

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 124 OF 2016

Satish N. Deshmukh .. Petitioner
vs.
Additional Commissioner
Pune Division Pune and ors. .. Respondents

Mr. S.S. Aradhye for the Petitioner.
Mr. S.H. Kankal, AGP for Respondent Nos.1, 2 and 5.
Mr. A.R.Metkari,for Respondent No.3.

CORAM : M. S. SONAK, J.
DATE : 14 DECEMBER 2017

ORAL JUDGMENT :-

1] Heard Mr. Aradhye, learned counsel for the petitioner, Mr. A.R. Metkari, learned counsel for respondent No.3 and Mr. Kankal, learned AGP for respondent Nos.1,2 and 5.

2] Rule. Rule is made returnable forthwith at the request of and with the consent of learned counsel for the parties.

3] The challenge in this petition is to the order dated 21st August 2013 made by the Additional Commissioner, Pune Division in exercise of appellate powers under Section 16(2) of the Maharashtra Village Panchayat Act, 1958 (said Act). The Additional Commissioner, by the impugned order has set aside the Additional

Collector's order dated 28th February 2013, by which, he had disqualified respondent No.3 from continuing as a member of the village panchayat of Karkamb by relying on the provisions contained in Section 14 (1) (j-3), i.e., encroachment on government land or public property.

4] Mr. Aradhye submits that in this case, both the adjudicating authorities have concurrently held that respondent No.3 has indeed encroached upon Government property. The Additional Collector, in fact, disqualified respondent No.3 on this ground. However, the Additional Commissioner, by observing that this encroachment had taken place in the year 1996 has unjustifiably absolved respondent No.3 from the taint of disqualification. Mr. Aradhye submits that as long as encroachment on the Government property continues, respondent No.3, would be liable to be disqualified under the provisions of Section 14(1)(j-3) of the said Act. He submits that the view taken by the Additional Commissioner suffers from perversity and is in excess of jurisdiction. Therefore, he submits that this is a fit case to set aside the impugned order made by the Additional Commissioner and restore the order made by the Additional Collector.

5] Mr. Metkari, learned counsel for respondent No.3, whilst joining issues with the contentions of Mr. Aradhye submits that the term for which respondent No.3 was elected as a member of Panchayat has come to an end in October 2017. He therefore, submits that this petition has become infructuous and may be disposed of as such.

6] Mr. Metkari relies upon the decision of this Court in *Narayan A. Borase vs. State of Maharashtra and ors* reported in **2005 (2) Mah.L.J 1093**, to submit that the section of Panchayats Act does not provide for disqualification spreading beyond the term of Sarpanch or a member found guilty of misconduct. He submits that since, the alleged encroachment, was made in the year 1996, the same is quite irrelevant for determining disqualification of respondent No.3 who was elected as a member of the Panchayat for the term 2012-2017.

7] The rival contentions now fall for determination.

8] The term of respondent No.3, has no doubt ended, and in that sense, the petition, could have been disposed of by merely taking note of this fact. However, it was pointed out by Mr. Aradhye, if

the impugned order is allowed to stand, then, there will be no bar to the respondent No.3 continuing as a member of the Panchayat, in case, he is elected once again. Mr. Aradhye submits that such continuance as a member of the Panchayat simultaneous with his continuance of encroachment on government land will, frustrate both the letter as well as spirit of the provisions contained in Section 14(1)(j-3) of the said Act.

9] There is some merit in the submission of Mr. Aradhye. Section 14 (1)(j-3) of the said Act *inter alia* provides that no person shall be a member of a Panchayat or continue as such, who, has encroached upon Government land or public property. This means that disqualification attaches to a person from being a member of the Panchayat as well as from continuing as a member of the Panchayat. The Statement of Objects and Reasons for the amendment by which this provision was introduced in the said Act indicates that the purpose was to disqualify the person, who has encroached upon Government land or public property from becoming a member of the Panchayat or to continue as such.

