

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12769 OF 2022

Subhash Haridas Ade

VERSUS

The Additional Divisional Commissioner 2 And Others

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Advocate for the Petitioner : Mr. Gore Ravindra Vitthal

AGP for Respondent/State : Mr. R.B. Dhaware

Advocate for Respondent No.3 : Mr. V.H. Pathade

Advocate for Respondent No.4 : Mr. Kuldeep Patil

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATED : DECEMBER 08, 2025

PER COURT :

1. Heard learned counsel for respective parties.
2. By way of present petition, the petitioner challenges the order dated 07.04.2022 passed by the Additional Divisional Commissioner, Aurangabad in Appeal No. CR-57/2021, whereby the appeal filed by the petitioner came to be dismissed and order dated 17.09.2021 passed by the learned Collector, Aurangabad was confirmed.
3. Mr. Gore, learned counsel for the petitioner submits that the District Collector and Additional Divisional Commissioner had not considered the fact that there were no any specific findings recorded by the revenue authorities pointing out that there was encroachment. He further submits that as far as the encroachment is concerned, the authorities are required to record specific findings that how much

area belongs to the government and how much area was encroached. He further submits that the petitioner was not present when the panchnama was prepared. Even no copy of notice was served upon the petitioner and therefore, on this ground, he submits that the order passed by both Courts are liable to be set aside.

4. Per contra, learned counsel for respondent no.4 and learned AGP support the orders passed by the Collector and Additional Divisional Commissioner. They submit that the Collector, relying on the report which was submitted to him wherein it was specifically mentioned that the petitioner has encroached upon the government land, rightly passed the order. Therefore, they submit that the order passed by both Courts need to be maintained.

5. I have gone through the orders passed by both Courts. As far as this issue about disqualification is concerned, once the elected representative is elected, the action of removal of the said employee is penal in nature. Therefore, the authority is required to follow the provisions and procedure to that effect strictly. If there was allegations of encroachment, then the authority has to verify the same through the revenue authorities i.e. Taluka Inspector of Land Records or Superintendent of Land Records. They have to pinpoint the encroachment carried out by the elected representative.

6. As far as the present case is concerned, admittedly, the petitioner was not present when the panchnama was prepared. The

panchnama was submitted by the Circle Officer, admittedly, who is not an expert in the field of measurement. Therefore, I find that the Collector and Additional Divisional Commissioner have not considered the matter properly. Therefore, I am of the opinion that the order passed by both the authorities are liable to be quashed and set aside and the matter be remanded to the Collector, Aurangabad.

7. In view thereof, the petition is allowed.

8. The order dated 07.04.2022 passed by the Additional Divisional Commissioner, Aurangabad in Appeal No.CR-57/2021 and order dated 17.09.2021 passed by the learned Collector, Aurangabad in Dispute No. CR-16/2021, are quashed and set aside.

9. The matter is remanded to the District Collector, Aurangabad. The District Collector is directed to get the report from the T.I.L.R. or S.L.R. and pursuant to such report pass an appropriate order.

10. Parties to appear before the District Collector on 15.12.2025. After appearance of parties, the District Collector is directed to decide the matter within a period of three months thereafter.

(SIDDHESHWAR S. THOMBRE, J.)