

(2011) 08 BOM CK 0165

In the Bombay High Court

Case No : Writ Petition No. 3436 of 2011

Ganesh Shankar Landge

APPELLANT

Vs

The Additional Commissioner, Additional Collector, Secretary,
Gram Panchayat Mhaismal and Sakru Ganu Rathjod

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 14, 14(1), 16(2)
Constitution of India, 1950 — Article 226, 227

Citation : (2012) 1 BomCR 692

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : P.B. Patil, for the Appellant; T. Khan, learned A.G.P. for Respondent Nos. 1 and 2 and R.N. Ghuge, Learned Counsel, for the Respondent

Judgement

R.M. Savant, J.—Rule with the consent of the parties made returnable forthwith and heard.

2. The above petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 06/06/2011 passed by the Additional Commissioner, Amravati Division, Amravati, by which order the Appeal filed by the Respondent No. 4 herein came to be allowed, resulting in the application filed by the Respondent No. 4 for disqualification of the Petitioner u/s 14(1)(j3) of the Bombay Village Panchayats Act, 1958 being allowed.

3. The Petitioner was elected as a member of the Gram Panchayat Mhaismal, so also the Respondent No. 4, it appears that after the said elections, the Respondent No. 4 contested for the post of Sarpanch in which elections the Respondent No. 4 was defeated. It is the case of the Petitioner that on account of his defeat, the Respondent No. 4 bore a grudge against the Petitioner and was looking for an opportunity against the Petitioner so as to unseat him. The Respondent No. 4 filed an application before the Collector invoking Section 14(j3) of the Bombay Village Panchayats Act, 1958 on the ground that the Petitioner

has encroached upon Government land. The Petitioner appeared in the said proceedings and objected to the said application. The complaint filed by the Respondent No. 4 came to be dismissed by the Additional Collector by his order dated 13/12/2010. The Additional Collector inter alia held that it could not be conclusively proved that the Petitioner has encroached upon the Government land.

4. Aggrieved by the said order dated 13/12/2010, the Respondent No. 4 filed an Appeal in terms of Section 16(2) of the Bombay Village Panchayats Act, 1958. It is pertinent to note that in the said Appeal the Respondent No. 4 sought to rely upon a report of the Talathi, which the Respondent No. 4 had himself procured. The Petitioner objected to the said report being produced at the appellate stage, as the same was not produced before the Additional Collector. The application filed by the Respondent No. 4 for placing the said report on record was placed along with the Appeal and in spite of the objections of the Petitioner, the said report was relied upon and the Appeal was resultantly allowed. The Appellate order as can be ex facie seen is replete with the observations made on the basis of the said report of the Talathi. It is the contention of the learned Counsel for the Petitioner that without the Authority ordering the submission of a report by a Revenue Officer, the Respondent No. 4 procured the said report and sought to rely upon the same in the Appeal. It is further sought to be contended that if the Appellate Authority deemed it appropriate that the report of the Talathi ought to be placed in the proceedings, it should have remanded the matter back to the Additional Collector for consideration of the matter on the basis of the report. It is further sought to be contended that the said report having been procured by the Respondent No. 4 behind the back of the Petitioner could not be relied upon.

5. Per contra, it is submitted by Shri Ghuge, the learned Counsel appearing on behalf of the Respondent No. 4 that though the Petitioner claims that said report was not handed over to him, the Petitioner nevertheless has filed his objection to the said report and, therefore, now cannot be heard to say that he was not given an opportunity to deal with the report. The learned Counsel would contend that it was permissible for the Appellate Authority to consider the said report and adjudicate upon the Appeal filed by the Respondent No. 4.

6. Having heard the learned Counsel for the parties, in my view, considering the facts and circumstances as narrated above, the orders passed by both the Authorities would have to be set aside and the matter would have to be relegated back to the Additional Collector for a de novo consideration after obtaining a report from the appropriate Revenue Officer in that behalf. In my view, it was highly improper on the part of the Appellate Authority to permit the Respondent No. 4 to produce the said report, which has been prepared unilaterally by the Talathi without any notice to the Petitioner, if report was to be obtained from the Revenue Officer, it was incumbent on the Authority that the parties are noticed in that behalf and thereafter given an opportunity to deal with the report in question. That having not happened, in my view, the order passed

solely on the basis of the said report stands vitiated on the ground of violation of the principles of natural justice. In my view, considering the nature of the controversy involved in the matter, it would be just and proper for the Authorities below to rely upon a report of the concerned Revenue Officer, but definitely not on the report of the Talathi, which has been procured by the Respondent No. 4. The above petition would therefore have to be allowed and the following directions are required to be issued.

i) Both the orders i.e. the order dated 13/12/2010 passed by the Additional Collector and the impugned order dated 06/06/2011 passed by the Additional Commissioner are quashed and set aside and the matter is remanded back to the Additional Collector for a de novo consideration.

ii) The Additional Collector, if he so deems it fit to call for a report from an appropriate Revenue Officer either from the Revenue Inspector or from the Tahsildar in respect of the alleged encroachment by the Petitioner. The Authority that would be appointed by the Additional Collector to give notice to the parties to remain present on site on the date and time when the said Authority would be visiting it. The Petitioner and the Respondent considering the contents of the report would be entitled to file their respective replies in respect of the said report that would be given by the Authority.

iii) The Additional Collector thereafter to consider the application filed by the Respondent No. 4 on the basis of the said report and the pleadings of the parties as also the material i.e. placed on record by either of them and thereafter record findings.

iv) The parties to appear before the Additional Collector on 22nd August, 2011. The Additional Collector thereafter to dispose of the proceedings within eight weeks.

7. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.