

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

WRIT PETITION NO.11401 OF 2017

Sou. Rohini D. Zagade .. Petitioner.
v/s.
Shri Sangramsinh M. Rajenimbalkar
& Others .. Respondents.

Mr. Abhijeet Kulkarni, for the Petitioner.
Mr. Prathamesh Bhargude, for Respondent No.1.
Mr. S. H. Kankal, AGP for Respondent Nos.4 & 5.

CORAM: M.S.SANKLECHA, J.
DATE : 20th NOVEMBER, 2017.

P.C:-

At the request of the learned Counsel appearing for the parties, Petition itself is taken up for final disposal, at the stage of admission.

2 This Petition under Article 227 of the Constitution of India, challenges the order dated 4th September, 2017 passed by the Additional Commissioner, Pune. By the impugned order dated 4th September, 2017, the appeal of Respondent No.1, was allowed. Thus, dis-qualifying the Petitioner from the membership of Village Panchayat, Vadgaon Nimbalkar, Taluka Baramati, District Pune. This on account of having attracted dis-qualification under Section 14(1)(J)(3) of the Bombay Village Panchayat Act, 1958 (the Act) i.e. for encroaching upon the Government Land and/or public property.

3 The impugned order dated 4th September, 2017 had been stayed by the Additional Commissioner, Pune on 25th September, 2017, on an application stated to have been made by the Appellant before him and not the Respondent. Further, the signature in the order dated 25th September, 2017 seemed to indicate that it was signed on 20th September, 2017. This gave rise to doubt about the order dated 25th September, 2017, granting stay, passed by the Additional Commissioner, Pune, indicating that it was being granted at the instance of the Appellant before him i.e. Respondent herein. In the aforesaid circumstances, an explanation was called for from the Additional Commissioner, Pune who passed the order dated 25th September, 2017.

4 Mr. Subhash Dumbare, Additional Commissioner, Pune Division, Pune has filed an affidavit dated 17th November, 2017. In the aforesaid affidavit, it has been clarified that, by mistake, the word '*appellant*' instead of the Respondent before him i.e. the Petitioner herein had been written in the order dated 25th September, 2017. This was an error. The explanation offered/ given by the Additional Commissioner, Pune is, satisfactory. Besides, the record produced before me, does indicate that the date 20th September, 2017 below the signature in the order dated 25th September, 2017, is an apparent mistake. Thus, issue of the manner of passing the order dated 25th September, 2017, stands closed.

5 Now, turning to the challenge in this Petition. Briefly, the facts are that, on 14th August, 2015, Petitioner was elected as a member of the Village Panchayat, Vadgaon Nimbalkar, Taluka Baramati, District Pune. Respondent No.1 herein filed a complaint on 28th June, 2016, with

the Additional Collector, Pune, seeking Petitioner's dis-qualification as a Panchayat member, alleging that the Petitioner's husband had encroached upon the Government land. On 30th December, 2016, the Additional Collector, Pune, rejected the complaint of Respondent No.1, by holding that, there has been no encroachment on public land by Petitioner and also recording the fact that no notice under Sections 52, 53 and 54 of the Act, had been issued in respect of the alleged encroachment.

6 Being aggrieved, Respondent No.1 had filed an Appeal under Section 16(2) of the Act to the Additional Commissioner, Pune. By the impugned order dated 4th September, 2017, the Additional Commissioner, Pune allowed the appeal of Respondent No.1. This, by holding that the husband of the Petitioner had encroached upon the Government/ public land. Thus, dis-qualifying the Petitioner from membership of the Village Panchayat under Section 14(1)(J-3) of the Act.

