
(2016) 04 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No. 7681 of 2012

Shri Dhanraj Bhaidas Patil (Jadhav)

APPELLANT

Vs

The Divisional Commissioner, Nasik Division, Nasik

RESPONDENT

Date of Decision : 26-04-2016

Acts Referred:

Citation : (2016) 4 AIRBomR 815

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Shri Patil Shrikant S, Advocate, for the Appellant; Shri Basarkar, A.P, AGP, Shri Pawa,r P.B, Advocate, Shri Patil Vijay B, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Ravindra V. Ghuge, J.(Oral)—Heard learned Advocates for the respective parties.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the order dated 5.1.2012 delivered by respondent No.2, thereby allowing the Complaint filed by respondent No.5 and concluding that the petitioner stands disqualified under Section 14(j-3) of the Maharashtra Village Panchayat Act. The petitioner is further aggrieved by the judgment of respondent No.1 - appellate authority dated 18.6.2012, by which Appeal No.16 of 2012 filed by the petitioner has been dismissed.

5. The submissions of Shri Patil, learned Advocate for the petitioner can be summarised as under:-

(a) Respondent No.5 - Gram Panchayat resolved in 1980 to allot a piece of land to 12 agriculturists for erecting a cattle shade and for residing in the said area. Respondent No.5 was the Chairman of the Gram Panchayat committee which

granted/allotted the land admeasuring 30x50.

(b) Such land was allotted to 12 persons.

(c) The petitioner has erected his residence on the said land in 1982.

(d) The Gram Panchayat has allotted House No.66 to the said structure and the petitioner is paying taxes.

(e) The elections to the Gram Panchayat were declared in 2010 and the petitioner was elected as a Member of the Gram Panchayat.

(f) Subsequently, he was elected as a Sarpanch of the Village.

(g) Respondent No.6 filed a Gram Panchayat Dispute in 2011, alleging therein that Government land admeasuring 1 Hectare and 1 Are was illegally allotted to the petitioner and he has erected a permanent structure in the form of his residence.

(h) His permanent structure admeasures 50x16? which is 825 sq. ft. and the tin shade admeasures 30x16? which is 495 sq. ft.

(i) Said construction is suppressed in the nomination form.

(j) The petitioner has encroached upon the said land and has erected the structure without obtaining any permission from any statutory authority.

(k) Above contention of respondent No.5 are baseless and the same do not require any consideration.

(l) Sub-section (j-3) under Section 14 was introduced in 2006 and the same is, therefore, not applicable to the election of the petitioner, which took place in 2010.

(m) The Circle Officer carried out an enquiry on the request of respondent No.5 and submitted his report to the District Collector, concluding that there is an encroachment on the Government land at the behest of the petitioner, which report was never supplied to the petitioner.

(n) The petitioner is a bona fide user and occupier of the properties at issue and there is no wilful encroachment committed by him.

(o) His term has already ended and as such, the dis-qualification for the entire life time calls for an interference.

(p) He has been occupying the said property for 30 years when the fifth respondent lodged a complaint.

(q) The matter needs to be remanded for a detailed enquiry and for reconsidering the above contentions, which have been raised by the petitioner and never considered by the lower authorities.

6. Learned AGP appearing on behalf of respondent Nos. 1 to 3 relies upon the

affidavit-in-reply filed by the Naib Tahsildar - Grade II, Tahsil Office, Sindhkheda, dated 28.6.2013. He submits that it is the contention of the State that the land allotted to the petitioner and other 11 persons was unauthorisedly distributed by the Village Panchayat for cattle shade and residential purpose. No permission was taken from the District Collector, Dhule in this regard. The said land has been entered in the name of the petitioner in Extract No. 8 without authorization. The learned Judicial Magistrate (F.C.), Sindhkheda has directed to make an investigation under Section 156(3) of the Criminal Procedure Code in RC No.155 of 2011.

7. He further submits, in the light of the affidavit filed, that no permission was taken for allotment of the land as well as for erecting any permanent structure on the said land.

8. Shri Pawar, learned Advocate appearing for respondent No.4 - Gram Panchayat submits that the petitioner was in possession of the land for almost 28 years when the election took place. Till today, there has been no decision as to whether the land has been illegally allotted to the petitioner or not. All the 12 persons, who were allotted the land have been in peaceful possession. It is only after the election that respondent No.5, who was the Sarpanch of the village in 1980 and himself being instrumental in sanctioning the land to the petitioner, has lodged a complaint. He further submits that the report of the Circle Officer was never supplied, either to the Gram Panchayat or to the petitioner.

