

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

**WRIT PETITION NO. 6456 OF 2016
WITH
CIVIL APPLICATION NO. 1520 OF 2016**

Shri. Rahul Arun Jambhulkar ...Petitioner

vs.

The Additional Commissioner Pune
Division and ors. ...Respondents

**WITH
WRIT PETITION NO. 6457 OF 2016
WITH
CIVIL APPLICATION NO. 1521 OF 2016**

Sou. Rekha Sandip Sakhare ...Petitioner

vs.

The Additional Commissioner Pune
Division and ors. ...Respondents

**WITH
WRIT PETITION NO. 6458 OF 2016
WITH
CIVIL APPLICATION NO. 1522 OF 2016**

Mrs. Jaymala Sambhaji Hulawale ...Petitioner

vs.

Mrs. Ujwala Yeshwant Sakhare & ors. ...Respondents

**WITH
WRIT PETITION NO. 6460 OF 2016
WITH
CIVIL APPLICATION NO. 1524 OF 2016**

Bebi Dilip Hulawale ...Petitioner

vs.

Mrs. Swati Vishal Hulawale & ors. ...Respondents

**WITH
WRIT PETITION NO. 6461 OF 2016
WITH
CIVIL APPLICATION NO. 1525 OF 2016**

Shri. Sagar Dattatraya Sakhare

...Petitioner

vs.The Additional Commissioner Pune
Division and ors.

...Respondents

**WITH
WRIT PETITION NO. 6462 OF 2016
WITH
CIVIL APPLICATION NO. 1526 OF 2016**

Sou. Rohini Dattatraya Sakhare

...Petitioner

vs.The Additional Commissioner Pune
Division and ors.

...Respondents

**WITH
WRIT PETITION NO. 6464 OF 2016
WITH
CIVIL APPLICATION NO. 1527 OF 2016**

Shri. Shrikant Dilip Jadhav

...Petitioner

vs.The Additional Commissioner Pune
Division and ors.

...Respondents

Mr. Sanjay D. Thokade, Advocate for the petitioner in all petitions.

Mrs. V. S. Nimbalkar, Additional Government Pleader for respondents no.1 & 2 in WP No.6456, 6457 & 6458 of 2016.

Mr. S. D. Rayrikar, Additional Government Pleader for respondents no.1 & 2 in WP No.6460, 6461, 6462 & 6464 of 2016.

Mr. Chetan Nagre a/w Mr. Amit Avad, Advocate for respondent no.3.

Coram : Smt. R. P. SondurBaldota, J.
Date : 13th July, 2016

P.C. :

1. This is a common order on the above petitions challenging the orders passed by the Additional Commissioner, Pune Division, respondent no.1 dismissing their respective

appeals against the order of disqualification passed by respondent no.2 Additional Collector. Since the allegations made for their disqualification and the orders upholding the disqualification are identical in nature, the petitions can be conveniently disposed off by a common order.

2. All the petitioners contested election to Hinjwadi Grampanchayat, Mulshi, Pune. On 6th August, 2015 they were declared elected. Respondent no.3, who was one of the contestants and a defeated candidate filed application dated 27th August, 2015 under Section 14(1)(j-3) and Section 16 of Bombay Village Panchayat Act, 1958 ('the Said Act', for short) before respondent no.2 alleging that the petitioners had carried out illegal construction by encroaching upon the "Gairan" at Survey no. 153 and an entry to that effect has been made in Village Encroachment Register 1(E). All the petitioners have been using the property under encroachment. The petitioners appeared in the dispute and filed their respective replies along with documents. The petitioners claimed that the alleged encroachment was not carried out by them and they had no concern with the encroachment. Some of the petitioners also claimed that the encroached land had, in fact, been allotted by Grampanchayat to their forefathers. Respondent no.2 considered the defence of the petitioners, the revenue records and passed the order dated 2nd January, 2016 to allow the dispute applications and disqualify the petitioners.

