

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.158 OF 2016
IN
WRIT PETITION NO.6456 OF 2016**

Shri. Rahul Arun Jambhulkar Petitioner

Vs.

The Additional Commissioner Respondents
Pune Division, Pune & Ors.

**WITH
REVIEW PETITION NO.159 OF 2016
IN
WRIT PETITION NO.6457 OF 2016**

Sou. Rekha Sandip Sakhare Petitioner

Vs.

The Additional Commissioner Respondents
Pune Division, Pune & Ors.

**WITH
REVIEW PETITION NO.160 OF 2016
IN
WRIT PETITION NO.6458 OF 2016**

Mrs. Jaymala Sambhaji Hulawale Petitioner

Vs.

The Additional Commissioner Respondents
Pune Division, Pune & Ors.

WITH
REVIEW PETITION NO.161 OF 2016
IN
WRIT PETITION NO.6460 OF 2016

Bebi Dilip Halawale Petitioner

Vs.

The Additional Commissioner Respondents
Pune Division, Pune & Ors.

WITH
REVIEW PETITION NO.162 OF 2016
IN
WRIT PETITION NO.6461 OF 2016

Shri. Sagar Dattatraya Sakhare Petitioner

Vs.

The Additional Commissioner Respondents
Pune Division, Pune & Ors.

WITH
REVIEW PETITION NO.163 OF 2016
IN
WRIT PETITION NO.6462 OF 2016

Sou. Rohini Dattatraya Sakhare Petitioner

Vs.

The Additional Commissioner Respondents
Pune Division, Pune & Ors.

WITH
REVIEW PETITION NO.164 OF 2016
IN
WRIT PETITION NO.6464 OF 2016

Shri. Shrikant Dilip Jadhav Petitioner

Vs.

The Additional Commissioner Respondents
Pune Division, Pune & Ors.

Mr. Sanjay D. Thokade, Advocate for the Petitioners.
Mr. Chetan R. Nagare, Advocate for Respondent no.3.

Coram : Smt. R.P. SondurBaldota, J.
Date : 10th February, 2017

P.C.

1 These petitions seek review of the common order dtd. 13th July, 2016, by which petitions filed by the review petitioners were dismissed. Since the grounds taken in all the review petitions are the identical, they are being disposed off by a common order.

2 The petitioners had filed their respective petitions to challenge the orders passed by the Additional Commissioner, Pune Division, dismissing their respective appeals against the order of disqualification passed by the Additional Collector. By the orders impugned in the petitions, the petitioners were held

disqualified to be members of Hinjwadi Gram Panchayat, Mulshi, Pune. The disqualification was under Section 14(1)(j-3) and Section 16 of the Bombay Village Panchayats Act, 1958 for having carried out illegal construction by encroaching upon the government land i.e. "Gairan" land at survey No. 153. Except for the petitioner in Writ Petition No. 6462 of 2016, the encroachment alleged was by the relatives of the petitioners. However, all the petitioners except the petitioner in Writ Petition No.6458 of 2016 were found using the encroached portion.

3 At the outset, Mr. Thokade relies upon decision of the Apex Court in Rajender Singh vs. Lt. Governor, Andaman and Nicobar Islands and Others, reported in A.I.R., 2006 Supreme Court, page 75 to emphasize upon the purpose and need for exercise of power of judicial review. He submits that it has been held by the Apex Court that the courts should not hesitate to review its order because an error apparent on record would lead to miscarriage of justice. He submits that in the facts of that case, the Apex Court has held that the court is not justified in ignoring the material on record, which on proper consideration may justify the claim of the petitioners. The power of judicial review extends to correct all errors to prevent miscarriage of justice. There can be no dispute as regards the legal principle enunciated by the decision cited. It is therefore only to be seen whether any ground of error apparent on the

face of the record is made out by the petitioners.

4 The review of the order sought by the petitioners is on ten grounds. The first and the last ground i.e. grounds (a) and (j) are challenge to the correctness of the order. It is contended therein that the order under review is contrary to justice, equity and evidence on record and is perverse. These grounds being in the nature of the challenge to the order on its merit fall beyond the purview of review.

