

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 50 OF 2025

Krushnat Ramchandra Sutar

....*Petitioner*

V/s.

Additional Divisional Commissioner
and Ors.

....*Respondents*

Mr. Sandeep Koregave with *Ms. Pallavi A. Karankar* for *Petitioner*.

Mrs. Vaishali Nimbalkar, *AGP for the Respondent Nos.1 to 3-State*.

Mr. Aditya Raktade, *for Respondent No.4*.

CORAM : SANDEEP V. MARNE, J.

Date : 9 January 2025.

ORAL ORDER :

1) **Rule.** Rule made returnable forthwith. With the consent of the learned counsel appearing for the parties, the petition is taken up for hearing and final disposal.

2) The petition challenges the order dated 21 October 2024 passed by the Additional Divisional Commissioner, Pune Division, Pune dismissing the Appeal preferred by the Petitioner and confirming the order dated 31 January 2024 passed by the Collector, Kolhapur disqualifying the Petitioner from being a Member and Sarpanch of Grampanchayat, Village-Mandre, Taluka-Karveer, District-Kolhapur

under the provisions of Section 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1958.

3) I have heard Mr. Koregave, the learned counsel appearing for the Petitioner, Ms. Nimbalkar, the learned AGP for Respondent Nos.1 to 3 and Mr. Raktade, for Respondent No.4.

4) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the Petitioner filed his nomination for election as Member of Grampanchayat, Village-Mandre, Taluka-Karveer, District-Kolhapur on 1 December 2022 and came to be elected not only as a Member of Grampanchayat but also as *Lokniyukt Sarpanch*. Respondent No.4 filed Dispute Application No.5/2023 before the Collector, Kolhapur seeking Petitioner's disqualification under the provisions of Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958 alleging that the Petitioner had committed encroachment on government land. It was alleged that the Petitioner had constructed a house which is assessed in Petitioner's name in the records of the Grampanchayat as House Property No.228 and that he was residing in the same.

5) Petitioner does not dispute the position that his forefathers did construct Grampanchayat House No.228 on land bearing Gat No.275 which is a *Gairan* land. Apparently however, the said house was badly damaged and had already collapsed and accordingly the Petitioner filed application on 25 November 2022 with the Grampanchayat informing it about collapse of the house and that what existed at the place was mere vacant land. The Petitioner also made a statement that he had left possession of the land on which the house had existed and that the same was in possession of Grampanchayat. The Petitioner

stated that he has no right, title or interest in respect of the land or house no.228 and accordingly requested for deletion of his names as occupant of the house in the records of Grampanchayat.

6) The Grampanchayat in turn gave response dated 29 November 2022 to the Petitioner stating that after site inspection presence of some buffaloes was observed at House no.228 and therefore the Petitioner was yet to leave possession of the land on which House no.228 was located. The Grampanchayat therefore requested the Petitioner to remove the encroachment by demolishing the house and agreed to delete entry of the Petitioner being occupant thereafter.

7) It appears that in the Dispute Application, the Collector directed to conduct the measurement of land bearing Gat No.275 which is a *gairan* land. The measurement was conducted on 7 August 2023 and measurement map bearing M.R.17611/2002 was prepared. In the said map, open land was noticed in place of Grampanchayat House No. 228. Additionally, statement of Gramsevak was recorded on 16 May 2023 in which he certified that the nature of property as on 16 May 2023 was vacant land.

8) Thus, both the statement of Gramsevak dated 16 May 2023, as well as the measurement map dated 7 August 2023 clearly indicated non-existence of any house at the site, which was found to be merely vacant/open land.

9) The Collector appears to have been swayed by the response given by the Grampanchayat on 29 November 2022 to the Petitioner for drawl of an inference that the house actually existed at the site as on 29

November 2022. It would be apposite to reproduce response of the Grampanchayat dated 29 November 2022, which reads thus :

प्रति
श्री कृष्णाच्या रामचंद्र सुतार
रा. मांडरे , ता. करवीर
यांना.

विषय -आपला दि २८/११/२०२२ रोजीचा अर्ज.

आपले विनंती अर्जानुसार प्रत्यक्ष स्थळ पाहणी केली असता मिळकत क्र. २२८ मध्ये म्हैशी बांधलेल्या दिसून येत आहे त्यावरून असे दिसून येते कि आपण मिळकतीचा ताबा सोडलेला नाही ते आपण अतिक्रमण आपण स्वतः निष्काशीत करून घ्यावी. सदर अतिक्रमण निष्कातीत केलेचे ग्रामपंचायत कार्यालयाची पुष्टी झाल्या नंतर आपला अर्जावर पुढील योग्यती कायदेशीर कार्यवाही करण्यात येईल.