7 Mr. Kulkarni, learned Counsel appearing for the Petitioner submits that in view of the latest decision of the Apex Court in **Sagar Pandurang Dhundare v/s. Keshav Aaba Patil & Others** (Civil Appeal Nos. 2306-2307 of 2017 with Civil Appeal Nos. 5132-5133 of 2017) decided on 13th November, 2017, the dis-qualification of a member from the Village Panchayat under the Act for encroachment on the Government land and/or public property, can be visited upon the member, only if the encroachment has been committed by the member himself/ herself. The dis-qualification under Section 14(1)(J-3) of the Act would not arise in case of encroachment done by the family members of the elected members. In this case, the impugned order dated 4th September, 2017 has dis-qualified the Petitioner as a member on a finding that her husband

had encroached upon the Government land and not that the Petitioner had encroached upon the Government land.

8 As against above, Mr. Bhargude, learned Counsel appearing for Respondent No.1 supports the impugned order. In support, he submits that the decision of the Apex Court in Sagar Dhundare (supra), would support his case. According to him, dis-qualification would visit a member of a Panchayat even when a trial order of eviction has been passed against him/her under Section 53 of the Act. In support, he tenders across the bar, a communication dated 10th October, 2017 from the Deputy Officer of the Panchayat to the Sarpanch, seeking information in respect of eviction of the Petitioner from Government land. In support of the above, he invites my attention to paragraph 15 thereof which reads as under:-

“ From the Statements of objects and Reasons for the amendment introduced in 2006, it is seen that the purpose was “to disqualify the person who has encroached upon the Government land or public property, from becoming member of the Panchayat or to continue as such”. The person, who has encroached upon the Government land or public property, as the law now stands, for the purpose of dis-qualification, can only be the person, who has actually, for the first time, made the encroachment. However, in view of Section 53(1) of the Act, in case a member has been punished for encroachment, he shall be dismissed. Similarly, a member against who there is a final order of eviction under Section 53(2) or (2A), shall also not be entitled to continue as a member.”

9 From the plain reading of the paragraph 15 of the Apex Court's decision, it is clear that there are three classes of cases which would result in dis-qualification under Section 14(1)(J-3) of the Act which are as under:-

- (a) the member of the Panchayat as himself/ herself done the encroachment for the first time;
- (b) if a member has been punished for an encroachment under Section 53(1) of the Act; and
- (c) if a final order of eviction under Section 53(2) and (2a) of the Act has been passed against a member.

Thus, the dis-qualification would be attracted in all the three cases, if the member himself has committed encroachment on a Government land and/or public property or an order has been passed against the member for encroachment and/or eviction under Section 53(1) or 53(2) of the Act. In this case, nothing is on record to indicate that order under Section 53 of the Act has been passed against the Petitioner. On the contrary, there is a finding in the order dated 30th October, 2016 of the Additional Collector, Pune that no notices have been issued to the Petitioner under Sections 52, 53 and 54 of the Act.

10 Moreover, it is an undisputed position before me that the impugned order dated 4th September, 2017 has dis-qualified the Petitioner only on ground that the husband of the Petitioner has committed encroachment on Government land and/or public property. There is no finding that the Petitioner herself had encroached upon the public property. Thus, the decision of the Apex Court in Sagar Dhundare (supra) would apply in favour of the Petitioner.

11 The attempt on the part of Mr. Bhargude's to support the impugned order on the basis of a communication dated dated 10th October, 2017 from the Development Officer of the Panchayat to the

Sarpanch, seeking information in respect of eviction from Government land, is futile. This for the reason that the aforesaid communication dated 10th October, 2017 by itself is no evidence of any order being passed against the Petitioner under Section 53 of the Act. Further, it is a settled position in law that the order passed by authority under the Act, must stand or fall for the reasons indicated therein and cannot be improved upon even by affidavits (see *Mohinder Singh Gill and Another v/s. The Chief Election Commissioner, 1978 (2) SCC 405* and *T. P. Senkumar v/s. UOI 2017 (6) SCC 801.*)

12 In the above view, the impugned order dated 4th September, 2017 of the Additional Commissioner, Pune dis-qualifying the Petitioner, is quashed and set aside. Consequently, the order dated 30th December, 2016 of the Additional Collector, is restored.

13 **Writ Petition allowed** in the above terms. No order as to costs.

(M.S.SANKLECHA,J.)