



1211-2025

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

WRIT PETITION NO. 1211 OF 2025

(Sunil s/o Narendra Rathod Vs. Additional Commissioner, Amravati Division & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. S.D. Chopde, Counsel for the petitioner.
Ms M.S. Naik, A.G.P for respondent nos. 1 and 2.

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CORAM : ANIL L. PANSARE, J.
MARCH 6, 2025

The challenge is to order dated 14/1/2025 passed by the Additional Commissioner, Amravati, thereby partly allowing the appeal filed by respondent no.3.

2] The petitioner lodged a complaint before the Collector, Washim, under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959 (for short "Act of 1959"), stating therein that respondent no.3 has encroached upon the government land. The Collector conducted enquiry. He called report of Chief Officer, Municipal Council, Karanja (Lad), District – Washim. Report dated 5/10/2023 was furnished by the Chief Officer stating therein that the husband of respondent no.3 has erected Tin Shade on the open land in the layout belonging to one Mr. Ankush Kale. On the basis of said report, the Collector took a view that respondent no.3's husband has made encroachment on the government land, and accordingly, proceeded to allow the complaint,

thereby disqualifying respondent no.3 as Member and Sarpanch of Gram Panchayat.

3] Respondent no.3 challenged the order before the Commissioner, Amravati, in terms of Section 16(2) of the Act of 1959. The Commissioner has noted that though Chief Officer, Nagar Parishad, Karanja, in notice dated 18/7/2023 and report dated 5/10/2023 recorded that respondent no.3's husband has constructed Tin Shade without permission, there is nothing in the notice that would indicate that he has made encroachment on the land. As regards report, the Commissioner was of the view that the report would not prove encroachment on government land. The Commissioner then expressed an opinion that the Collector will have to verify whether the construction made by respondent no.3's husband is made on a land belonging to Municipal Council or the Government.

4] The learned Counsel for the petitioner submits that the report of Chief Officer is self-evident because in the report, it has been mentioned that respondent no.3's husband has made encroachment on the open land of the layout belonging to Mr. Ankush Kale.

5] I do not find substance in the aforesaid argument inasmuch as the report does not, in clear word, mention firstly that the layout under question was a sanctioned layout, and further that open land or PU land was part of layout, and further that the open land, mentioned in the report, is the land, which was handed over to the Municipal Council. In a given case, there could

be construction on the open plot or PU land or any other open land in the layout. Thus, what is important to verify is firstly, whether the layout under question is a sanctioned layout or is a layout belonging to Mr. Ankush Kale, and secondly, whether the open land of the layout has been handed over to the Municipal Council and whether Tin Shade has been erected on the said land. Unless the aforesaid aspect is verified, the Collector could not have dislodged the elected member. The Hon'ble Supreme Court has time and again held that disqualification is a penal action and, therefore, the same should be based on cogent evidence.

6] In the present case, the Collector has disqualified respondent no.3 in a most casual manner. That being so, the Commissioner has rightly set aside the Collector's order and remanded the matter back.

7] There is, thus, no merit in the petition. The same is accordingly dismissed in *limine*. No costs.

8] The Collector shall proceed to decide the complaint in accordance with law and also what has been stated in the body of the order.

(ANIL L. PANSARE, J.)

Sumit