

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4251 OF 2016

Shri. Shahaji Bajirao Jadhav

... Petitioner

vs.

Shri. Laxman Mahadev Patil & ors.

... Respondents

Mr. Girish Godbole a/w Mr. Drupad Patil, Advocate for the petitioner.

Mr. S. S. Patwardhan, Advocate for respondent no.1.

Mr. Pawan S. Patil, Advocate for respondent no.2.

Ms. M. S. Bane, 'B' Panel counsel for the State/respondent no.3.

Coram : Smt. R. P. SondurBaldota, J.

Date : 16th August, 2016

P.C. :

1. Petitioner was elected as a member of respondent no.2 Grampanchayat Pimple Tarf Satave, Tal. Panhala, Dist. Kolhapur in the general elections held in the year 2012. He has also been subsequently appointed as Deputy Sarpanch. Respondent no.1 filed Application No. 22 of 2014 before the Collector, Kolhapur under the provisions of Section 14(1)(j-3) r/w Section 16 of Maharashtra Village Panchayat Act, 1958 ('the Act', for short) seeking disqualification of the petitioner alleging that the petitioner's father has encroached upon the Government land at Gat No.489 by constructing a house thereon over the total area of 1.5 Are. The

petitioner appeared before the Collector and filed his written statement contending that the land at Gat No.489 is not 'Gairan' land but is a private property and names of several individual persons have been recorded in the Revenue records as the owners of the portions of land. Their names also appear in the cultivation column of the 7/12 extract. Secondly, petitioner himself has not encroached upon the Government land and the encroachment by his father cannot incur disqualification for the petitioner as contemplated under Section 14(1)(j-3) of the Act. Significantly respondent no.2 Grampanchayat had filed written statement to contest the application. In the written statement, it completely supported the petitioner stating that the land at Gat No.426 admeasuring 2H. 51 Are, has actually been used as "Gairan" land and that the land at Gat No.489 is substantially in possession of private persons. Their names have been noted in the Revenue records as 'kabjedar' for several years. The constructions carried out at Gat No.489 are old constructions and the occupants whereof have been paying assessment to the Grampanchayat. As regards the petitioner, the Grampanchayat states in its written statement that he has been elected as a member of Grampanchayat for the last about 15 years out of which for 10 years he had acted as Sarpanch of the Grampanchayat over different periods of time. The Grampanchayat claim that the allegations made by respondent no.1 against the petitioner are false and sought dismissal of the application.

2. The petitioner later filed an additional written statement contending that there was delay of two years in filing the application and therefore the same was liable to be dismissed. He also contended that respondent no.1 was not a bona-fide litigant. He has on account of political rivalry filed the application against the petitioner.

3. The Additional Collector, Kolhapur before whom the complaint was filed **recused** himself from hearing it on the ground of personal relationship with the contesting parties. Therefore under the orders of Additional Commissioner, Pune, the application was transferred for hearing to the Collector, Satara. He, by his order dt. 11th March, 2015 dismissed the application recording a finding that the encroachment is committed by the father of the petitioner and for the acts committed by the father, the petitioner cannot be penalised by disqualifying him to be member of Gram Panchayat.

4. Being aggrieved by the order of the Collector, respondent no.1 filed appeal before the Additional Commissioner, Pune Division under Section 16(2) of the Act. By the order dt. 23rd March, 2016, the Additional Commissioner allowed the appeal and declared the petitioner disqualified to be member of Grampanchayat under Section 14(1) (j-3) of the Act. The present petition is to challenge that order.

5. Two of the grounds of challenge to the impugned order need to be rejected outright. The first of those grounds is that the application ought not to have been transferred from Kolhapur to Satara. Once the Collector, Kolhapur **recused** himself for the reason of personal acquaintance with the parties before him, one fails to understand as to how the petitioner can insist that he should have heard the application. In any case, the order of transfer was not challenged by the petitioner at the relevant time. The second ground is of denial of opportunity of hearing before the Additional Commissioner. According to the petitioner, he had applied for an adjournment for hearing and adjournment was refused to him. Since the appeal was already adjourned thrice before that date, it cannot be said that the petitioner was denied opportunity of hearing.
- 6 Mr. Godbole, the learned counsel for the petitioner submits that the learned Commissioner failed to appreciate that the land bearing Gat no.489 is not Government land. Since, except for the 7/12 extract which describes the land as “Gairan” land, no material is produced by respondent no.1 to show that the land is Government land. He also draws attention to the stand taken by respondent no.2- Grampanchayat that the “Gairan” land is at Gat no.426. The Additional Commissioner noted the entries in Register No.8 and Encroachment Register no.1 (E) about the encroachment on the part

of the father of the petitioner and the electoral roll, which indicates that the petitioner is a member of the joint family of his father to accept the allegation of respondent no.1.

7 There is no dispute about the entries in the two registers. Mr. Godbole however submits that apart from the father of the petitioner, there are several other persons who have constructed houses on the land at Gat no.489. The houses have been in existence for a very long time. In my opinion, encroachment by others and the length of the encroachment cannot be a relevant consideration for deciding the present matter. The fact relevant would be of encroachment on the Government land. Once the 7/12 extract indicates that the land is Government land, the burden was upon the petitioner to establish that it is private property. The petitioner neither names the owner of Gat no.489 nor discloses the manner in which his father acquired any right to the land.

8 Mr. Godbole then relying upon two decisions of Single Judge Bench of this court in Smt. Kanchan Shivaji Atigre vs. Mahadev Baban Raj Ranjgale, reported in 2013 (1) Maharashtra Law Journal, page 455 and Ganesh Chavan vs. State of Maharashtra and others, reported in 2013 (II) ALL MR. page 192 submits that encroachment by family members cannot incur disqualification of the member of

Grampanchayat. As held by me in the order dt. 8th August, 2016 in Kusum Tekawade vs. Sachin Tekawade and Anr. (Writ Petition No.8807 of 2016), the two decisions are per-incurium in as much as they do not refer to and consider the earlier binding decision of the Division Bench in Shri. Devidas Matiramji Surwade vs. Additional Commissioner, Amravati and Ors., reported in 2013 (7), ALL M.R., page 5. Therefore the argument advanced and the reliance placed on the two judgments in support of the argument are not correct. The argument must be discarded.

- 9 Resultantly the misconduct on the part of the petitioner under Section 14(1) (j-3) of the Act stands established and hence the order impugned in the petition must be sustained. Therefore, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]