

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

WRIT PETITION NO.10876 OF 2016

**Sou. Shubhangi Vijaykumar Koli
Versus**

..Petitioner

Atul Vasantrao Patil and others

..Respondents

Mr. C. N. Chavan a/w Manoj Mane for the Petitioner.

Mr. U. R. Mankapure for the Respondent Nos.1 & 2.

Mr. V. V. Pai for the Respondent No.4.

Mr. S. D. Rayrikar, AGP for the Respondent Nos.5 & 6.

CORAM : R. M. SAVANT, J.

DATE : 9th FEBRUARY, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 18.08.2016 passed by the Additional Commissioner, Pune Division, Pune. By which order, the Appeal filed by the Petitioner against the order dated Nil March 2015 passed by the Additional Collector, Sangli, came to be dismissed.

2 The Petitioner is a member of the Gram Panchayat Nehru Nagar, Taluka Tasgaon, District Sangli. The Petitioner was elected as a Sarpanch sometime in the year 2012. An application came to be filed by the Respondent Nos.1 and 2 herein who are residents of the said village Nehru Nagar for the disqualification of the Petitioner under Section 14(1) (j-3) of the Maharashtra Village Panchayat Act, 1958 (For short "the Said

Act”). The disqualification of the Petitioner was sought on the ground that the Petitioner's husband one Vijaykumar Koli has encroached upon property No.414 which is a forest, and therefore the land belonging to the government. To the said application, the Petitioner herein filed her reply and inter-alia took the following defences ; that the property does not stand in the name of the Petitioner, that the property is occupied by the ancestors of the husband of the Petitioner since a long time, and that the Petitioner is not residing with her husband but residing separately and that the Petitioner has nothing to do with the said property being No.414. It seems that the Gramsevak of the Gram Panchayat in question had submitted a report to the Deputy Chief Executive Officer of the Sangli Zilla Parishad stating that property No.46 stands in the name of Vijaykumar Koli as a owner and property No.414 is shown as forest but the occupant is shown as one Vijaykumar Koli in the village record. The said report was forwarded to the Additional Collector, Sangli. Before the Additional Collector, the Petitioner reiterated her stand which was taken in her reply. The Additional Collector on the ground that the property No.414 which is a forest and in respect of which the name of the husband of the Petitioner is appearing as an occupant, held that the Petitioner would have to be disqualified under Section 14(1)(j-3) of the Said Act. The Additional Collector relied upon the Division Bench judgment of this

court dated 31.07.2012 rendered in Letters Patent Appeal No.305 of 2012 in the matter of Devidas S/o Matiramji Surwade Vs. Additional Commissioner. The Additional Collector accordingly by passing the order dated Nil March 2015 has disqualified the Petitioner under the said provision.

3 The Petitioner aggrieved by the same carried the matter by way of an Appeal under Section 35(3) of the Said Act to the Additional Commissioner, Pune Division, Pune. The Additional Commissioner having regard to the material on record, where indubitably the name of the husband of the Petitioner is shown as occupant in respect of property No.414 which is forest, did not deem it appropriate to interfere with the order passed by the Additional Collector and accordingly dismissed the Revision.

4 The Learned Counsel appearing on behalf of the Petitioner Mr. C. N. Chavan would by relying upon a certificate dated 22.06.2015 and the letter dated 09.06.2015 annexed to the Petition as Exhs. H and I as also letter dated 04.06.2015 of the Conservator of Forest, Exh.K would contend that in view of the recording made in the village record that there is tin shed on the forest land, the Petitioner could not have been disqualified under the said Section 14(1)(j-3) for encroaching upon the

government land. It was also the submission of Mr. C. N. Chavan that in another identical case the Additional Collector has relied upon a judgment of a Learned Single Judge of this Court, wherein it has been held that the encroachment made by a member of the family could not be held against the elected person and therefore the Additional Collector according to him has discriminated between him and the other person. It was also the submission of Mr. C. N. Chavan that the Petitioner has nothing to do with the said property No.414 and therefore could not be disqualified under the said provision.

5 Per contra, the Learned Counsel appearing on behalf of the Respondent Nos.1 and 2 Mr. U. R. Mankapure, the Learned AGP appearing for the authorities and Mr. V. V. Pai appearing for the Gram Panchayat would support the impugned orders. The Learned Counsel Mr. U. R. Mankapure took this Court through the reply filed by the Petitioner and based on the said reply the Learned Counsel would contend that the Petitioner has been changing her stand from time to time. The Learned AGP would draw this Court's attention to certain documents which have been forwarded to him by the Gram Panchayat which are the receipts for payment of tax in respect of the property in question. The Learned AGP would draw this Court's attention to the fact that there cannot be any dispute that the structure is on forest land.

6 Having heard the Learned Counsel for the parties, I have considered the rival contentions. It would be interesting to note that faced with a notice issued for the disqualification under Section 14(1)(j-3) of the Said Act, the first reaction of the Petitioner was as can be seen from her reply was that, she has nothing to do with the said property, that she is living separately from her husband at the same time. It is also stated in the said reply that though the said land is forest, the same has been allotted by the government to the ancestors of the husband of the Petitioner and that the family of the husband of the Petitioner are in occupation of the said land since long past. Hence the reply of the Petitioner makes an interesting reading and exemplifies the attempt of the Petitioner to get out of the rigors of Section 14(1)(j-3) of the Said Act. As indicated above, the authorities below have relied upon the record which indubitably indicates that land being plot No.414 is shown as a forest land and the name of Petitioner's husband is entered as an occupant. No doubt, the name of the Petitioner does not appear qua the said land in question. However applying the judgment of the Division Bench in *Shri. Devidas S/o Matiramji Surwade's case (supra)*, where the Division Bench has held that a person contemplated under Section 14(1)(j-3) of the Said Act would have to include his heirs, assignees or transferees as otherwise the said provision would turn nugatory as the

government land would continue to remain encroached and the heirs, assignees or the transferees remaining on such land would claim the right to get elected to a democratically elected body. The Division Bench has adverted to the object behind incorporating the said provision for disqualification of an elected representative. There can be no gain saying of the fact that the provisions for disqualification have been incorporated so as to bring purity and probity in public life. The order passed by the Additional Collector in some other case obviously cannot be relied upon by the Petitioner, as in the said case the Additional Collector has not referred to the judgment of the Division Bench of this Court in *Shri. Devidas S/o Matiramji Survade's case (supra)*.

7 The reliance on Exhs.H, I and K on behalf of the Petitioner is misplaced in the light of the Petitioner's own stand in the reply filed, which has been adverted to hereinabove. In fact in the letter dated 04.06.2015 Exh.K, the Conservator of Forest has mentioned that apart from the persons who have structures on forest land the persons who do not have structures have got their names entered in the village record form 8, and therefore such persons should not be granted the benefit of the water supply scheme. The said letter in a way exemplifies the extent to which the encroachers have gone.

8 In the light of the orders passed by the authorities below, they cannot be said to suffer from any illegality or infirmity for this Court to interdict in its writ jurisdiction. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]