5 At ground (b), the petitioners state that neither the orders impugned in the petitions, nor the order passed on the petitions, deal with the contentions raised by the petitioner regarding allotment of the plots for construction by the competent authorities and the construction made by the forefathers of the petitioners way-back in the year 1963. This permission for construction and the contention of its non-consideration is also taken at ground (g) in the petition. Mr. Thokade, the learned counsel appearing for the petitioners submits that the order under review does not consider the document dtd. 24th March, 1963 signed by Sarpanch of Group Gram Panchayat, Marunji addressed to one one Savleram Jambhulkar stating that as per his application, pursuant to the Resolution of the Gram Panchayat dtd. 24th March, 1963, he had been allotted land admeasuring 6 gunthas at survey no. 153, Hinjwadi (Gairan). This document can by no stretch of

imagination be said to be a document of allotment of land by the competent authority for construction. The order under review specifically records that the petitioners have failed to produce any evidence of their title to the land of encroachment. Besides, the report of C.E.O. of Zilla Parishad which is considered at, paragraph 5 of the order under review records that the process of development of gavthan was not yet complete and only 7/12 extract in respect thereof had been prepared. In that case as per the report, there could be no allotment of the land for construction to any person and the construction carried thereon is unauthorised. Therefore, grounds (b) and (g) of the review petitions are without merit.

6 The contentions raised at grounds (c), (e), (f), (h) and (i) are the contentions that would be available to the petitioners in the challenge to the order in a higher forum and cannot be grounds for review. By these grounds they seek to contend that appreciation of the evidence and submissions advanced by the petitioners in the order is not correct. In these grounds the petitioners also contend that this court has not considered six reported judgments cited on their behalf. The grounds however specifically refer to only two of the decisions as the decisions unconsidered, the description of which is incomplete. The description is by naming the Coram and stating citation as 2211(5) M.L.J., page 249 and 2011 (6), B.C.R. Page, 427. Both the decisions are of the Bench of a Single Judge

of this Court. The decisions are on inadequacy of the opportunity of hearing to the petitioners which aspect has been considered at para 8 of the order.

7 At ground (d), the petitioners contend that paragraph 4 of the order under review incorrectly records the concession by Mr. Thokade appearing for the petitioners. The concession recorded therein reads as under :

“ Mr. Thokade, the learned Advocate for the petitioners in fairness does not dispute the legal position that disqualification under Section 14(1)(j-3) of the said Act, is attracted not only in cases of encroachment on the Government land by the elected candidate himself but also in cases of encroachment by members of family of the elected candidate”

It is unfortunate that the petitioners seek to dispute the concession by Mr. Thokade recorded in the order because the concession had been recorded in view of the law laid down by the Division Bench of this court in it's decision in Devidas Matiramji Surwade v. Additional Commissioner, Amravati Division, Amravati and Ors., reported in 2013(2) ABR, page 579. This aspect had been pointed out during the course of submissions after which the concession was made.

8 The petitioners' dispute the concession on the basis of the decision of the learned Single Judge of this Court in

Shantaram Narayan Raut vs. Additional Collector and others, reported in 2013(2) Bombay C.R. Page 341, which holds that encroachment by a family member does not attract the disqualification under Section 14(1) (j-3) of the Bombay Village Panchayats Act. This decision is per incurium since it does not consider the decision of the Division Bench which is earlier in point of time. In any case, the decision of the Division Bench is binding on the Bench of a Single Judge. The Division Bench in its decision holds that disqualification of the Member of Panchayat on the ground of having made encroachment on the government land extends to the encroachment at the behest of family member also. The relevant observations at para 5 of the judgment read as under:

“5. 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 today. If no case our conscious permits such type of interpretation to defeat the very object of the Bombay Village Panchayats (Amendment) Act, 2006.”

In view of this, decision of the Division Bench, which would be binding on the Bench of Single Judge, it could not have been argued by Mr. Thokade, that disqualification under Section 14(1) (j-3) of the said Act is attracted only in the case of encroachment on the government land by the elected candidate himself. Therefore this ground is also without merit.

9 In the above circumstances, the review petitions are seen to be absolutely without any merit. The same are nothing but abuse of process of law and as such are liable to be dismissed with costs. The review petitions are dismissed with costs quantified at Rs.25,000/- each, to be deposited with High Court Legal Aid within six weeks from today.

(Smt. R.P. SondurBaldota, J.)