

(2011) 08 BOM CK 0067
In the Bombay High Court
Case No : Writ Petition No. 3516 of 2011

Yunus Shah

APPELLANT

Vs

Additional Commissioner, Amravati and others

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 14(1)

Citation : (2012) 1 ALLMR 389 : (2012) 2 BomCR 405 : (2011) 5 MhLj 249

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

Bench : Single Bench

Advocate : M.I. Dhatrak, for the Appellant; M.Y. Wadodkar, for the Respondent

Final Decision : Allowed

Judgement

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

2. The above petition takes exception to the order dated 8-7-2011 passed by the Additional Commissioner, Amravati Division, Amravati, by which order the appeal filed by respondent No. 4 herein, came to be allowed and resultantly the petitioner was declared to be disqualified as a Member of the Gram Panchayat on the ground that he has encroached on Government Land.

3. The petitioner herein is an elected Member of the Gram Panchayat, Sirasgaon Kasba in the election held some time in the year 2010. The respondent No. 4 herein filed a complaint invoking section 14(1)(j-3) of the Bombay Village Panchayats Act, 1958 alleging that the petitioner has encroached on the Government land and is, therefore, disqualified for being a Member of the Gram Panchayat. To the said application, the petitioner filed his reply and contended that he is staying in the rented premises owned by one Shagir Khan Najir Khan at Somwar Kheda, Shirasgaon Kasba. The Additional Collector, who tried the said proceedings, rejected the said application filed by the respondent No. 4 herein on the ground that the petitioner is staying in the rented premises and could not be

said to have committed encroachment on the Government land. The order of the Additional Collector, Amravati is dated 28-2-2011. The respondent No. 4 herein aggrieved by the rejection of his complaint by the said order dated 28-2-2011 filed an appeal before the Additional Commissioner which appeal as indicated above came to be allowed by the impugned order dated 8th July, 2011. The Additional Commissioner, as can be seen from the impugned order, on the basis that the name of the petitioner appears at Sr. No. 80 of the voters list for the Assembly Constituency and that the name of Shagirkhan Najirkhan appears at Sr. No. 295, reached to the conclusion that the petitioner is an encroacher on the Government land. How such a conclusion can be reached on the said basis begs an answer. The order is conspicuous of the absence of reasons and is a most cryptic and laconic order to say the least. The learned counsel for the respondent No. 4 i.e. the original complainant states that certain documents in the form of 7/12 extract and voters list were filed on record. However, except referring to the voters list, the appellate authority has not even adverted to the other material on record. It requires no debate that a quasi judicial authority is required to deal with the contentions raised before it and after recording findings pass orders. The impugned order discloses that inquiry has been completed in a most summary manner without there alluding to the documents on record. In that view of the matter, the above petition is required to be allowed and the following directions are required to be issued.

i) The impugned order dated 8-7-2011 passed by the Additional Commissioner, Amravati is quashed and set aside and the matter is relegated back to him for de novo consideration of the Appeal filed by the respondent No. 4.

ii) The Appellate Authority i.e. Additional Commissioner, Amravati to consider the documents on record and thereafter record a finding as to whether the petitioner is an encroacher or not. The said findings to be supported by appropriate reasons.

iii) The parties to appear before the Additional commissioner, Amravati on 25-8-2011. The Additional Commissioner, Amravati, thereafter to decide the Appeal by 31st September, 2011.

iv) The parties are at liberty to produce further material in support of their respective cases.

4. Rule is accordingly made absolute with parties to bear their respective costs.