



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

Writ Petition No.3908 of 2023

Sunil Shridharrao Inzalkar and others Vs. Hon'ble Minister Rural Development
Dept., Mumbai and others

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

Court's or Judge's Order

Shri N.A. Gawande, Advocate for the Petitioners
Shri Dhumale, AGP for the Respondent Nos.1 and 2/State
Shri P.R. Agrawal, Advocate for the respondent Nos.5, 6, 8 and 9

CORAM : ANIL S. KILOR, J.
DATED : 01.02.2024

1. Heard.
2. This matter pertains to disqualification of the respondent Nos.5 to 9 under Section 39(1) of the Maharashtra Village Panchayat Act, 1959 (for short the "Act of 1959"). The allegation made against the respondent Nos.5 to 9 are that, by passing a resolution dated 28.06.2021, they have illegally recorded the names of 11 persons as owners in *Namuna* 8, though there are no documents of ownership in their favour.
3. The proceedings under Section 39(1) of the Act of 1959 was initiated at the instance of the petitioners and in the report called for and submitted by the Chief Executive Officer (CEO), Zilla Parishad, Amravati, the CEO held the respondent No.4, who was holding the post of 'Sarpanch' as guilty.
4. However, without recording any reasons how the respondent Nos.6 to 9 are also liable to be disqualified under

Section 39(1) of the Act of 1959. The Divisional Commissioner, Amravati disqualified the respondent Nos.6 to 9 along with respondent No.5 vide order dated 23.11.2022.

5. The respondent Nos.5 to 9 feeling aggrieved by the order of the Commissioner, preferred an appeal before the Hon'ble Minister who has allowed the appeal vide order dated 19.06.2023 and set aside the order of the Divisional Commissioner dated 23.11.2022. The same is the subject matter of challenge in the present writ petition.

6. To examine the correctness of the order of the Hon'ble Minister as well as the Divisional Commissioner, I have perused the record and both the orders.

7. It is pertinent to note that there is no resolution directing Secretary of the Grampanchayat to record names of those 11 persons in the Village *Namuna 8*. Whereas, the resolution dated 26.08.2021 only recommends to record names of 11 persons in Village *Namuna 8*. Despite the said fact, the Chief Executive Officer, in his report, has observed that, the decision was taken to record the names of those 11 persons in the record of the Village *Namuna 8*.

8. In the report of the Chief Executive Officer says that, recording the names in the 'Namuna 8' does not create title in favour of anybody but it is for the purpose of payment of taxes. However, at the end of the report, he held the respondent No.5 as guilty, discarding the fact that there is no such resolution to

record the names in the *Namuna* 8, but it was just a recommendation.

9. Further in the reply, there is a specific stand taken by the respondent Nos.5 to 9 that, the land in question is not of the Government. In this regard, there is no observation either by the Chief Executive Officer or by the Divisional Commissioner.

10. As per Section 39 of the Act of 1959 the disqualification would be on the following grounds, namely,

- (i) misconduct in the discharge of duties; or
- (ii) any disgraceful conduct, or
- (iii) neglect to perform duties; or
- (iv) incapacity to perform duties; or
- (v) persistently remiss in the discharge thereof.

11. The Divisional Commissioner as well as the Chief Executive Officer without recording any positive finding as regards misconduct against the respondent Nos.5 to 9, came to be conclusion that, the respondent Nos.5 to 9 are liable to be disqualified under Section 39(1) of the Act of 1959.

12. Since this matter pertains to disqualification, and as held by the Hon'ble Supreme Court of India in the case of *Ravi Yashwant Bhoir ..vs.. Collector*¹, the disqualification can only be permitted by strict adherence of law and not in a casual manner.

13. In the present matter, the Divisional Commissioner, in a most casual manner, disqualified the respondent Nos.5 to 9 without discussion relating to evidence available on record which

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sufficiently establishes the allegations against the petitioners. The Hon'ble Minister, therefore, rightly held in favour of the respondent Nos.5 to 9.

14. In that view of the matter, I am of the opinion that in this matter needs a fresh consideration. Accordingly, I pass the following order:

- (i) The writ petition is partly **allowed**.
- (ii) The orders passed by the Divisional Commissioner dated 23.11.2022 and the Hon'ble Minister dated 19.06.2023, are hereby quashed and set aside.
- (iii) The matter is remanded back to the learned Divisional Commissioner, Amravati to decide the same afresh, after hearing both the parties and taking into consideration the above referred observations.
- (iv) The parties shall appear before the Divisional Commissioner, Amravati on **22.02.2024 at 11.00 a.m.**, thereupon, the Divisional Commissioner shall decide the application filed by the petitioner under Section 39(1) of the Act of 1959, after hearing the both the parties within five months from the date of the appearance of the parties.

Accordingly, the writ petition is disposed of in the above terms. No order as to costs.

[ANIL S. KILOR, J.]