

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8750 OF 2016

Shri Pravin Dattatray Jambhulkar] Petitioner

Vs.

Divisional Commissioner, Pune]
Division, Pune.] Respondents

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Mr. A.V. Anturkar a/w Mr. Amol Gatne, for the petitioner.

Mr. S.D. Rayrikar, A.G.P, for respondents No.1 and 2.

Mr. V.V. Pai, for respondent No.4.

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CORAM : R.G. KETKAR, J.

RESERVED ON : 20TH APRIL, 2017.

PRONOUNCED ON : 4TH MAY, 2017.

P.C.

Heard Mr. Anturkar, learned Senior Counsel for the petitioner, Mr. Rayrikar, for respondents No.1 and 2 and Mr. Pai, learned Counsel for respondent No.4 at length. None appears on behalf of respondent No.3 though served.

2. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 2nd January, 2016 passed by respondent No.2, District Collector,

Pune in Dispute Application No. 35 of 2015, as also the judgment and order dated 31st March, 2016 passed by Additional Commissioner, Pune Division, Pune in Appeal No. 2 of 2016. By order dated 2nd January, 2016, respondent No.2 Additional Collector disqualified the petitioner as a member of Hinjewadi Grampanchayat, Tal. Mulshi, Dist. Pune [for short 'Grampanchayat'] on the ground that the petitioner has encroached upon the Government land or public property as contemplated by Section 14 (1) (j-3) of the Maharashtra Village Panchayats Act [for short 'Act']. Aggrieved by this decision, the petitioner preferred appeal before Additional Commissioner Pune Division, Pune which was dismissed on 31st March, 2016. Aggrieved by these decisions, the petitioner has instituted this Writ Petition.

3. In support of this petition, Mr. Anturkar submitted that Collector has no jurisdiction to entertain and try the Dispute Application filed by respondent No.3 under section 16 of the Act. He submitted that remedy, if any, is to institute Election Petition under Section 15 of the Act before Civil Judge, Junior Division and if there is no Civil Judge, Junior Division then before Civil Judge, Senior Division having ordinary jurisdiction in the area in which the election was held.

4. He further submitted that while allowing the dispute filed by third respondent on 2nd January, 2016, Additional Collector held that from perusal of the record and in particular, Village form No. 1-E at Sr. No.3, the petitioner's father Dattatray Maruti

Jambhulkar had made encroachment over property No. 153. He submitted that the Authorities below did not record finding to the effect that it is the petitioner who has committed encroachment. He submitted that the Authorities below were, therefore, not justified in disqualifying the petitioner under Section 14 (1) (j-3) as it is not the petitioner who has committed encroachment. Because of encroachment committed by petitioner's father, he cannot be disqualified by the Authorities under Section 14 (1) (j-3). He has invited my attention to Section 14 of the Act which lays down disqualification under clause (a) to (j-5) to sub section (1) of Section 14.

5. Mr. Anturkar relied upon the following decisions:

- [1] Ganesh Arun Chavan Vs. State of Maharashtra, & Ors., 2013 (2) Mh. L. J, 955 decided on 24th September, 2012.
- [2] Smt. Yallubai Maruti Kamble Vs. State of Maharashtra, [Writ Petition No. 8497 of 2012] decided on 5th October, 2012 [by S.C. Dharmadhikari, J.]
- [3] Devidas Matiramji Surwade Vs. Additional Commissioner, 2017 (1) Mh. L. J. 102 decided 31st July, 2012.
- [4] Parvatabai @ Shobha d/o Kisan Kakde Vs. Additional Commissioner, Nagpur, 2015 (5) Mh. L. J. 238, decided on 30th July, 2015.

[5] Sandip Ganpatrao Bhadade Vs. Additional Commissioner, Amravati, 2017 (1) Mh. L. J, 79.

[6] Ranjeet Singh Vs. Harmohinder Singh Pradhan, 1999 (4) Supreme Court Cases 517.

and in particular, paragraph 5 and 7. The Apex Court considered Section 9-A of Representation of the People Act, 1951 laying down disqualification for Government contracts.

