2024:BHC-NAG:4192

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

Writ Petition (WP) No. 1318 of 2023

Nitirajsingh Ramsingh Rajput

Versus

Additional Commissioner, Amravati Division, Amravati

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

Shri Rohan R. Deo, Advocate for the petitioner.
Shri Harshal Futane, AGP for the respondent/State.

CORAM : ANIL S. KILOR, J.
DATED : 8th APRIL, 2024.

Heard

2. This matter pertains reversal of order of disqualification of respondent no.4 from the post of member Gram Panchayat Nipana, Tahsil Motala, District Buldhana under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959.

3. The Additional Collector, Buldhana allowed the application moved by the petitioner for such disqualification of respondent no.4 relying upon the tax assessment document wherein property no. 235 is shown as owned by the Government and under occupation of respondent no.4.

4. Admittedly, the Additional Collector, Buldhana has not conducted any inquiry beyond such document which was produced by the petitioner.

Furthermore, the Additional Collector has not referred to any other revenue document or any other evidence to hold that the land in question of the respondent no.4 is of the Government.

5. The Hon'ble Supreme Court of India in the case of *Ravi Yashwant Bhoir Vs. District Collectors, Raigad and others*[1] has observed thus :-

> *"34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office bearer sought to be removed.*
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> *35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (Vide: Jyoti Basu & Ors. v. Debi Ghosal & Ors., AIR 1982 SC 983; Mohan Lal Tripathi v. District Magistrate, Rai Barelly & Ors., AIR 1993 SC 2042; and Ram Beti etc. etc. v. District Panchayat Rajadhikari & Ors., AIR 1998 SC 1222).*
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> *36. In view of the above, the law on the issue stands crystallized to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an*

1 2012(4) SCC 407

> *incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office bearer but his constituency/electoral college is also deprived of representation by the person of their choice.*
> *37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like 'No Confidence Motion' etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period.*

6. Considering the above referred observations made by the Hon'ble Supreme Court of India in the case of *Ravi Yashwant Bhoir Vs. District Collectors, Raigad and others* (supra) and after considering the reasons recorded by the Additional Commissioner, Amravati for setting aside the order of the Additional Collector, Buldhana to the extent that Additional Collector has not called any necessary report as regards the encroachment and the ownership of the land in question and only relying upon the tax assessment document, I do not find any reason to interfere with the said order.

7. However, in such eventuality, the Additional Commissioner, Amravati ought to have remanded the matter back to the Additional Collector, Buldhana which the Additional Commissioner has failed to do so. Therefore, I am of the opinion that in the above referred

peculiar facts and circumstances of the present case, to meet the ends of justice, it would be appropriate to quash and set aside the order of the Additional Commissioner, Amravati and to refer the matter to the Additional Collector, Buldhana to decide the same afresh after following due process of law. Accordingly, I pass the following order.

i. The writ petition is partly allowed;

ii. The order dated 9th December, 2022 passed by the Additional Commissioner, Amravati is hereby quashed and set aside.

iii. Further, the order dated 27th September, 2022 passed by the Additional Collector, Buldhana is hereby quashed and set aside and the matter is remanded back to the Additional Collector, Buldhana to decide the same afresh after conducting the necessary inquiry and after verifying ownership of the land as well as allegation of encroachment.

iv. It is made clear that the Additional Collector, Buldhana shall not decide the matter on basis of tax assessment document only but to conduct the inquiry as required in such matters.

v. The Additional Collector, Buldhana shall decide the application for disqualification preferred by the petitioner within two months from the date of service of notice upon the respondent no.4.

vi. All the contentions of the parties are kept open.

[ANIL S. KILOR, J.]