

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.363 of 2016

Smt. Kalpana w/o Bhagwan Khaire,
Aged about 30 years,
Occupation – Agriculturist,
R/o Chicholi, Tahsil Mohadi,
District Bhandara (Maharashtra State). ... Petitioner

Versus

1. Divisional Commissioner,
Nagpur Division,
Nagpur (Maharashtra State).
2. Collector,
Bhandara, Tahsil & District Bhandara
(Maharashtra State).
3. Secretary,
Gram Panchayat, Chicholi,
Tahsil Mohadi,
District Bhandara (Maharashtra State).
4. Talathi,
Talathi Office, Andhalgaon,
Tahsil Mohadi,
District Bhandara (Maharashtra State).
5. Shankar s/o Ganesh Acharkate,
Aged about 36 years,
Occupation – Nil,
R/o Chicholi, Tahsil Mohadi,
District Bhandara (Maharashtra State). ... Respondents

Shri A.N. Ansari, Advocate for Petitioner.
Ms Geeta Tiwari, Assistant Government Pleader for Respondent Nos.1
and 2.

Coram : R.K. Deshpande, J.
Dated : 27th September, 2016

Oral Order :

1. The petitioner has been disqualified under Section 14(1)(j-3) of the Bombay Village Panchayats Act, 1958 (for short, “the Act”) for encroaching upon the Government land or public property. This is the order challenged in this petition.

2. Undisputedly, the petitioner was staying in the house of her maternal aunt-Kasturba Sakharam Gadekar, bearing No.317 on Plot No.42 at Chicholi, Tahsil Mohadi, District Bhandara, since the year 2010, i.e. after the death of her aunt on 4-1-2010. It is not in dispute that the house is an encroachment on the Government land. The stand of the petitioner in response to the proceedings for disqualification was that she was temporarily staying in the said house till the construction of her own house was going on. The petitioner was elected as a Member, Gram Panchayat in the year 2012, and on the date when the proceedings for disqualification were initiated, she

was staying in the house of her aunt.

3. According to Shri Ansari, the learned counsel appearing for the petitioner, the aforesaid factual position does not attract the provision of Section 14(1)(j-3) of the said Act. He has placed reliance upon the decision of the learned Single Judge of this Court in the case of *Kanchan Shivaji Atigre v. Mahadev Baban Ranjagane and others*, reported in 2013(1) *Mh.L.J.* 455, wherein it is held that the encroachment committed by some of the family members of the petitioner therein would attract the provision of Section 14(1)(j-3) of the said Act so as to disqualify her.

4. In the decision of this Court in the case of *Sheela Dilip Daberao v. State of Maharashtra and others*, reported in 2015(3) *Mh.L.J.* 231, it has been held in para 4 as under :

“4. The disqualification alleged against the petitioner is under section 14(1)(j-3) of the said Act, which is reproduced below :

“14. Disqualifications.-- (1) No person shall be a member of a Panchayat continue as such, who--

(j-3) has encroached upon the Government land or public property.”

Clause (j-3) of section 14(1) of the said Act, which is reproduced above, covers the cases where a member of a Panchayat resides in a portion encroached upon the Government land or public property. It will not be necessary in such a situation to establish that such member is the owner of the property adjacent to the encroached portion. The question as to whether any other member of the family has made an encroachment, loses its significance. In the facts and circumstances of this case, it was not necessary for the respondents to establish that it is the petitioner herself has encroached upon the Government land. The decision of the learned Single Judge of this Court in the case of Kanchan Shivaji Atigre vs. Mahadev Baban Ranjagane and others, reported in 2013(1) Mh.L.J. 455, relied upon by the learned counsel for the petitioner, would not, therefore, be applicable in the facts of the present case.”

In the case of *Sheela Daberao*, cited supra, this Court has held that the aforesaid provision covers the cases where a member of a Panchayat resides in a portion encroached upon the Government land or public property. It is further held that it will not be necessary to establish that such a member is the owner of the property adjacent to the encroached portion and that she has herself encroached upon the Government land. In the case of *Sheela Daberao*, the decision of the learned Single Judge of this Court in the case of *Kanchan Atigre*, cited supra, relied upon by the petitioner, has been referred to and distinguished.

5. In view of the fact that the petitioner has been residing in a house, which is an encroachment, the provision of Section 14(1)(j-3) of the said Act is clearly attracted. No fault can be found with the order impugned in this petition. The petition is dismissed. No costs.

JUDGE.

Lanjewar

CERTIFICATE

“I certify that this Order uploaded is a true and correct copy of original signed Order.”

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