6. Mr. Anturkar relied upon Statement of Objects and Reasons and in particular, clause (b) thereof which reads thus:

(b) to disqualify the person, who has encroached upon the Government land or public property, from becoming member of Panchayat or to continue as such.

7. Mr. Anturkar submitted that Division Bench of this Court in **Devidas Surwade's case** [supra] recorded submission advanced on behalf of the appellant in paragraph 3 to the effect that Plot bearing No. 168 was admittedly not encroached upon by the appellant but by his father way back in the year 1966. A house was constructed on Plot No. 168 by the father of the appellant and after the death of his father, the appellant is residing in the said house. Disqualification provided by Section 14 (1) (j-3) of the Act is inapplicable to the appellant and the appellant could not have been removed for the encroachment made by his father. In

paragraph 4, Division Bench observed that the State Legislature while enacting the said provision fully accepted the Statement of Objects and Reasons in respect of the said particular provision regarding encroachment on the Government properties. The Statement of Objects and Reasons states that the person who has encroached on the Government property, shall not only be disqualified to be a member of Gram Panchayat but also disqualification shall be attached to such person till his tenure. In other words, on such disqualification the member can be disqualified and thus removed. In the next paragraph, Division Bench observed thus:

“We find that there is a definite object in making the said amendment to the provisions of disqualification and the object is that one, who encroaches upon the Government land or the Government property, cannot make any claim to represent the people by becoming an elected member of the Gram Panchayat. The term person in the said amended provision has to be interpreted to mean the legal heirs of such person, who has encroached and continues to occupy the Government land or the Government property, his agent, assignee or transferee or as the case may be. If such an interpretation is not made in the said provision, the result would be absurd in the sense that the Government land would continue to remain encroached and the legal heirs or the assignees or the transferees remaining on such encroached Government land shall claim the right to get elected as a member of democratically elected body. In no case our conscious permits such type of interpretation to defeat the very object of the Bombay Village Panchayats (Amendment) Act, 2006.

8. Mr. Anturkar submitted that interpretation given by the Division Bench on the basis of the Statement of Objects and Reasons, with respect, is clearly contrary to Section 14 (1) (j-3) of the Act. He heavily relied upon the decision of this Court in the case of **Ganesh** [supra]. In paragraph 11, learned Single Judge observed that on plain reading of Section 14 (1) (j) of the Act what would be apparent is that it is the person who is intending to be a member of Panchayat or who is a member cannot continue if that person has encroached upon the Government land or public property. As far as this aspect is concerned, the Legislature has not imported anything by which one can presume that if the encroachment is made by the spouse, relative of the member of Gram Panchayat, residing jointly with the Member, on the public property, then together with the members of such family, he is also deemed to be guilty of the Act of encroachment. If the act is committed by somebody other than the elected person, and, therefore, he incurs or invites disqualification, is not a conclusion which can be drawn or arrived at on a plain reading of section 14 (1) (j-3).

9. Mr. Anturkar invited my attention to the decision of the learned Single Judge of this Court in **Parvatabai's** case where learned Judge observed that decision of **Devidas** was rendered on 31st July, 2012. Decision of learned Single Judge in **Ganesh's** case was rendered on 24th September, 2012 and decision in **Yallubai's** case was rendered by learned single Judge on 5th October, 2012. Learned Single Judge observed that judgment of Division Bench

was not brought to the notice in **Ganesh** and **Yallubai's** case. Mr. Anturkar submitted that decision of Division Bench, with respect, is contrary to the express language employed in section 14 (1) (j) of the Act.

10. Lastly, Mr. Anturkar invited my attention to paragraph 11 of the reply dated 4th December, 2015 filed by the petitioner opposing Dispute Application No. 35 of 2015 before Additional Collector, Pune. In paragraph 11, the petitioner asserted that he is residing separately since 2011. He holds separate ration card since 2011. Petitioner's mother and brother are separately residing. The petitioner has not committed any encroachment in Property No. 153 which is grazing land. In other words, partition had taken place and petitioner is residing separately.

