

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

Writ Petition No.11302 of 2016

* Gajanan s/o Gangadharrao Sose,
Age 30 years,
Occupation : Agriculture,
R/o Chitrawadgaon,
Taluka Ghansawangi,
District Jalna. **.. Petitioner.**

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai.
- 2) The Additional Commissioner,
Aurangabad Division, Aurangabad.
- 3) The Additional Collector, Jalna,
District Jalna.
- 4) The Tahasildar, Ghansawangi,
Taluka Ghansawangi, District Jalna.
- 5) Circle Officer, Ranjani Circle,
Taluka Ghansawangi, District Jalna.
- 6) Talathi, Sajja Yeola (Chitrawadgaon)
Taluka Ghansawangi, District Jalna.
- 7) The Gramsevak,
Grampanchayat Chitrawadgaon,
Taluka Ghansawangi,
District Jalna.
- 8) Sunita w/o Chatrabhuj Damale
Age 35 years,
Occupation: Agriculture,

R/o Chitrawadgaon,
Post Karadgaon,
Taluka Ghansawangi,
District Jalna.

- 9) Chatrabhuj s/o Gulabrao Damale,
Age 38 years,
Occupation: Agriculture,
R/o Chitrawadgaon,
Post Karadgaon,
Taluka Ghansawangi,
District Jalna.

.. Respondents.

Shri. Sambhaji S. Tope, Advocate, for petitioner.

Shri. S.K. Tambe, Assistant Government Pleader, for
respondent Nos.1 to 6.

Shri. S.K. Sawangikar, Advocate for respondent Nos.8 & 9.

With

Writ Petition No.11305 of 2016

- * Bhagwat s/o Ramkisan Sose,
Age 30 years,
Occupation : Agriculture,
R/o Chitrawadgaon,
Taluka Ghansawangi,
District Jalna.

.. Petitioner.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai.

- 2) The Additional Commissioner,
Aurangabad Division, Aurangabad.
- 3) The Additional Collector, Jalna,
District Jalna.
- 4) The Tahasildar, Ghansawangi,
Taluka Ghansawangi, District Jalna.
- 5) Circle Officer, Ranjani Circle,
Taluka Ghansawangi, District Jalna.
- 6) Talathi, Sajja Yeola (Chitrawadgaon)
Taluka Ghansawangi, District Jalna.
- 7) The Gramsevak,
Grampanchayat Chitrawadgaon,
Taluka Ghansawangi, District Jalna.
- 8) Anita w/o Prabhakar Shinde,
Age 35 years,
Occupation: Agriculture,
R/o Chitrawadgaon, Post Karadgaon,
Taluka Ghansawangi, District Jalna.
- 9) Prabhakar s/o Laxman Shinde,
Age 38 years,
Occupation: Agriculture,
R/o Chitrawadgaon, Post Karadgaon,
Taluka Ghansawangi,
District Jalna.

.. Respondents.

Shri. Sambhaji S. Tope, Advocate, for petitioner.

Shri. S.K. Tambe, Assistant Government Pleader, for
respondent Nos.1 to 6.

Shri. S.K. Sawangikar, Advocate for respondent Nos.8 & 9.

With

Writ Petition No.11307 of 2016

* Shivaji s/o Raghoji Sose,
Age 50 years,
Occupation : Agriculture,
R/o Chitrawadgaon,
Taluka Ghansawangi, District Jalna. .. **Petitioner.**

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai.
- 2) The Additional Commissioner,
Aurangabad Division, Aurangabad.
- 3) The Additional Collector, Jalna,
District Jalna.
- 4) The Tahasildar, Ghansawangi,
Taluka Ghansawangi, District Jalna.
- 5) Circle Officer, Ranjani Circle,
Taluka Ghansawangi, District Jalna.
- 6) Talathi, Sajja Yeola (Chitrawadgaon)
Taluka Ghansawangi, District Jalna.
- 7) The Gramsevak,
Grampanchayat Chitrawadgaon,
Taluka Ghansawangi, District Jalna.
- 8) Vithal w/o Bapurao Pokale,
Age 50 years,
Occupation: Agriculture,
R/o Chitrawadgaon, Post Karadgaon,
Taluka Ghansawangi,
District Jalna. .. **Respondents.**

Shri. Sambhaji S. Tope, Advocate, for petitioner.

Shri. S.K. Tambe, Assistant Government Pleader, for respondent Nos.1 to 6.

Shri. S.K. Sawangikar, Advocate for respondent No.8.

CORAM: T.V. NALAWADE, J.

DATE : 19 DECEMBER 2016

ORAL JUDGMENT:

1) Rule, Rule made returnable forthwith. Heard learned counsels for both the sides for final disposal by consent.

2) Writ Petition No.11302/2016 is filed to challenge the decision given by the learned Additional Commissioner, Aurangabad in Appeal No.235/2016 which was filed against the decision given by the learned Additional Collector Jalna in proceeding No.2016/GB/VPE /CR-01 filed under section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958. Writ Petition No.11305/2016 is filed against the decision given by the learned Additional Commissioner in Appeal No.234/2016 which was filed against the decision given by the Additional

Collector in proceeding No.2016/GB/VPE/CR-05 and the last proceeding is filed to challenge the decision given by the learned Additional Commissioner in Appeal No.233 of 2016 and this appeal was filed against the decision given by the learned Additional Collector in similar proceeding bearing No. 2015/GB/VPE/CR-50.