9. I have considered the submissions of the learned Advocates for the respective sides.

10. The allotment of land by the Gram Panchayat to the petitioner is not in dispute. The resolution passed by the Gram Panchayat for allotting the land in 1980 is also not in dispute. The 12 persons to whom the land was allotted, have been in possession of the said land and are residing over the said land, is also not in dispute.

11. Respondent No.5 was himself the Sarpanch of the said village when the land was allotted to the 12 persons, including the petitioner in 1980. Until the result of the elections in 2010, he has never complained against any of these 12 persons that they are illegally in possession of the land.

12. On the complaint of respondent No.5, the Circle Officer, commonly known as the Mandal Officer, carried out an enquiry and submitted a report that the Gram Panchayat has illegally allotted the land to the petitioner and 11 other persons. None of the litigating sides are in a position to state, whether the report of the Circle Officer would amount to an adjudication of the issue, as to whether the petitioner is illegally in possession of the said plot.

13. In so far as the submission of the petitioner is concerned that he was not supplied with a copy of the Circle Officer's report, I do not find any merit in the said submission since respondent No.5 in his memo of the complaint had

categorically stated in paragraph No.4 that a report has been submitted by the Circle Officer expressing an opinion that the petitioner has been unauthorisedly given the possession of the plot and he has illegally constructed the permanent structure. The petitioner, in response to the said complaint, could have sought a copy of the report. No such request appears to have been made either before respondent No.2 or respondent No.1 seeking a copy of such report.

14. It is an admitted position that the land allotted to the petitioner is 30x50 i.e. 1500 sq. ft. It is also an admitted position that the concrete structure erected by the petitioner is 50x16? and the tin shade is 30x16?.

15. I find that a proper procedure has not been followed by the State authorities to arrive at a legal conclusion that the land/plot allotted to the petitioner has been a result of an illegal resolution. If that be so, the statutory authorities should have recovered the possession of the said 12 plots allotted to the 12 persons and for which the due process as laid down in law needs to be followed for dispossessing these 12 persons. The opinion of the Circle Officer is not a result of an adjudicatory process and does not tantamount to a decision by the competent authority.

16. In the light of the above, both the impugned judgments are based upon the Circle Officer's report without conducting a proper enquiry with regard to the purported illegal allotment of the property and an illegal structure erected by the petitioner. Based on the report of the Circle Officer, the lower authorities have disqualified the petitioner under Section 14 (j-3) of the Maharashtra Village Panchayat Act.

17. Considering the fact that the term of the petitioner is already over, even if the matter is remanded for a proper adjudication, there is no necessity for restoring the status of the petitioner as an elected Member of the Gram Panchayat.

18. I am fortified in my above recorded conclusions by the judgment of this Court in the matter of Gajanan Hariba Susar v. Additional Commissioner and others [2011 (6) BCR 427], wherein, this Court has concluded that the report of the Talathi cannot be the sole basis for concluding that a person is an encroacher.

19. In the light of the above, this petition is partly allowed. The orders impugned dated 5.1.2012 delivered by respondent No.2 and 18.6.2012 delivered by respondent No.1 are quashed and set aside. The Gram Panchayat Appeal No.16 of 2012 is disposed off. The Gram Panchayat Dispute No. 34 of 2011 is remitted back to the second respondent for a proper adjudication and especially on the following issues:-

(A) Whether the plot was illegally allotted by the Gram Panchayat to the petitioner?

(B) Whether the petitioner had obtained legal sanction for erecting permanent structure by way of a residence on the said plot?

(C) Whether the permanent structure and the tin shade erected by the petitioner and as is disclosed in his nomination form, on internal page 4, amounts to an encroachment and whether such encroachment is over the Government land?

Needless to state, if the conclusions of the statutory authority indicate that the plots were illegally allotted to the petitioner along with 11 other persons, the said authorities shall resort to appropriate procedure laid down in law for recovery of the said possession, from these 12 persons.

20. It is expected that respondent No.2 shall decide Gram Panchayat Dispute No. 34 of 2011 on it's own merits and as expeditiously as possible, preferably on/or before 31.1.2017.

21. Rule is, therefore, made partly absolute in the above terms.