11. On the other hand, Mr. Rayrikar has invited my attention to the findings recorded by the Authorities below as also the report dated 11th March, 2016 made by Sub Divisional Officer, Maval. He submitted that in the report, it is specifically mentioned that the petitioner is residing along with his father in Government's grazing land by committing encroachment. The Authorities below have also recorded concurrent finding to the effect that encroachment is made on property No. 153 which is a grazing land. He, therefore, submitted that no case is made out for interfering with concurrent findings recorded by the Authorities below. Mr. Pai also supported the impugned orders and submitted that even though the petitioner himself may not have committed

encroachment on the Government property, he is residing along with his family in the Government property which is encroached upon. He, therefore, submitted that this is not a fit case for invocation of powers under Article 227 of the Constitution of India.

12. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused material on record. A perusal of the order passed by the Additional Collector, Pune dated 2nd April, 2016 shows that a specific finding is recorded to the effect that the petitioner's father has committed encroachment on property No. 153 which is a grazing land of the Government. In other words, the petitioner's father has made encroachment on the Government property. A perusal of the order passed by the Additional Commissioner shows that the Additional Commissioner has referred to the finding recorded by the Additional Collector. In paragraph 6.3 (I), Additional Commissioner further observed that the petitioner is residing in the Government property which is encroached. In paragraph No. 6.3(II), Additional Commissioner referred to report dated 11th March, 2016 made by Sub Divisional Officer Maval which is a self-explanatory report. The said report also records that the petitioner is residing in the grazing land belonging to the Government. In paragraph No. 6.3 (III), Additional Commissioner referred to the report dated 30th March, 2016 submitted by the Chief Executive Officer, Zilla Parishad. In the said report also it is recorded that the petitioner is residing in the grazing land belonging to the Government and that the same is encroached. The Additional Commissioner recorded a

categoric finding that the petitioner is residing on the Government land which is encroached upon.

13. A perusal of the report dated 11th March, 2016 submitted by Sub Divisional Officer, Maval, Mulshi shows that land bearing Survey No. 153 is a grazing land. Several persons made encroachment in that land. In Village Form No. 1-E entries in respect of these constructions are made. Similarly, constructions are also noted in the register of Gram Panchayat. Village Form No. 8-A records that property No. 254-A and 254-D recorded names of petitioner and his other family members. However, on 27th April, 2015 names of the petitioner and others were deleted as per consent Deed and resolution passed by Gram Panchayat. Presently, name of the petitioner is not recorded in Village Form No. 1-E. The petitioner has relinquished his rights by consent Deed dated 27th April, 2015 in respect of Gram Panchayat property No. 254-A and 254-D in favour of his mother. Consent Deed is, however, executed on a stamp paper and is not a registered instrument. Thus, the petitioner has share in the said property. The petitioner has direct or indirect interest in the said property.

14. Mr. Anturkar submitted that Collector has no jurisdiction to entertain and try the dispute filed by third respondent under Section 16 of the Act. Respondent No.3 has to institute election petition under Section 15 of the Act. I do not find any merit in these submissions. Section 14 lays down disqualifications. No person can become a member of Panchayat

and continue as such who has incurred disqualification specified in that section. Section 15 provides for filing election petition within 15 days after the date of declaration of the result calling in question validity of any election of a member of Panchayat.

15. Section 16 lays down disability from continuing as a member incurring disqualification mentioned in Section 14 of the Act. Provisions of Section 15 and 16 operate in a total different field. Validity of election of a member of Gram Panchayat can be questioned by any candidate at such election or by any person qualified to vote at the election at any time within 15 days after the date of declaration of the election result by filing election petition before Authority specified in Section 15. As against this, Section 14 lays down disqualification which a person may incur after his election. A perusal of Section 14 does not indicate that any time limit is prescribed therein. If a person has incurred disqualification specified in Section 14 recourse will have to be made to provisions of Section 16.

16. Mr. Anturkar relied upon the decisions in **Ganesh** and **Smt. Yallubai** cases (supra) to contend that the decisions referred by the Division Bench of this Court in **Devidas's** case and by the learned Single Judges in cases of **Paravatabai** and **Sandip** do not lay down correct law.

