



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

Writ Petition No.2407/2024

(Devidas V Additional Commissioner, Amravati and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. D.J. Jain, Advocate for the petitioner.
Mr. M.S. Sharma, Advocate for resp. no.5./Caveator.
Mr. P.B. Patil, Advocate for resp. no.3.

CORAM : N.R. Borkar, J.

DATE : 04-10-2024.

This petition takes exception to the order dated 15-03-2024 passed by respondent No.1-the Additional Commissioner, Amravati Division, Amravati in Appeal No.106/BVP-16(2)/Shirla Nemane, Dist. Buldhana/2023.

ii. The petitioner was elected as a Member and then Sarpanch of Gram Panchayat Shirla Namane.

iii. The respondent Nos.3 to 5 herein had filed an application before respondent No.2-Additional Collector, Buldhana, alleging that petitioner has encroached upon the Government land and thus he should be disqualified in terms of Section 14(1)(J-3) of the Maharashtra Village Panchayats Act, 1949. The respondent No.2 by order dated 02-11-2023 allowed the said application.

iv. By the order impugned respondent No.1 has dismissed the appeal filed by the petitioner against the order of respondent No.2 thereby disqualifying the petitioner from continuing as Member/Sarpanch of Gram Panchayat Shirla Namane.

v. The learned Counsel for the petitioner submits that the alleged encroachment is attributed to the brother of the petitioner. It is submitted that petitioner is residing separately from his brother and no material/evidence is produced on record to show that they are residing jointly. It is submitted that orders impugned therefore cannot be allowed to stand.

vi. On the other hand, the learned Counsel for the contesting respondents supported the orders impugned.

vii. I have perused the impugned orders. The respondent No.2 has held that petitioner has not produced any evidence to show that he is residing separately from his brother. The respondent No.2 has erred in shifting the onus on the petitioner. It was for respondent Nos.3 to 5 to prove the allegations.

viii. The orders impugned therefore cannot be allowed to stand. In the result, the following order is passed :-

- (a) The orders impugned are set aside.
 - (b) The respondent No.2 shall permit the present petitioner to file reply and then shall decide the matter afresh.
 - (c) Liberty is granted to respondent Nos. 3 to 5 to file documentary evidence, if any, in support of the allegations.
- ix. Petition is disposed of in the aforesaid terms.

(N.R. Borkar, J.)