

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.416 OF 2016

Hrishikesh s/o. Vinayakrao
Bhosale

..Petitioner

Vs.

The State of Maharashtra
and others

..Respondents

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Mr.H.V.Patil, Advocate for petitioner
Mr.A.P.Basarkar, AGP for respondent nos.1 to 3
Mr.A.V.Rakh, Advocate for respondent no.4
Mr.N.D.Kendre, Advocate for respondent no.5

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CORAM : S.V. GANGAPURWALA, J.
DATE : APRIL 24, 2017

PER COURT :

Mr.Patil, learned Counsel for the petitioner submits that the authorities below have committed error by dismissing the petition filed by the petitioner for disqualification of respondent no.5. He submits that the husband of respondent no.5 has encroached upon the Gavthan property. Both the authorities, only on the premise that respondent no.5 has not encroached

the Gavthan property, have dismissed the said petition. The learned Counsel submits that even if the husband of respondent no.5 has encroached upon the Government property, respondent no.5 should be disqualified and this aspect has not been considered by the authorities below. The learned Counsel refers to the statement of one Pramod, who stated that he has carried out construction on his portion in survey no.1 and that Sanjay, husband of respondent no.5, has not carried any construction. This would show that the husband of respondent no.5 considers himself to be in possession of the a part of survey no.1, which is, admittedly, a Gavthan area. He submits that as such, respondent no.5 would incur disqualification. Even the report and the panchnama would show that respondent no.5 claims one part of the said property in survey no.1. The learned Counsel submits that all these aspects are relevant.

2. Mr.Kendre, learned Counsel for respondent no.5 submits that there is no record to show that the husband of respondent no.5 owns any property in survey no.1. The 7/12 extract also does not show that the husband of respondent no.5 owns any property in survey no.1. According to him, the husband of respondent no.5 does not own or posses any property in part of survey no.1.

3. I have considered the submissions advanced by the learned Counsel for the parties. No doubt if respondent no.5 and her husband are residing together and even if the husband of respondent no.5 encroaches upon any Government/ public property, respondent no.5 would be liable to be disqualified.

4. On 21.11.2016, this Court had asked the learned Counsel for the petitioner to show that the property owned by the husband of respondent

no.5 is a part of survey no.1. However, no authentic record could be produced by the learned Counsel for the petitioner. It appears that the petitioner relies on the village map. The 7/12 extracts of years 2012-2013 and 2015-2016 are also produced by the petitioner. But in those 7/12 extracts of survey no.1, the name of the husband of respondent no.5 does not appear either as an owner or occupier thereof. Neither there is any authentic record available to come to the conclusion that the husband of respondent no.5 occupies or owns any part of survey no.1 nor respondent no.5 claims that her husband occupies or owns part of survey no.1.

5. In view of the above, present Writ Petition cannot be considered. The Writ Petition is, therefore, dismissed. No costs.

[S.V. GANGAPURWALA, J.]

kbp