17. He relied upon the Statement of Objects and Reasons. The Statement of Object and Reasons provides that Gramsabha

plays an important role at the Village level. Government considers it necessary to empower the Gramsabha to exercise financial control over the expenditure to be incurred by the Panchayat on the development activities, so also to ensure transparency in the working of Panchayat. It has accordingly amended Bombay Village Panchayats Act, 1958 so as to,

- (b) to disqualify the person who has encroached upon the Government land or property from becoming a member of the Panchayat or to continue as such.

18. Section 14 (1) (j-3) of the Act reads thus:

“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; or

19. In the case of Ganesh (supra), learned Single Judge [S.C. Dharmadhikari, J.] considered Section 14 (1) (j-3) of the Act. The issue was again considered by the same Judge in Yallubai's case. Decision in the case of Ganesh [supra] was quoted in extenso in Paragraph 12 which reads thus:

“12. The Commissioner holds that one Vitthal Aappaso Patil has constructed a house on a Gairan land in Gat No. 213, which is authorized. The Panchanama was carried out from which it was noticed that 16 persons have encroached the Gairan land by constructing houses on it and one of them is the husband of the Petitioner Mr. Maruti S. Kamble. If Mr. Maruti Kamble is the person who has

carried out construction and his name appears in the Antodaya Ration Card and together with him the Petitioner's name also appears that means that she is residing with her husband and, therefore, she is disqualified. The finding ought to be that the Petitioner has encroached upon a government land or public property. That her husband has encroached upon a government land is an admitted position and obviously the Petitioner resides with her husband. For that she should be disqualified is really reading something in the provision which is not there. By reading in the provision that the Petitioner is the wife and therefore, party to the encroachment or having a nexus therewith, she is held to be disqualified and disabled. That is not what is provided by the Statute itself. I had an occasion to deal with some what identical controversy in a Writ Petition No. 3942 of 2012 decided on 24th September, 2012. In that case the argument was that the father of the elected member had committed encroachment upon the government land or public property. The elected member was residing with his father and therefore, he invites disqualification to continue as such. While repelling this argument, I have observed as under:

“This is not a case where the petitioner has committed any encroachment on Government Land or a public property. The admitted factual position should not have been ignored that once the property belongs to the petitioner's father. Arun Chavan and that the construction on the said property, if at all, it could be termed as Government land or public property, has been made not by the petitioner but by his father Arun Chavan, then on the plain reading of Section 14 (1) (j3) the petitioner could not have been disqualified.

10] There is nothing in the Act by which the concept of family or joint residence could be imported as far as the subject disqualification is concerned. The said provision contemplates encroachment upon the Government land or public property by a person, as in this case, who is a Member of the Panchayat. Therefore, the encroachment must be by the person who is a member and

not any third party.

11] Therefore, on a plain reading of this provision what would be apparent is that it is the person who is intending to be a member of panchayat or who is a member cannot continue if that person has encroached upon the Government land or public property. As far as this aspect is concerned, the Legislature has not imported anything by which one can presume that if the encroachment is made by the spouse, relative of the member of grampanchayat, residing jointly with the Member, on the public property, then together with the members of such family, he is also deemed to be guilty of the act of encroachment. If the act is committed by somebody other than the elected person and, therefore, he incurs or invites disqualification, is not a conclusion which can be drawn or arrived at on a plain reading of section 14 (1) (j3).

12] The Legislature has taken care and wherever the concept of family or joint residence has to be applied, specific provision in that behalf has been made either substantively or by way of a Explanation. For illustration, if the disqualification is under section 14 (1) (h) for failure to pay any tax or fee due to the panchayat or the zilla parishad, then, by virtue of explanation 2, what the Legislature has done is to provide that failure to pay any tax or fee due to the panchayat or zilla parishad by a member of HUF or by person belonging to a group, then, that shall be deemed to disqualify all members of such family or as the case may be of the group or unit. Equally in case of clause 14 (1) (g) where a person is said to be disqualified for having any interest either by himself directly or indirectly through or his partner, any share or interest in any work done by order of the panchayat or in any contract with by or on behalf of or employment with or under the panchayat, the Legislature by Explanation I-A has clarified that a person shall not be disqualified under clause (g) by reason of only such person having a share or interest in any newspaper in which any advertisement relating to the affairs of the panchayat is inserted; or

