

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 142 OF 2016
IN
WRIT PETITION NO. 4251 OF 2016

Shri. Shahaji Bajirao Jadhav
V/s.

.....Petitioner

Shri. Laxman Mahadev Patil
and Ors.

.....Respondents

* * * * *

Mr. Drupad S. Patil, Advocate for the petitioner.
Mr. S.S. Patwardhan, Advocate for respondent no.1.
Mr. Pavan S. Patil, Advocate for respondent no.2.
Mrs. Aparna Vhatkar, AGP for respondent no.3.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 30TH SEPTEMBER, 2016.

P.C. :-

1). This petition seeks review of the order dated 16th August, 2016 by which the review petitioner's petition was dismissed and the findings of the authorities below on the allegation of misconduct on the part of the petitioner under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1958 were confirmed.

2). The three grounds on which review have been sought are enumerated as grounds (B), (C) and (D) at para-3 of the Review Petition. During the course of his arguments, Mr. Patil, the learned Advocate for the petitioner makes a statement that, he does not

press the petition in terms of Ground (D). Hence, the only two grounds to be now considered are Grounds No.(B) and (C). The same read as follows :-

“(B). The Advocate had argued that grandfather of the petitioner was occupying the portion of land bearing Gat No.489 from the year 1951 or thereabout. The name of the said grandfather was recorded in Extract No.XII of the land bearing Gat No. 489. Therefore, for the alleged encroachment committed by the said Grandfather, the petitioner cannot be disqualified by invoking the provisions of Sections 14(1)(j-3) of Gram Panchayat Act.

(C). The Advocate for petitioner has also argued that the petitioner was born in house constructed on the portion of land bearing Gat No.489. Therefore, the petitioner cannot be held guilty of the alleged encroachment committed by his forefathers and he cannot be disqualified under the provisions of Section 14 of the Village Panchayat Act.”

3). Admittedly, the contentions of fact mentioned in the above two grounds were neither pleaded nor argued by the petitioner before the authorities below i.e. the Collector and the Additional Commissioner. Infact, the original pleadings of the petitioner in his written statement and additional written statement

filed before the Collector are different. They refer to the encroachment by the father. The petitioner could not have given up that stand and taken up a new defence of fact in the writ petition filed by him. On this background, the complaint of non-consideration cannot be entertained. The new inconsistent contention of fact raised for the first time, in the petition deserved to be ignored.

4). In any case, the change in the stand could be of no assistance to the petitioner since it has been held by the order that, encroachment by an immediate family member which would include father and the grandfather incurs disqualification under Section 14(1)(j-3). Thus, there is no merit in the Review Petition also. Hence, the Review Petition is dismissed.

5). Mr. Patil, then requests for continuation of the ad-interim order that was in operation until 27th September, 2016. Since the order has already come to an end, there cannot be its continuation. However, in order to protect the interest of the petitioner, it is directed that, respondent no.3 shall not take any steps for declaration of election to the seat that falls vacant on disqualification of the petitioner.

(SMT. R.P. SONDURBALDOTA, J)