3. Being aggrieved by the order of disqualification, the petitioners preferred appeals to respondent no.1. During the course of hearing of the appeals respondent no.1 called for report from Sub Divisional Officer (SDO), Mawal-Mulshi Division on the allegations of encroachment. The Sub Divisional Officer

submitted his report on 11th March, 2016. Report was also called from Chief Executive Officer (CEO) of Zilla Parishad, which was received on 30th March, 2016. Respondent no.1 dismissed the appeals by his order dated 31st March, 2016.

4. The challenge of the petitioners to the impugned orders is essentially on four grounds. Firstly that the report called by respondent no.1 from CEO of Zilla Parishad does not support the allegation of encroachment. Secondly that the encroachment register maintained by the Grampanchayat is demonstrably not a reliable document. Thirdly that the petitioners did not have complete opportunity of hearing before respondent no.1 as the impugned order was passed on the next date after receipt of the report. Lastly respondents no.1 and 2 did not consider the documentary evidence produced by the petitioners, in particular by the petitioner in Writ Petition No. 6456 of 2016. Except for the petitioner in Writ Petition No. 6462 of 2016, the encroachment alleged in the dispute raised by respondent no.3 is by the relatives of the petitioners. As regards the petitioner in Writ Petition No. 6462 of 2016 the allegation is that she along with her relatives has encroached upon the Grampanchayat land. The details of the encroachment including the use by the petitioners is as stated below.

Petition number	Encroached by	Whether used by the party
WP 6456/2016	Grandfather and uncle	Yes.
WP 6457/2016	Husband	Yes.
WP 6458/2016	Father-in-law and mother-in-law	---
WP 6460/2016	Father-in-law	Yes.
WP 6461/2016	Father	Yes.
WP 6462/2016	Herself and husband	Yes.
WP 6464/2016	Parents	Yes.

Mr. Thokade, the learned advocate for the petitioners in fairness does not dispute the legal position that disqualification under Section 14(1)(j-3) of the Said Act, is attracted not only in cases of encroachment on the Government land by the elected candidate himself but also in cases of encroachment by members of family of the elected candidate.

5. The reports of SDO and of CEO of Zilla Parishad have been annexed to the petitions. Their detailed report is made on the basis of the record of Grampanchayat, Revenue record and the information collected from site. The alleged encroachment in respect of each petitioner has been specifically described with reference to it's record in the revenue as well as Grampanchayat records. All the encroachments are seen to be on the land described as "Gairan" land at Survey No.153. The report also shows that over the period of time the nature of construction as well as the area of construction has changed. There are changes in the entries as regards the description of the land as "Gairan" land from time to time. The description as "Gairan" land is missing for some years and the encroacher is shown as the owner of the land. There was no evidence produced in all the petitions showing title to the land of encroachment. Mr. Thokade, however, draws attention to the observations of the CEO in the report that Survey No. 153 is the land divided into seven parts without any specific boundaries. As per the report the process for development of "Gavthan" is not complete and only 7/12 extract in respect thereof has been prepared. The report observes that in the absence of the development of "Gavthan" and allotment of plots of land, the construction carried out thereon is apparently unauthorized. It, in fact, recommends action not only against the encroachers but also against the authorities of the temple to which a portion of the

land was undisputedly allotted.

6. The above facts establish the complaint of respondent no.3 of encroachment by / on behalf of the petitioners on the Government land. Both the authorities i.e. respondents no.1 and 2 have caused detailed enquiry to be made not just on the basis of the record in the offices of the Government and Grampanchayat but also at the site of encroachment. The enquiry conducted is sufficient to decide the complaint of respondent no.3.

7. As regards the Encroachment Register the petitioners seek to contend that the same is not a reliable document on the basis of the entry made therein in respect of the encroachment by one Mr. Sham Dilip Hulawale. According to them, if the entry is to be believed, it would mean that the encroachment was done by the person even before his birth. Since the Encroachment Register is not the only document to justify the allegations, in my opinion some inconsistency therein can make no difference.

8. Mr. Thokade submits that the petitioners had no opportunity to consider the report of CEO of Zilla Parishad submitted on 30th March, 2016 as the same was filed after the appeals were closed for orders. There can be no substance in the grievance made since that report is consistent with the report made by the SDO on 11th March, 2016.

9. In the above circumstances, there is no merit in the petitions. The same are dismissed.

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