having a share or interest in the occasional sale to the panchayat of any article in which he regularly trades and having an occasional share or interest in the letting out or on hire to the panchayat of any article and equally having any share, interest in any lease for a period not exceeding ten years of any immovable property. Therefore, once the Legislature itself has clarified that an act of the member alone incurs or invites disqualification, then, by interpretative process it will not be possible to include in section 14 (1) (j3), the act of encroachment by members of his family and for that purpose, disqualify the elected representative. It is the act of the person seeking to contest election or functioning as a member which alone will attract the provision in question;

13] The Collector and Commissioner ought to have appreciated that, when, the Legislature makes a wrongful act of those other than the Member, it makes a specific provision and in widest terms. In Section 16 (1D) of the Mumbai Municipal Corporation Act, 1888, the disqualification is for the act of spouse or dependent. This provision is *pari materia* to Section 44 (1)(c) of the Municipalities Act and reads as under:

“16 (1D) A Councillor shall be disqualified for being a Councillor, if such Councillor has constructed or constructs by himself, his spouse or his dependent, any illegal or unauthorised structure violating the provisions of this Act or the Maharashtra Regional and Town Planning Act, 1966 or the bye-laws framed under the said Acts; and has directly or indirectly been responsible for, or helped in his capacity as such Councillor, in carrying out such illegal or unauthorised construction or has by written communication or physically, obstructed or tried to obstruct any competent authority from discharging its official duty in demolishing any illegal or unauthorised structure. Such disqualification shall be for the remainder of his term as a Councillor from the date of the declaration of such structure to be illegal or unauthorised by the

concerned authority under the provisions of the said Acts or, as the case may be, from the date of commission of the act of interference or obstruction by the Councillor against the Competent Authority.”

13] In such circumstances, in the teeth of the above referred findings of fact, the attempt by the authorities to read into the provisions the alleged role of the petitioner in residing in the structure/house along with the Encroacher – father as a part of joint family or allegedly assisting him or making any statement on his behalf with regard to the subject encroachment will not be enough to disqualify the petitioner. By an interpretative process and merely because the petitioner is residing with his father, he cannot be disqualified from continuing as a member of the village panchayat in question. That would amount to disqualifying him and declaring his seat vacant, although, he is not responsible or has not committed any act which could be said to be encroachment on Government land or public property. There is nothing in the provision in question like the petitioner aiding his father or abetting in encroaching upon Government land or public property, which disqualifies him. If that was the Legislative intent, it would have said so in specific terms.

20. I have already dealt with the decision of the Division Bench in **Devidas's** case in the earlier part of the order. In the case of **Sheela Dilip Daberao Vs. State of Maharashtra and Ors., 2015 (3) Mh. L. J. 231**, learned Single Judge referred to the findings recorded by the Authorities below to the effect that one Dilip Ramrao Daberao, the husband of the petitioner, the owner of Plot No. 73, admeasuring 33.33 sq. ft. situated at Village Manatri Bu, Tahsil Telhara, District Akola. There was an encroachment over the Government land attached to the said property to the extent of 17x17 sq. ft. Though the petitioner was not the owner of the said

land, still she was residing thereon along with her husband. It was noted that these findings of fact are not challenged in this petition. After considering provisions of Section 14 (j-3), R.K. Deshpande, J. observed in para 4 that Section 14 (1) (j-3) 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 the case, it would not be necessary for the respondents to establish that it is the petitioner herself who has encroached upon the Government land.

21. In the case of **Parvtabai** (supra), learned Single Judge referred to decisions of learned Single Judge in the cases of :

- [1] Ganesh [supra]
- [2] Yallubai [supra]
- [3] Decision of Division Bench in the case of Devidas [supra]

and observed that Division Bench in **Devidas's** case after considering the Statement of Objects and Reasons observed that the term 'person' in the amended provisions would have to be interpreted to bring legal representatives of a person who have encroached and continue to occupy government land within its purview. Learned Single Judge further observed that decision of

Division Bench in **Devidas's** case where expression 'person' having been duly considered, it is not permissible to follow the decisions of learned Single Judge in **Ganesh** and **Yallubai's** cases (supra).

