



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

WRIT PETITION NO.6543 OF 2023

Shri Manoj Dashrath Juware,
aged about 40 years, Occ. : Member,
R/o Thanegaon, Tah. Armori,
Dist. Gadchiroli. **PETITIONER**

...V E R S U S...

1. The Additional Commissioner,
Nagpur Division, Nagpur,
Old Secretariate Building,
Civil Lines, Nagpur.
2. The Collector, Gadchiroli
Collector Office Compound,
Civil Lines, Gadchiroli.
3. The Gram Panchayat,
Thanegaon, Tah. Armori,
Dist. Gadchiroli.
4. Shri Gopal Jagannath Bhandekar,
aged about 40 years, Occ. Agriculturist
R/o. Thanegaon, Tah. Armor,
Dist. Gadchiroli.
5. Assistant Engineer Class-I,
National Highway Sub-Division,
Gadchiroli. **RESPONDENT**

Mr. Bhojraj Dhandale, Advocate for Petitioner.
Mrs. Mrunal S. Naik, AGP for Respondent Nos.1 & 2/State.
Mr. U. P. Dable, Advocate for Respondent No.4.

CORAM: **BHARAT P. DESHPANDE, J.**
DATE: **14th MARCH, 2024.**

ORAL JUDGMENT:

Heard.

2. Rule. Rule is made returnable forthwith.

3. Heard finally with the consent of the learned counsels for the respective parties.

4. The short question in the present petition as raised by the petitioner is that the order for disqualification as Member of Gram Panchayat, Thanegaon, is passed without following due process and the observations of this Court in the case of ***Sau. Laita Dilip Khandalkar v. Additional Commissioner, Amravati Division, Amravati and others*** reported in ***2019(6) ALL MR 361***.

5. The learned counsel for the petitioner would submit that the complaint was filed by respondent No.4 on 24.11.2021 against the petitioner for disqualification on the ground that the petitioner is carrying out business in a shop known as 'Vidharba Welding' and that there is an encroachment on the government land.

6. The learned counsel for the petitioner would further submit that on receipt of notice from the concerned authority, he

filed a reply stating that there is no encroachment and if alleged encroachment is found, the same was never carried out by the petitioner. The concerned authority i.e. the Collector vide its order dated 26.06.2022 allowed the complaint filed by respondent No.3 and disqualified the petitioner for violation of clause 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1959 (for short the said Act).

7. The petitioner challenged such order before the Divisional Commissioner however, the order dated 20.09.2023 appeal was rejected.

8. The learned counsel for the petitioner would submit that first of all no spot inspection was carried out in order to identify whether there is any encroachment on the government land and that the same was carried out by the petitioner so as to incur disqualification. He further submits that the petitioner was not called to remain present at the time of any inspection and accordingly the impugned orders are perverse and against the settled proposition of law as laid down in the case of ***Laita*** (*supra*).

9. The learned counsel for respondent No.4 strongly

contended that a notice was issued to the petitioner by the National Highway Authority dated 15.11.2021 stating that the petitioner has encroached on the right side portion of the National Highway thereby directing to remove the said encroachment within a period of five days. He submits that the petitioner failed to act on such notice. He submits that the petitioner even did not challenge such notice but claimed in the reply filed before the Collector that such notice was not issued to the original owner of the said land and therefore, was not acted upon.

10. The learned AGP would submit that the National Highway Authority also addressed a letter to the Collector dated 17.02.2022 thereby enclosing photograph obtained from Google Map. This letter would go to show that there is encroachment in front of the shop of the petitioner by extending the shed and keeping the welding material. Accordingly, both the learned counsel for the respondents would submit that the petitioner was put to notice and even though he admitted of conducting business in the said shop, failed to comply with removal of such encroachment and hence, the provisions of Section 14 of the said Act stands attracted.

11. In *Lalita* (*supra*) this Court has specifically observed

that on the basis of a complaint filed for disqualification on the ground of encroachment on a government land, the concerned authority or even a Secretary of the Panchayat is entitled to carry out inspection however, such inspection has to be in presence of the party against whom such complaint is lodged. It is further observed that if such inspection is not carried out in presence of the party against whom the complaint is lodged, the proceedings stands vitiated.

12. In this matter admittedly no site inspection was carried out either by the Collector himself or through any other officer of the Panchayat and that too in presence of the petitioner. However, report shows that National Highway Authority on the directions of the Collector took out a Google photograph and attached it along with their letter dated 17.02.2022 claiming that there is an encroachment. This letter nowhere shows that the site inspection at the site was carried out by the National Highway Authority and in presence of the petitioner.

13. The consequences of encroachment on a government land by an elected Member are drastic. When such powers are required to be exercised to unseat an elected Member, the procedure has to be followed and the material must be to the

satisfaction of the concerned authorities. There is no doubt that the petitioner admitted that he is operating the said establishment on a rented basis. There is also no doubt that the reply filed by the petitioner would go to show that he denied about the encroachment and in the alternative claimed that even if alleged encroachment exists, the same was not done by him but by the original owner of the land. However, once it is established that the site inspection is not carried out in presence of the petitioner, the authorities has denied an opportunity to the petitioner for the purpose of proving his defence. The purpose of carrying out inspection in presence of the affected party is to prove that there is an encroachment on the government land and since the site inspection is carried out in presence of the elected member, he will not be able to deny it.

14. The matter in hand is squarely covered by the observation in the case of ***Lalita*** (*supra*). It is also necessary to note here that in spite of specific directions and observations of this Court in the year 2019 itself as found in the decision of ***Lalita*** (*supra*), the authorities failed to implement it in letter and spirit and committing same mistake since many cases are found filed before this Court on the same ground.

15. The petitioner has been denied opportunity to remain present at the time of inspection and accordingly, the impugned order required interference.

16. Having said so, the impugned order passed by the authorities below are hereby quashed and set aside. However, since a complaint was filed by respondent No.4 regarding encroachment, the Collector is directed to decide it afresh by carrying out inspection of the said portion and that too in presence of the petitioner as well as complainant/respondent No.4 and then to decide it within a period of one month from the date of receipt of copy of this order.

17. The petition is partly allowed. The impugned orders are quashed and set aside. The complaint filed by respondent No.4 is remitted to the office of Collector for fresh decision as observed above and to decide within a period of one month.

18. Rule is made absolute in the above terms. No costs.

(BHARAT P. DESHPANDE, J.)