

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

WRIT PETITION NO.11559 OF 2016

Smt. Mina Pandit Thite

..Petitioner

Versus

Sou. Shirmila Sandip Jagtap and others

..Respondents

**Mr. P. S. Dani, Senior Advocate i/by Mr. S. D. Chavan for the
Petitioner.**

Mr. V. B. Tapkir for the Respondent No.1.

Mr. S. D. Rayrikar, AGP for the Respondent Nos.2 & 3.

Mr. Abhijit Patil i/by Mr. Vikram Pai for the Respondent No.4.

CORAM : R. M. SAVANT, J.

DATE : 18th NOVEMBER, 2016

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 14.09.2016 passed by the Additional Commissioner, Pune Division, Pune, by which order, the Appeal filed by the Petitioner came to be dismissed and resultantly, the order dated 06.04.2016 passed by the Additional Commissioner in Dispute Application No.166 of 2015 came to be confirmed.

2 The Petitioner was elected as a member of the Gram Panchayat, Pimpale-Jagtap. The Petitioner was elected as a Upa Sarpanch and was holding office as such in the year 2010-2011. An order dated 24.10.2011 came to be passed by the Tahsildar against the Petitioner

under Section 48(7) of the Maharashtra Land Revenue Code for illegal excavation of Murum (soil) to the extent of 692 brass from Gat No.60 which was valued in the sum of Rs.2,07,600/- with penalty the total amount came to Rs.7,61,200/-. Against the said order dated 24.10.2011, the Petitioner filed an Appeal before the Sub Divisional Officer under Section 247 of the Maharashtra Land Revenue Code. The said Appeal came to be dismissed by the Sub Divisional Officer by order dated 25.04.2016. The Petitioner thereafter filed a Second Appeal before the Additional Collector which was pending at the relevant time. The Petitioner was disqualified as a member of the Gram Panchayat, Pimpale-Jagtap under Section 14(1)(j-3) of the Bombay Village Panchayat Act, 1958 (For short "the said Act") for carrying out excavation in Gairan land being Gat No.60. The foundation for the said disqualification was the order dated 24.10.2011 passed by the Tahsildar whereby as indicated above the Petitioner has been accused of carrying out illegal excavation of Murum (soil) to the extent of 692 brass. In so far as the order dated 24.10.2011 passed by the Tahsildar is concerned, as indicated above the Appeal filed by the Petitioner before the Sub Divisional Officer came to be dismissed by the order dated 25.04.2016 against which the Petitioner had filed a Second Appeal before the Additional Collector, Pune which was pending at the relevant time. The said Second Appeal filed before the

Additional Collector, Pune came to be allowed by the Additional Collector by order dated 06.04.2016 and both the orders i.e. order dated 24.10.2011 passed by the Tahsildar as also the order dated 25.04.2016 passed by the Sub Divisional Officer came to be set aside and the matter came to be remanded back to the Tahsildar for a de-novo consideration in terms of the direction as contained in the order dated 06.04.2016.

3 Against the order passed by the Additional Collector, Pune disqualifying the Petitioner under Section 14(1)(j-3) of the said Act, the Petitioner filed an Appeal before the Additional Commissioner, Pune Division, Pune. The said Appeal has been dismissed by the Additional Commissioner, Pune Division, Pune by the impugned order dated 14.09.2016 by reiterating the ground based on the order dated 24.10.2011 passed by the Tahsildar.

4 Since the orders passed by the authorities below under Section 14(1)(j-3) of the said Act disqualifying the Petitioner are based on the order dated 24.10.2011 passed by the Tahsildar on account of setting aside of the said order dated 24.10.2011 as also the order dated 25.04.2016 by the Additional Collector, the same would obviously impact the Petitioner's disqualification under Section 14(1)(j-3) of the said Act. Unfortunately for the Petitioner the order passed by the Additional

Collector dated 06.04.2016 was passed after the Additional Commissioner had dismissed the Appeal filed by the Petitioner against the order passed by the Additional Collector disqualifying the Petitioner under Section 14(1)(j-3) of the said Act. In view of the fact that the foundation of the orders passed by the authorities below now does not exist, the status-quo ante would have to be restored meaning thereby that the disqualification of the Petitioner would stand set aside pending consideration of the proceedings under the Maharashtra Land Revenue Code by the Tahsildar on remand. The orders dated 06.04.2016 and 14.09.2016 are accordingly quashed and set aside. The Petition is allowed to the aforesaid extent and is disposed of.

5 The Tahsildar on remand may adjudicate the said proceeding under the Maharashtra Land Revenue Code expeditiously.

6 The parties to appear before the Tahsildar on 05.12.2016.

[R.M.SAVANT, J]