22. Decisions in the cases of **Devidas** (supra), **Ganesh** (supra), **Sheela** and **Parvatabai** were considered in the case of **Sandip** (supra). In para 13, learned Single Judge referred to object of introducing the provision of disqualification under Section 14 (1) (j-3) of the Act. Paragraph 13 reads thus:

“13.The very object of introducing the provision of disqualification under section 14(1) (j-3) of the said Act is to avoid the conflict of interest by prohibiting the persons, who are the encroachers upon the Government land or public property to get elected or continued as a member of the Panchayat, which is a democratically elected body of the villagers. It is beyond comprehension to assume that a person under statutory obligation or a duty to protect the Government land or public property from encroachment, commits an act of such encroachment. To permit a person, who proposes to become a member or becomes a member of the Panchayat to be the encroacher upon the Government land or public property, would be anathematic, acting in breach of statutory duty, exposing himself to prosecution under sub-sections (1) and (4) of section 53, resulting ultimately in losing the protection under section 180 read with section 184 of the said Act. It is in this context that the text of disqualification under section 14 (1) (j-3) of the said Act is required to be analyzed and interpreted”.

In paragraph 14, learned Single Judge referred to the meaning of expression 'encroach' and 'encroachment' in Black's Law Dictionary.

The learned Single Judge also considered Sections 53, 180 and 184 of the Act and observed in paragraph 15 to 18 thus:

“15. 'To encroach' means to enter, intrude, infringe gradually upon the rights of others by unlawfully and without authority taking possession of the property, which is not of his own. Upon completion of such act, it becomes an “encroachment”. The further act of continuing or remaining in such occupation or possession of the property with an intention or object of beneficial enjoyment would mean that the person committing encroachment has 'encroached' upon the property. An encroacher is a person, who encroaches.

16. In view of the aforesaid meaning of the terminologies “to encroach”, “encroachment”, “encroacher” and “encroached”, whoever resides in the property or any portion thereof, which is an encroachment upon the Government land or public property, can be said to have 'encroached’ upon it and becomes an “encroacher”. Whether such an encroachment is jointly with others and/or individually, either at one time or at different times remains hardly of any significance' as he becomes liable to be removed and prosecuted under section 53 of the said Act from the Government land or public property, becomes a real test of attracting disqualification under section 14 (1) (j-3) of the said Act. If the answer is in the affirmative, disqualification is incurred.

17. In view of the aforesaid position, the provision of section 14 (1) (j-3) of the said Act is attracted even in a case where a member of Panchayat resides in the property, or any portion thereof, which is an encroachment upon the Government land or public property. The question as to whether any other person or a member of a

family has already made an encroachment, loses its significance and as soon as a member of proposed member joins such act, he cannot escape from the clutches of disqualification under section 14 (1) (j-3) of the said Act. The question framed, is answered accordingly.

18. If an intention of the Legislature is to prevent an encroachment upon the Government land or public property by a person, who is deemed to be a “public servant” under section 184 entitled to enjoy all privileges attached to it under section 180 of the said Act, can it be said that such an intention of the Legislature be defeated by adopting circuitous way of occupying the property, which is encroachment on the Government land or public property. The answer would obviously be in the negative, for two main reasons - (i) the act, which is prohibited directly, cannot be promoted or encouraged indirectly to defeat the object and purpose of such prohibition, and (ii) it would amount to promoting or encouraging the conflicting interest, necessarily resulting in the disqualification under section 14 (1) (j-3) of the said Act.

