



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

WRIT PETITION NO.7154 OF 2023

Sandeep Manikrao Parteki,
Aged about 35 years,
Occ: Business,
R/o Thar, Taluka Ashti,
District: Wardha. **PETITIONER**

...VERSUS...

1. Collector,
Wardha, District: Wardha.
2. Arun Ganpatrao Ghodile,
Aged about 45 years,
Occ: Agriculturist,
R/o Thar, Taluka Ashti,
District: Wardha.
3. Secretary,
Gram Panchayat Thar,
Taluka Ashti, District: Wardha.
4. Block Development Officer,
Panchayat Samiti Ashti,
District: Wardha. **RESPONDENTS**

Mr. N. D. Khamborkar, Advocate for Petitioner.
Mrs. Mrunal S. Naik, AGP for Respondent No.1/State.
Mr. R. D. Karode, Advocate for Respondent No.2.
Mr. S. R. Charpe, Advocate h/f Mr. C. V. Sawalkar, Advocate
for Respondent No.4.

CORAM: **BHARAT P. DESHPANDE, J.**
DATE: **15th 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 challenge in the present petition is an order dated 14.08.2023 passed by the Collector, Wardha in G.P. Case No.15/2022 along with the order dated 21.09.2023 passed by the Additional Collector, Nagpur in VPA Case No.43/2023-24.
5. The learned counsel for the petitioner would submit that the petitioner was allotted a land by *Sanad* issued in the year nil for an area of 417.27 sq. mtrs., out of Gat No.7 in village Thar, Taluka Ashti.
6. The petitioner is elected as Member of Gram Panchayat of Thar and was acting as an Upa-Sarpanch.
7. The learned counsel for the petitioner would submit that on complaint filed by respondent No.2 under Section 14 (1) (j-3) of the Maharashtra Village Panchayats Act, the enquiry was conducted and accordingly by an order dated 18.04.2023 passed by the Collector, Wardha, the petitioner was disqualified on the ground that he encroached upon the land.

8. On appeal filed before the Additional Commissioner, Nagpur, the same was rejected on 21.09.2023.

9. The learned counsel for the petitioner would submit that though the inspection was carried out and the *panchnama* was drawn, there is no material to show that the petitioner carried out any encroachment beyond the land awarded to him under the said *Sanad*. According to him, there is no encroachment beyond the area allotted to him and since the authorities failed to consider this aspect, both the order needs to be quashed and set aside.

10. The learned counsel for respondent No.2 would submit that the *panchnama* and other sketch produced on record would clearly go to show that there is an encroachment by the petitioner and therefore, he has been rightly removed from the said post.

11. Rival contentions fall for determination.

12. The only aspect which needs consideration in the present petition is the spot inspection and the sketch prepared by the concerned authorities. First of all there is no dispute that the petitioner is in possession of piece of land which was granted to his father on the basis of a *Sanad*. The dimension of the land is disclosed in the said *Sanad*. Accordingly, what was expected from

the concerned authority while carrying out spot inspection is to identify the area mentioned in the *Sanad* and thereafter to find out whether there is any encroachment beyond it. Admittedly, such exercise is not carried out. The *panchnama* and the sketch nowhere identify the boundaries of the plot allotted to the father of the petitioner so as to identify the encroachment if any. The measurements are disclosed in the *panchnama* as well as in the sketch. However, at both places the dimensions of the land allotted on *Sanad* are not found and therefore, it is difficult to conclude that there is encroachment by the petitioner beyond the area mentioned in the *Sanad*. Only on this count itself, both the orders are requires interference. Both the authorities completely failed and ignored to consider this vital aspect.

13. Accordingly, the impugned orders are quashed and set aside. The complaint lodged by respondent No.2 is remitted to the Collector, Wardha with the directions to conduct the site inspection, identify the plot of land granted to the father of the petitioner on a *Sanad* and then decide whether there is any encroachment beyond such area and that too on a public land or a government land so as to consider the question of disqualification.

14. Such exercise shall be carried out within a period of

one month from the date of receipt of the copy of this order.
The parties shall appear before the Collector, Wardha on
08.04.2024 at 11:00 a.m.

15. Rule is made absolute in the above terms.

16. The parties shall act on the authenticated copy of this
order.

(BHARAT P. DESHPANDE, J.)

NSN