3) There is allegation against the respondents No.8 of the first two proceedings that their families have made encroachment over Gairan bearing Gat No.68 by making construction and thereby they have incurred disqualification under the aforesaid provisions of the Act. There is allegation against respondent No.8 of the third proceeding that he has made encroachment over one hectare portion of Gat No.128 which belongs to the Government and thereby he has incurred disqualification. These respondents are members of the Village Panchayat, Chitrawadgaon, Tahsil Ghansavangi, District Jalna.

4) The record like panchnama prepared by Circle Officer on 5-4-2008 was considered by the learned Additional Collector for declaring that respondents from

the first two proceedings had incurred disqualification and the record like panchnama prepared on 12-11-2013 by Talathi in respect of the encroachment made by Vithal Pokale, respondent No.8 of the third proceeding was considered by the Additional Collector. The Additional Collector was satisfied that this record is sufficient to infer that the members of their families had made encroachment over Government land and if they were allowed to continue to hold the present posts they will misuse the post and so the disqualification order was made against them. Learned Additional Commissioner has set aside the orders made by the learned Additional Collector by giving reason that the aforesaid evidence is not sufficient. It is also observed that the record of allotment of plots under the scheme of rehabilitation was not considered by the learned Additional Collector. It is also observed that the respondents are the elected representatives of people and they cannot be disqualified on the basis of such record.

5) The learned counsel for the petitioners showed to this Court the duties of the Circle Inspector mentioned

in Maharashtra Land Revenue Circle Officers and Circle Inspectors (Duties and Functions) Rules, 1970. He submitted as per Rule 17 it is the duty of the Circle Inspector to inspect the lands to ascertain as to whether on Government land anybody has made encroachment and if he finds that there is encroachment, it is his duty to give report to the Tahsildar. Learned counsel submitted that in accordance with his duty the Circle Inspector had prepared the report in the first two proceedings and he had submitted the report to the Tahsildar and as that record was created in the year 2008 itself, it cannot be said that false record was created. Learned counsel for the respondents submitted that one relative of the husband of the respondent in the first proceeding was allotted a plot under the rehabilitation scheme and the revenue authority probably have shown this plot as encroachment made by the respondent. This submission is not at all acceptable. When revenue officer draws panchnama which is to the effect that it is encroachment it needs to be presumed that the revenue authority has considered the allotment which is made to other persons. It is not the panchnama that over the portions allotted to

third persons these respondents have made encroachment. So, there is no force in that submission. For the respondent from the second proceeding, learned counsel for her submitted that the encroachment is described only as open space and it cannot be said that it was really encroachment. This submission also is not acceptable. Even when construction is not started but if the portion is earmarked by the person to show that he is in possession that circumstance can be considered to ascertain as to whether he has made encroachment.

6) Learned counsel for the petitioners showed to this Court duties of Talathi. He submitted that it is also the duty of the Talathi to prepare and maintain register of encroachments and unauthorised non-agricultural uses. Relevant record and panchnamas are produced on record and they show that respondent from the third proceeding has not only made encroachment over one hectare portion but his brother also had made encroachment over one hectare portion of land. But it appears that in favour of brother of respondent some order was made by revenue authority and that record is produced by the respondent

in the present proceeding. However, there is no such record in favour of respondent Vitthal, member of the Village Panchayat and the fact remains that he is still encroacher on Gat No.128 belonging to Government. The encroachment is of one hectare. It is clear that this respondent will misuse his post to see that he is able to continue the encroachment. Today, learned counsel for the respondent from the third proceeding submitted that he has obtained certificate from the Talathi showing that in the year 1989-90 no encroachment was found to be made by Vithal Pokale. This certificate will not help the respondent as there is panchnama which is of the year 2013. Learned counsel for respondent No.9 from Writ Petition No.11305/2016 submitted that in favour of Laxman Jairam Maratha there is allotment of one plot and so it cannot be said that there is encroachment. This certificate also cannot be of any help as the panchnama made shows that encroachment is made by Prabhakar and not by Laxman. It is already observed that it needs to be presumed that if there was allotment of plots made under the rehabilitation scheme, the revenue authority had considered that allotment separately and the

encroachment is ascertained on the basis of factual encroachment made by the present respondents. Thus, these two certificates also cannot be of any use to the respondents.

7) Learned counsel for the petitioners placed reliance on the case reported as **2013 (7) All MR 5 (Devidas Surwade v. Additional Commissioner, Amravati)** and also the case reported as **2015 (5) ALL M.R. 343 (Parvatibai @ Shobha Kisan Kakde vs. Additional Commissioner, Nagpur)**. In the first case, the Division Bench has held that aforesaid provision of the Village Panchayat Act is not only against the members who made encroachment but it can be used against the member when the encroachment is shown to be made by family members of the member. In the present matter in the first two cases the encroachment is made by the husband of the member and so it can be said that this encroachment can be used for disqualification of the members. In the third proceeding the encroachment is made by the member himself. In view of these circumstances, this Court holds that the learned Additional Commissioner has

made grave error in allowing the appeals filed by the respondents. The matters are required to be decided on the subjective satisfaction of the Collector and the aforesaid circumstances are sufficient to infer that there was sufficient material before the Additional Collector for such subjective satisfaction. The decision given by the learned Additional Commissioner cannot sustain in law.

8) In the result, all the writ petitions are allowed. The decisions given by the learned Additional Commissioner are hereby set aside and the decisions given by the learned Additional Collector are hereby restored. Rule is made absolute in the aforesaid terms in all the three proceedings.

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

rsl