

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

WRIT PETITION NO. 6423 OF 2016

Smt. Shakuntala Ramkrushna Undre ...Petitioner

vs.

Additional Commissioner, Pune & ors. ...Respondents

**WITH
WRIT PETITION NO. 6424 OF 2016**

Hanumant Sonba Undre ...Petitioner

vs.

Additional Commissioner, Pune & ors. ...Respondents

Mr. G. S. Godbole i/by Chaitanya Nikte, Advocate for the petitioner.

Mr. S. D. Rayrikar, Additional Government Pleader for respondents no.1, 2, 5, 6 & 9.

Mr. S. R. Nargolkar a/w Mr. Swapnil Mohite, Advocate for respondent no.3.

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

Date : 11th July, 2016

P.C. :

1. This is a common order on the above two petitions that raise identical issues for consideration of the Court.

2. The petitioners are the elected members of Grampanchayat Manjari Khurd, Tal. Haveli, Dist. Pune. The petitioner in the first petition is the Sarpanch of the village. Respondent no.3 filed two dispute applications before

respondent no.2, Additional Collector and sought relief that the petitioners should be declared disqualified to continue as members of Grampanchayat in view of Section 14(1)(j-3) of the Maharashtra Village Panchayat Act for having encroached upon the Government land. Respondent no.3 alleged that husband of the petitioner in the first petition and the father of the petitioner in the second petition have encroached upon the Government land bearing Survey No. 202. According to him, as per the Mutation Entry No. 1832 the area of "Gav tale (village lake)" is of about one acre and the adjoining open land of the said lake admeasuring about 5 acres 32 gunthas, was handed over to the Grampanchayat. The relatives of the petitioners have encroached upon that open land.

3. The husband of the petitioner in the first petition has erected brick wall/ cement house with tin roof admeasuring East-West 16 ft. X 36 ft. X 11 ft., North-South 34 ft. X 12 ft. X 34 ft. admeasuring 1350 sq. ft. numbered as Grampanchayat property no. 263 and iron angle shed with roof admeasuring 264 sq. ft. numbered as Grampanchayat property no. 264 on the Government land. He has also erected a shed with brick walls and roof with the total area of 880 sq. ft., numbered as Grampanchayat property no. 261. The father of the petitioner in the second petition has erected an iron angle shed with roof admeasuring 836 sq. ft. The construction by both the relatives is indicated in 8A extract of Grampanchayat property no. 263 and 261. According to respondent no.3, the report of Deputy Superintendent of Land Record dated 2nd November, 2015 specifically indicates the encroachment by the relatives of both the petitioners.

4. The petitioners appeared in their respective disputes and denied the allegations of encroachment. They claimed that the allegations have been made out of political vendetta. According to them, the entire action has been initiated at the instance of the Guardian Minister. The letter dated 21st October, 2015 issued by respondent no.5 to Village Development Officer shows that the Guardian Minister had directed respondent no.3 to enquire into encroachment on the Government's land. Upon his direction respondent no.5 DSLR decided to demarcate the Government land to show that the petitioners have encroached upon the land. The spot inspection was engineered. The petitioner alleges that there is no record with Grampanchayat regarding existence of the village lake. In fact, the Talathi had so replied by his letter dated 24th September, 2015 to the application filed by the petitioner under The Right to Information Act. The petitioners also took a stand in the application that their respective lands at City Survey No.213 are adjoining to City Survey No.202. Therefore, unless the boundaries of the two properties are fixed, the conclusion of encroachment could not have been drawn.

5. Respondent no.2, the Additional Collector by his judgment and order dated 12th February, 2016 allowed the dispute applications and declared that the petitioners are disqualified to continue as the members of Grampanchayat. Being aggrieved by the judgment and order of the Additional Collector, the petitioners preferred appeal to respondent no.1, Additional Commissioner, Pune Division, who by his orders dated 21st March, 2016 has dismissed the appeals.

6. The petitioners allege that when respondent no.1 heard the appeal neither the report of respondent no.6 Sub-Divisional Officer (SDO) nor that of respondent no.7 Chief Executive Officer (CEO) had been received. Respondent no.1 had called for report from SDO and CEO and decided the appeals based on the contents of the reports. The petitioners thus did not have adequate opportunity of hearing.

7. Mr. Godbole, the learned Senior Advocate for the petitioners submits that the decisions of both the Authorities deserves to be quashed and set aside since the same suffer from non-application of mind. According to him, it is admitted position that the land at Survey No.202 and Survey No.213 have not been demarcated. Therefore the inference of encroachment by the relatives of the petitioners could not have been drawn. He also submits that there is nothing on record to indicate that the village lake is in existence and therefore there is no question of encroachment upon the open land around village lake.

8. In both the proceedings i.e. the proceeding before respondent no.2 and later before respondent no.1, the petitioners were represented through lawyers. Respondent no.2 had called for report from Tahasildar on the encroachment. He considered the Mutation Entry No. 1832 to note that City Survey No.202 is Government land over which there is 'village-lake'. The area of City Survey No.202 is 3005 sq. mts. and the area covered by the lake is one acre. The Mutation Entry also refers to existence of land admeasuring 500' X 500' adjoining to the village-lake. This document establishes that the land at City Survey No. 202 is Government land and has a lake situate on it.

9. The second document considered by respondent no.2 was of Register 8A which indicates existence of encroachment as alleged. In fact, notices had been issued in respect of the encroachment. The third document considered by him was of the report of District Inspector of Land Records.

10. Respondent no.1 while considering the appeals before him had by the order dated 2nd March, 2016 called for report on the encroachment from the SDO and from the CEO of Pune Zilla Parishad. The report of SDO was received by him on 11th April, 2016 and that from CEO on 16th April, 2016. The appeals were decided on 2nd June, 2016. The reports refer to the same documents as considered by respondent no.2 i.e. the Mutation Entry, 8A register, report of Tahsildar and report of Assistant Inspector of Land Records. All these documents which are the Government record clearly establish encroachments on the Government land as alleged. Therefore, in my opinion there is no substance in the challenge to the impugned orders. The petitions are dismissed.

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