

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

WRIT PETITION NO. 8807 OF 2016

Kusum Pralhad Tekawade ... Petitioner
vs.
Sachin Sudhakar Tekawade and ors. ... Respondents

**WITH
WRIT PETITION NO. 8820 OF 2016**

Somnath Bapurao Tekawade ... Petitioner
vs.
Sachin Sudhakar Tekawade and ors. ... Respondents

Mr. Abhijit P. Kulkarni, Advocate for the petitioner.

Mr. Rahul Kadam, Advocate for respondents no.1, 3 and 4.

Mrs. Vaishali Nimbalkar, Additional Government Pleader for respondent no.5.

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

Date : 5th August, 2016.

P.C. :

1. This is a common order on the above two petitions that involve identical questions of fact and law.

2. The petitioners in both the petitions were elected in the year 2015 as a member of Grampanchayat, Javalarujun, Tal. Purander, Dist. Pune. On the complaint filed by respondents no.1, 3 and 4, they have been declared disqualified under Section 14(1)(j-3) read with Section 16 of the Bombay Village Panchayt Act by the Additional Collector, Pune by his order dated 6th April, 2016. Being aggrieved by the order they have preferred appeals before the Additional Commissioner, Pune along with an

application for interim stay of the order of disqualification. By the order dated 18th July, 2016 the Additional Commissioner, Pune refused to confirm the ad-interim stay granted on 16th May, 2016. Hence the present petitions.

3. The allegations made to support disqualification under Section 14(1)(j-3) read with Section 16 of the Bombay Village Panchayat Act is of encroachment on the Government land by the members of family of the petitioners. As regards the petitioner in the first petition, the encroachment alleged is on the part of her son Navnath Pralhad Tekavade. As regards the petitioner in the second petition, the encroachment is by the petitioner's father Bapurao Raghunath Tekavade. The Additional Collector on the documents of panchnama, Encroachment Register and the complaint has held that the family members of both the petitioners have encroached on the 'Gairan' land at Gat No.80 by carrying out construction thereon.

4. Mr. Kulkarni, the learned advocate for the petitioner relying upon two decisions of the same Single Judge Bench of this Court submits that encroachment made by a family member of the elected representative should not incur disqualification under Section 14(1)(j-3) of Bombay Village Panchayat Act. The first decision relied upon by him is dated 24th September, 2012 in ***Ganesh Arun Chavan vs. State of Maharashtra & ors.*** reported in **2013(5) Bom. C. R. 297** and second decision is dated 12th October, 2012 in ***Kanchan Shivji Atigre vs. Mahadev Baban Ranjagane & ors.*** reported in **2013(2) Bom. C. R. 311**. By the two decisions, the learned Single Judge has held that encroachment on the Government property by a family member does not amount to violation of Section 14(1)(j-3) of the Bombay Village Panchayat Act.

5 The reasons for the view in Ganesh Chavan case at paras 10 and 11 read as under:

“10. There is nothing in the Act by which the concept of family or joint residence could be imported as far as the subject disqualification is concerned. The said provision contemplates encroachment upon the Government land or public property by a person, as in this case, who is a Member of the Panchayat. Therefore, the encroachment must be by the person who is a member and not any third party.”

“11. Therefore, on a plain reading of this provision what would be apparent is that it is the person who is intending to be a member of panchayat or who is a member cannot continue if that person has encroached upon the Government land or public property. As far as this aspect is concerned, the Legislature has not imported anything by which one can presume that if the encroachment is made by the spouse, relative of the member of gram panchayat, residing jointly with the Member, on the public property, then together with the members of such family, he is also deemed to be guilty of the act of encroachment. If the act is committed by somebody other than the elected person and therefore, he incurs or invites disqualification, is not a conclusion which can be drawn or arrived at on a plain reading of section 14(1)(j-3).”

Further at para 12, the judgment observes that the Legislature has taken care and wherever the concept of family or joint residence has to be applied, specific provision in that behalf has been made either substantially or by way of an Explanation. By way of illustration, the judgment mentions disqualification under Section 14(1)(h) and 14(1) (g) of the same Act for failure to pay tax or fee due to Panchayat or Zilla Parishad and for having interest in any work done, essentially relating to Panchayat wherein reference to family, HUF, being member of a group or to a partner is made. It is then held that once the Legislature itself has clarified that an act of the member alone incurs or invites disqualification, then, by interpretative process, it will not be possible to include in Section 14(1) (j-

3), the act of encroachment by members of family to disqualify the elected representative.

