

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**Writ Petition No.9214 of 2016**

\* Atmaram, s/o. Annarao Khekale,  
Age 34 years,  
Occupation : Agriculture,  
R/o Perjapur, Taluka Bhokardan,  
District Jalna. .. **Petitioner.**

**Versus**

- 1) Kasabai w/o Keshavrao Talekar,  
Age 47 years,  
Occupation: Household and  
Agriculture,  
R/o Perjapur, Taluka Bhokardan,  
District Jalna.
- 2) Krushna s/o Vishnu Burange,  
Age 22 years,  
Occupation: Agriculture,  
R/o Perjapur, Taluka Bhokardan,  
District Jalna.
- 3) The Additional Collector, Jalna,  
District Jalna.
- 4) The Additional Divisional Commissioner,  
Aurangabad Division,  
Aurangabad.
- 5) The Village Development Officer,  
Grampanchayat Perjapur,  
Taluka Bhokardan, District Jalna. .. **Respondents.**

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Shri. Anant Devakate, Advocate, for petitioner.

Shri. Amol Gandhi, Advocate, holding for Shri. Pratap P. Mandlik, Advocate, for respondent Nos.1 and 2.

Shri. A.P. Basarkar, Assistant Government Pleader, for respondent Nos.3 and 4.

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**CORAM: T.V. NALAWADE, J.**

**DATE : 30 NOVEMBER 2016**

**ORAL JUDGMENT:**

1) Rule. Rule made returnable forthwith. Heard both sides by consent for final disposal.

2) The petition is filed to challenge the order made by learned Additional Commissioner, Aurangabad in Appeal No.263/2016 which was filed by respondent No.1, Kasabai and respondent No.2, Krishna against the order of disqualification passed by the learned Additional Collector Jalna in Disqualification Proceeding No.10/2016.

3) The disqualification proceeding was started before the Collector by the present petitioner. It is his contention that respondent No.1, Kasabai, who is

Sarpanch and respondent No.2, Krishna who is member of Village Panchayat Perjapur need to be disqualified as they have made encroachment and they are in possession of the Government property, Gairan, as encroachers. Specific number of the property over which encroachment was made was given as Gat No.181 and it was contended that the constructions of R.C.C. nature were made by these persons on the land.

4) After hearing both the sides, the learned Additional Collector came to the conclusion that the family of Sarpanch had made encroachment and there was record to show that notice was issued against the husband of the Sarpanch for removal of the encroachment but no steps were taken for removal of encroachment. Similar observations are made against respondent-Krishna as there is allegation that his father, Vishnu, has made encroachment over some portion of the same land.

5) There is record to show that the matter of encroachment was considered by the village panchayat and notice was given to the husband of Kasabai namely

Keshavrao Talekar and he was asked to remove the encroachment. The construction was described as R.C.C. construction and there was also separate toilet block and water tank on Gat No.181 and these constructions were made by making encroachment. In the notice given to Vishnu it was mentioned that one hut having tin sheets which were 10 in number was there.

6) Learned counsel for respondent No.1 Kasabai submitted that issuance of the notice itself shows that the Sarpanch had taken necessary steps and had given notice and so the act of the husband cannot be used against her for disqualification. Similar submission was made for the member, Krishna. Learned counsel for these respondents submitted that in Writ Petition No.9255/2013 decided by this Court on 24-6-2015, the Division Bench had observed that some encroachments on this property were longstanding and it was observed that it is necessary to take steps to regularise these encroachments. Learned counsel further submitted that the matter of regularisation is pending before the Commissioner and so this ground cannot be used against the Sarpanch and the

member. This submission is not at all acceptable. What is required to be proved under section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958 is the fact of encroachment upon Government land or public property. Whether encroachment can be regularised is a different matter. And if the Government is thinking about regularisation that is also a different matter. As soon as the ground is proved, the disqualification is incurred.

7) Learned counsel for the respondent Sarpanch submitted that one plot was allotted to Keshavrao and it cannot be said that encroachment is made. It appears that some plots were allotted by the Government and occupancy certificates were also issued. There is record showing that in favour of Keshavrao Talekar allotment of plot of 33 feet x 33 feet was made in the year 1987. This property is different from the property which is said to be encroached. In the present proceeding learned counsel for the petitioner has produced some record like list of encroachers and it shows that Keshavrao has made encroachment on more portion like 51 feet x 38 feet, 10 feet x 15 feet, 22 feet x 36 feet and 18 feet x 38 feet. By

making encroachment construction of R.C.C. structure, toilet block, cattle shed is shown to be made by Keshavrao Talekar. Learned counsel for respondent Sarpanch submitted that this record was not produced before the Collector and so this record cannot be considered by this Court in the present matter. This record bears signature of the Sarpanch and the copy of list is issued by the Sarpanch herself. In view of this circumstance, to give opportunity to the learned counsel for the respondent Sarpanch the matter was adjourned on yesterday and it was kept today. Surprisingly learned counsel for the Sarpanch submitted that he could not contact his client and he could not get confirmation about the list. The Collector is the authority who is having the relevant record and it cannot be said that he had no opportunity to see the relevant record about the encroachment. Finding is given by the Collector on the encroachment made by Keshavrao Talekar. The aforesaid property mentioned in the list is in addition to the allotment letter issued in favour of Keshavrao in the year 1987 which was of plot of the size of 33 feet x 33 feet.

8) So far as the case as against Vishnu is concerned, who is father of other respondent, member, it can be said that no allotment of any piece of land from Gairan was made in his favour. In spite of that, he has made encroachment over the portions of 24 feet x 14 feet and 13 feet x 35 feet. On this property he has made construction having roof of tin sheets.

9) The aforesaid record is sufficient to prove that encroachment has been made. One encroacher Keshavrao is the husband of the Sarpanch and so she cannot disown her liability in respect of that encroachment. There is no need to consider as to when the encroachment was made by her husband as the fact remains that she did not take concrete steps for removal of the encroachment made over Gairan and she has been misusing her post for protecting the structure. Submissions made by learned counsel to the effect that the encroachment can be regularized also show that they are waiting for regularisation of the encroachment. Such persons cannot be allowed to continue on the post as they continue to misuse the post.

10) Even when there are aforesaid circumstances and the learned Additional Collector had passed order of disqualification, learned Additional Commissioner did not take into consideration the factual aspects and set aside the order made by the Collector by making observation that in the Writ Petition being No.12459/2015 pending in the Court observation is made that the encroachments are not to be removed and that kind of order was made. This Court has already observed that such order cannot save the Sarpanch or the member from disqualification. In future they may even get those portions, but they will have to lose the present posts due to the aforesaid activities.

11) Learned counsel for respondents placed reliance on a case reported as **2013(1) Mh.L.J. 455 (Kanchan vs. Mahadev)**. Learned counsel submitted that in the reported case this Court held that disqualification was not incurred by the Sarpanch only because a member of the family had made encroachment. Considering the purpose behind the aforesaid provision and the fact that in the present matter husband of the Sarpanch has made

encroachment and the father of the member has made encroachment, this Court holds that they cannot disown the liability. Thus the order made by the learned Additional Commissioner in appeal cannot sustain in law.

12) In the result, the petition is allowed. The order made by the learned Additional Commissioner is hereby set aside and the order made by the Additional Collector is restored. Rule is made absolute in aforesaid terms. Learned counsel for the respondents requested for stay to operation of this order for few days. The prayer is rejected.

Sd/-  
**(T.V. NALAWADE, J. )**

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