23. In paragraph 23, learned single Judge also considered the request to refer the matter to the larger Bench. Para 23 reads thus:

“The decision of the Division Bench in the case of *Devidas Matiramji Surwade*, and the decisions of the learned Single Judges in the cases of *Ganesh Arun Chavan*, *Kanchan Shivaji Atigre* and *Sandhya Hemant Salunke*, cited supra, are based upon the similar facts. The ratio of the Division Bench in the case of *Devidas Matiramji Surwade* is that the term 'person' employed under sub-section(1) of section 14 of the said Act has to be interpreted to mean the legal heirs of such person, who has encroached and continues to occupy

the Government land or the public property, his agent, assignee or transferee or as the case may be, was not brought to the notice of the learned Single Judges, who decided the aforesaid cases. The law laid down by the learned Single Judges in the cases of *Ganesh Arun Chavan*, *Kanchan Shivaji Atigre* and *Sandhya Hemant Salunke* to the effect that if the legislative intent was to cover the cases of encroachment made by the spouse, relative of the member of Gram Panchayat, residing jointly with the member, on the public property, then it would have been clearly expressed in the provision, runs contrary to the decision of the Division Bench in the case of *Devidas Matiramji Surwade*. The learned Single Judge in the case of *Parvatabai @ Shobha d/o Kisan Kakde*, cited supra, has held that the ratio of the decision of the Division Bench needs to be followed instead of the view taken by the learned Single Judge. It is, therefore, not necessary for this Court to refer the matter to a Larger Bench for decision, as has been urged by Shri Kilor, the learned counsel for the petitioner”.

24. Thus, after considering all the judgments on the subject, learned single Judge observed that decision of the Division Bench is required to be followed instead of contrary view taken by the learned single Judge. The learned single Judge declined the request made before him for referring the case to the larger Bench. In view thereof, I do not find any merit in the submission of Mr. Anturkar that Division Bench's decision in case of **Devidas** [supra] requires to be referred to the larger Bench and that it does not lay down correct law.

25. Mr. Anturkar relied upon the decision in the case of **Ranjeet Singh** [supra], in particular paragraphs 5 and 7 thereof.

The Apex Court was considering provisions of Section 9-A of Representation of the People Act, 1951. On facts, the Apex Court found that the contract entered into by the successful candidate with the State Government to sell liquor did not come within the mischief of Section 9-A as it was neither for supply of goods to the Government nor for the execution of any works undertaken, the respondent did not suffer from any disqualification for being chosen as a Member of the Legislative Assembly. In my opinion, the said decision is not applicable to the facts of the present case as we are considering disqualification under Section 14 (1) (j).

26. Mr. Rayrikar has invited my attention to the report dated 11th March, 2016 made by Sub Divisional Officer, Maval, Pune and also report dated 30th March, 2016 submitted by Chief Executive Officer, Zilla Parishad. A perusal of the report dated 11th March, 2016 submitted by Sub Divisional Officer, Maval, Mulshi shows that land bearing Survey No. 153 is a grazing land. Several persons made encroachment in that land. In Village Form No. 1-E entries in respect of these constructions are made. Similarly, constructions are also noted in the register of Gram Panchayat. Village Form No. 8-A records that property No. 254-A and 254-D recorded names of petitioner and his other family members. However, on 27th April, 2015 name of the petitioner and others were deleted as per consent Deed and resolution passed by Gram Panchayat. Presently, name of the petitioner is not recorded in Village Form No. 1-E. The petitioner has relinquished his rights by consent Deed dated 27th April, 2015 in respect of Gram Panchayat property No. 254-A and 254-D in favour of his mother. Consent

Deed is, however, executed on a stamp paper and not by registered instrument. Thus, the petitioner has share in the said property. The petitioner has direct or indirect interest in the said property.

27. The Authorities below have recorded concurrent findings to the effect that the petitioner's father has committed encroachment on property No. 153 which is a grazing land. Mr. Anturkar invited my attention to paragraph 11 of the reply dated 4th December, 2015 filed by the petitioner opposing Dispute Application before the Additional Collector, Pune. In paragraph 11, the petitioner asserted that he is residing separately since 2011. He holds separate ration card since 2011. The petitioner's mother and brother are residing separately and the petitioner had not committed encroachment in property No. 153. In other words, he submitted that partition had taken place and the petitioner is residing separately. It is not possible to accept this submission in view of the reports referred hereinabove and the findings recorded by the Authorities below. Submission of the petitioner also cannot be accepted as no material in support of this contention is produced. In view thereof, petition fails and the same is dismissed.

[R.G. KETKAR, J.]