respondent no.4 has committed any encroachment over the Government road, it is necessary to remand the matter back to the Additional Collector,

Amravati for the reasons recorded by the Additional Commissioner, Amravati.

11. Accordingly, I pass the following order.

i. Writ petition is partly allowed

ii. The order dated 9<sup>th</sup> November, 2022 passed by the Additional Collector, Amravati and order dated 23<sup>rd</sup> December, 2022 passed by Additional Commissioner, Amravati are hereby quashed and set aside;

iii. The matter is remanded back to the Additional Collector, Amravati to decide the application afresh by taking into consideration the observations made by the learned Additional Commissioner, Amravati as regards necessity of carrying out measurement of the construction of the respondent no.4.

iv. The parties shall appear before the Additional Collector, Amravati on **18<sup>th</sup> March, 2024**. Thereupon, the Additional Collector, Amravati shall decide the same within four months from the date of appearance.

**[ANIL S. KILOR, J.]**