10] Recently, the Supreme Court in case of *Sagar P. Dhundare vs. Keshav Aaba Patil and ors* decided on 13th November 2017 in *Civil Appeal No(S). 2306 - 2307 of 2017* had the occasion to deal with the provisions of Section 14(1) (j-3) of the said Act. The Supreme Court has held that encroachment on public property or Government property is certainly to be condemned, encroacher evicted and punished. Desirably, there should not be a member in the Panchayat with conflicting interest. But once a person is elected by the people, he can be unseated only in the manner provided under law. Even with the best of intention, if there is no statutory expression of the intention, the Court cannot supply words for the sake of achieving the alleged intention of the law maker. It is entirely within the realm of the law maker to express clearly what they intend. No doubt, there is a limited extent to which the court can interpret a provision so as to achieve the legislative intent. That is in a situation where such an interpretation is permissible, otherwise feasible, when it is absolutely necessary, and where the intention is clear but the words used are either inadequate or ambiguous.

11] The above observations were made by the Supreme Court in the context of the provisions of Section 14(1)(j-3) of the said Act

whilst considering the issue as to whether the encroachment contemplated in the said provision had to be by the member of the Panchayat himself or would include encroachment by even the family members of the member concerned.

12] In the present case, there is no ambiguity either in the legislative provision or the legislative intent. The provision bars a person to be a member of Panchayat or from continuing as such, if, such person has encroached upon Government land or the public property. The use of expression "*has encroached upon*" clearly indicates that as long as the encroachment on Government land or private property continues, the disqualification attaches. Since, the statutory expression corresponds to the legislative intent, the interpretation of the Additional Commissioner to the contrary, cannot sustain.

13] Even though, the encroachment may have taken place in the year 1996, as long as the encroachment continues, the effect of the provisions of Section 14(1) (j-3) of the said Act cannot be avoided. This does not appear to be a case where respondent No.3 had encroached upon Government property some time in the year 1996

and thereafter, restored the property to the State before contesting elections to the membership of the Panchayat. If such was the position, then perhaps, the issue might have been arguable. However, if the encroachment continues, then disqualification cannot be avoided on the specious plea that the encroachment had taken place in the year 1996 and the respondent No.3 has been elected as a member of the Panchayat for the term which commenced in the year 2012.

14] It is not even the case of the respondent No.3 that by the year 2012, respondent No.3 had restored the encroached property to the State and therefore, disqualification could not attach on the basis of some encroachment in the past. The encroachment, continued till the year 2012 when the petitioner was elected as a member of the Panchayat and even thereafter, when the petitioner, continued as a member of the Panchayat. In such circumstances, it must be held that the Additional Collector had correctly appreciated both the facts as well as the legal position. The Additional Commissioner, in reversing the Additional Collector, has misconstrued the legal position and quite unjustifiably exonerated respondent No.3.

15] From the plain construction of the provisions in Section 14(1) (j-3) of the said Act, it is clear that no person, shall be a member of the Panchayat or continue as such, who has encroached upon Government land or public property. This means that as long as encroachment continues, the disqualification attaches. No member can insist upon continuing with his encroachment on Government land or public property and at the same time, claim any immunity from disqualification as a member of Panchayat. That would clearly be a case of conflict between interest and duty which is what the provision seeks to avoid.

16] If, the impugned order and the reasoning therein is permitted to stand, then, respondent No.3, if elected once again, will possibly claim immunity from disqualification, even though, he continues to encroach on Government property. In order to avoid such position, not only in the case of respondent No.3, but also in similar such cases, it is necessary that the impugned order is set aside or in any case the reasoning adopted by the Additional Commissioner is disapproved.

17] The decision in *Narayan Borase (supra)* is not at all applicable to the facts and circumstances in the present case. In that case, the Court was concerned with the provisions of section 39(1) and 39(1A) of the said Act, which deal with disqualification for proved misconduct. The Court has ruled that disqualification under the said provisions does not extend beyond the term of the Sarpanch found guilty of misconduct. The provisions in issue as also the facts were entirely different from the facts with which we are concerned in the present case.

18] For the aforesaid reasons, the impugned order dated 21st August 2013 made by the Additional Commissioner is set aside and the order dated 28th February 2013 made by the Additional Collector is restored.

19] The Rule is made absolute in the aforesaid terms. There shall however, be no order as to costs.

(M. S. SONAK, J.)