6 The additional reasons stated at para 13 of Kanchan Atigre read as under :

“13.....The Gram Panchayat is envisaged to be a unit of local self-Government in terms of Part IX of the Constitution of India. Therefore, the provisions with regard to disqualification will have to be construed in a manner so as not to create a vacuum or make it impossible for the villagers to choose their representative and constitute a Gram Panchayat. That will then create difficulties and obstacles in constituting a Panchayat. If that is equally not intended by the Statute in question, then by interpretative process, I cannot do so and import or insert something in the provision, which is not there. That would amount to legislation and which act a Court cannot perform or rather not permitted to perform. That is a function which has to be performed by the legislature alone and is there is any difficulty or lacuna in the legislation, it is for the legislature to step in and not for me to rewrite the section or provision in question.”

7 Mr. Kadam, the learned advocate for respondents no.1, 3 and 4 submits that the two decisions cited by Mr. Kulkarni are per-incurium in as much as they do not refer to and consider the earlier binding decision of the Division Bench of this Court, passed on 31st July, 2012 in **Shri. Devidas Matiramji Surwade vs. Additional Commissioner, Amravati & ors.** reported in **2013(7) ALL MR 5**. The Division Bench in it's concise order has held otherwise. It's observations at paras 4 and 5 of the decision read as follows :

“4 We have heard the learned counsel for the appellant. On the facts described by the learned counsel for the appellant, we find that the State Legislature while enacting the said provision fully accepted the Statement of Objects and Reasons in respect of the said particular provision regarding encroachment on the Government

properties. The Statement of Objects and Reasons states that the person, who has encroached on the Government property, shall not only be disqualified to be a member of Gram Panchayat, but also the disqualification shall be attached to such person till his tenure. In other words, on such disqualification, the member can be disqualified and thus removed.”

“5. We find that there is a definite object in making the said amendment to the provisions of disqualification and the object is that one, who encroaches upon the Government land or the Government property, cannot make any claim to represent the people by becoming an elected member of the Gram Panchayat. The term 'person' in the said amended provision has to be interpreted to mean the legal heirs of such person, who has encroached and continues to occupy the Government land or the Government property, his agent, assignee or transferee or as the case may be. If such an interpretation is not made in the said provision, the result would be absurd in the sense that the Government land would continue to remain encroached and the legal heirs or the assignees or the transferees remaining on such encroached Government land shall claim the right to get elected as a member of democratically elected body. In no case our conscious permits such type of interpretation to defeat the very object of the Bombay Village Panchayats (Amendment) Act, 2006.”

8 The above decision of the Division Bench has been followed in another decision of Single Judge of this Court at Nagpur Bench in ***Parvatibai @ Shobha Kisan Kakde vs. Additional Commissioner, Nagpur and ors.*** reported in **2015(5) Mh. L.J. page 238.**

9 In addition to abiding by the judicial discipline of following the decision of the Division Bench, I also respectfully agree with the same. In my considered opinion that it is necessary for an elected representative to hold and maintain confidence of the general public that as an elected

representative, he would discharge his functions in all circumstances completely in accordance with law without fear and favour. That, in fact, in essence was the object and purpose of the amendment to the Bombay Village Panchayat Act. A member of Grampanchayat has to necessarily deal with the important issue of encroachment on Government land. A member whose close family member has encroached on the Government land may or may not be able to discharge his duties effectively in that respect.

10. Mr. Kulkarni then submits that disqualification on account of encroachment on the Government land by a family member should being disqualification for the elected representative only if the elected representative is personally using or enjoying the encroachment. Otherwise it would amount to the elected representative being held accountable for the conduct of member of the family without deriving any benefit therefrom. Perusal of the decision of the Division Bench shows that no such qualification is attached by the Division Bench to application of Section 14(1) (j-3) of the Bombay Village Panchayat Act to encroachment by a family member of the elected representative. Therefore, there can be no substance in the submissions advanced.

11 Mr. Kulkarni next makes a serious complaint about the manner in which the impugned order is written. He submits that the order is cryptic and virtually without any reasons. According to him, such an order deserves to be set aside and the interim application remanded for fresh hearing. There is undoubtedly substance in the complaint. The impugned order states no reasons at all. The Additional Commissioner, Pune who acts as a quasi-judicial authority while deciding appeals under the Bombay Village Panchayat Act must state reasons for the order passed which will indicate that there was application of mind by him. An interim

order also has it's own consequences. However, considering the nature of the proceedings and the facts of the case, I am not inclined to pass an order of remand. Hence, the petitions are dismissed.

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