ग्रामसेवक
ग्रामपंचायत -मौजे मांडरे
ता. करवीर, जि . कोल्हापूर

10) Grampanchayat's letter dated 29 November 2022 shows that the site inspection was conducted and the Grampanchayat found teetering of buffaloes at House no.228. Merely because few buffaloes were found to have been teetered at the site of house no.228, it cannot be inferred with a degree of certainty that the house itself existed at the site as on 29 November 2022. The letter dated 29 November 2022 does not record that the buffaloes found to be teetered were of the Petitioner. The letter dated 29 November 2022 does not reflect existence of any construction at the site. The Grampanchayat appears to have drawn a surmise that the Petitioner continued to possess the open land where buffaloes were found even without verifying whether the said buffaloes were of Petitioner or not. As a matter of fact, on 25 November 2022, the

Petitioner had specifically made a statement that he had left possession of Grampanchayat House No.228 and that he did not have any right, title or interest therein. It would be apposite to reproduce Petitioner's letter dated 29 November 2022:

प्रति,
मा. ग्रामसेवकसो, ग्रामपंचायत मांडरे
ता. करवीर, जि. कोल्हापूर

अर्जदार -कृष्णात रामचंद्र सुतार

विषय :- ग्रामपंचायत मिळकत नं २२८ या मिळकतीबाबत ताबा सोडून
सदरचा ताबा ग्रामपंचायतीस दिलेमुळे असेसमेंट पत्रकी
भोगवटदार सदरी माझे असणारे नाव कमी होणे बाबत

- १) मी मांडरे ता. करवीर जि. कोल्हापूर येतील कायमचा रहिवासी आहे.
- २) मांडरे येतील मालमत्ता क्र. २२८ या मिळकती मधील दगड-विटा मार्तीचे घर हे माझ्या पूर्वहक्कदारानी बांधलेले होते. त्याचे क्षेत्रफळ १२ x १४ असे १६८ चौ. फू. असे आहे. सदर बांधीव मिळकत पडीक आहे. तसेच बांधकामही नष्ट झालेले होते व आहे.
- ३) सदर क्षेत्रातील माझा ताबा मी सोडून दिलेला आहे व सदर मिळकत ग्रामपंचायत मांडरे यांच्या प्रत्यक्ष ताब्यात दिलेली आहे. त्यामुळे सदर मालमत्ता क्र. २२८ बाबत माझा कोणताही हक्क, अधिकार, वहिवाट, राहिलेली नाही. त्यामुळे सदर मिळकतीचे असेसमेंट पत्रकी भोगवटदार सदरी माझे असणारे नाव कमी करून भोगवटादार सदरी ग्रामपंचायत मांडरे यांचे नाव नमूद करावे ही माझी आपणास नम्र विनंती आहे.

कृष्णात रामचंद्र सुतार
मांडरे
ता. २५/११/२०२२

11) In my view therefore, no definitive inference can be drawn based on Grampanchayats' letter dated 29 November 2022 that any construction existed at the site as on 29 November 2022.

12) The Additional Collector appears to have recorded a perverse finding that the measurement map prepared by the office of the Superintendent of Land Records on 7 August 2023 (M.R. No.17611/2002) shows encroachment by the Petitioner. In fact, perusal of the said measurement map no. 17611/2002 clearly reflects that there was an open land at the site of Grampanchayat House No.228. In contrast, it appears that two other houses bearing nos.230 and 235 were found at the site, with which Petitioner does not have any connection. Thus, whatever actual construction was seen by the Surveyor, he indicated its existence separately in the map and the status of house no.228 was clearly indicated as vacant land by the Surveyor. Even photographs apparently taken at the time of conduct of measurements indicates non-presence of any constructed structure at the site and what is observed at the site is merely a heap of soil and hay.

13) In my view, therefore the Collector and Additional Divisional Commissioner have grossly erred in directing disqualification of the Petitioner under the provisions of Section 14(1)(j-3) of the Village panchayat Act. It must be borne in mind that the Petitioner afterall is a democratically elected Sarpanch. He cannot be removed from the post merely on the basis of surmises in absence of any definitive proof of commission of encroachment by him. In ***Ravi Yashwant Bhoir v. Collector***, (2012) 4 SCC 407, the Apex Court has held as under:

37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like "no confidence motion", etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period.

36. In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/electoral college is also deprived of representation by the person of their choice.

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (vide *Jyoti Basu v. Debi Ghosal* [(1982) 1 SCC 691 : AIR 1982 SC 983], *Mohan Lal Tripathi v. District Magistrate, Rae Bareilly* [(1992) 4 SCC 80 : AIR 1993 SC 2042] and *Ram Beti v. District Panchayat Raj Adhikari* [(1998) 1 SCC 680 : AIR 1998 SC 1222]).

34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

14) In my view, therefore the orders passed by the Collector and Additional Divisional Commissioner are unsustainable and are liable to be set aside. The petition accordingly succeeds, and I proceed to pass the following order:

- (i) Order dated 31 January 2024 passed by the Collector, Kolhapur and order dated 21 October 2024 passed by the Additional Divisional Commissioner, Pune are set aside.

(ii) Dispute Application No.5/2023 is dismissed.

15) Writ Petition is allowed in the above terms. Rule is made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]