

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

WRIT PETITION NO. 12285 OF 2017

Shri Lahu Barikrao Gadhave

.. Petitioner

Vs.

The State of Maharashtra and others

.. Respondents

...

Mr. Laxman Deshmukh for Petitioner.

Mr. Avinash N Naikwadi for Respondent No.4.

Mr. S.D. Rayrikar, AGP for Respondent No.1 to 3.

***CORAM : M.S. SANKLECHA, J.***

***DATE : 14<sup>th</sup> NOVEMBER, 2017.***

***P.C. :***

1. This petition under Article 227 of the Constitution of India, challenges the order dated 27<sup>th</sup> September, 2017 passed by the Respondent No.2 - Additional Divisional Commissioner, Pune. The impugned order dated 27<sup>th</sup> September, 2017 upholds the order dated 12<sup>th</sup> February, 2016 passed by the Respondent No.3 Additional Collector, Pune, holding the petitioner disqualified to continue as a member of the Village Panchayat of Balpudi, Tal. Indapur, Dist. Pune. This, in view of Section 14(1)(j-(3)) of the Maharashtra Village Panchayat Act, 1959 (Act) i.e petitioner has encroached upon the Government land / public property.

2. The grievance of Mr. Deshmukh, learned counsel appearing for the petitioner to the impugned order dated 27<sup>th</sup>

September, 2017, is essentially two fold as under :-

(a) The petitioner's name from the encroachment register being Form No.1-E was deleted on 19<sup>th</sup> August, 2015 by the Tehsildar, Indapur. Thus, it could not be held that petitioner is an encroacher on public property; and

(b) The encroachment, if any, has been done by the members of the petitioner's family and not by him. Therefore, disqualification under Section 14 (1)(j-3) of the Act, is not attracted. In support, reliance is placed upon the decision of this Court in *Kanchan Shivaji Atigre -V- Mahadeo Baban Ranjagane and others 2013(1) Maharashtra Law Journal 455*.

3. So far as first grievance of the petitioner is concerned, the impugned order records the fact that, the process of deleting the petitioner's name from the encroachment register has to be done in exercise of powers either under Section 247 or 258 of the Maharashtra Revenue Code, 1966 (Code). In terms of Section 247 of the Code, the grievance in respect of any mutation entry which shows a person to be an encroacher, would be an appeal under Section 247 of the Code or a review under Section 258 of the Code. In this case, the change in the mutation entry deleting the petitioner has been done in one day i.e 19 September, 2015 without following the procedure as provided in the Code. Thus, in

the above circumstances, the impugned order holds that the reliance upon deletion of the petitioner's name from the encroachment register, does not carry any conviction. This view is on facts a possible view would not warrant interference under Article 227 of the Constitution of India.

4. The second grievance is that the petitioner had not encroached upon the public land but it was his family members, the impugned order records the fact that the petitioner alongwith his family members had filed a suit against the Government, which is pending before the Civil Judge, Senior Division. In the suit, petitioner alongwith his family members prayed for protection of land in their possession. This, on the ground that the Government order of 1991 has regularized only a part of the encroached land while he and his family members are in possession of encroached area i.e area beyond the regularised area. The decision of this Court in *Kanchan Shivaji Atigre (Supra)* is completely distinguishable as it was not a case where the petitioner therein himself alongwith other family members had taken proceedings and filed a suit, seeking protection of encroached property. Therefore, the aforesaid decision would not apply to the facts of the present case. Thus, the view taken by the impugned order in the present facts, is a possible view and no interference, is called for.

5. In the above facts, the view taken by the respondent No.2 - Additional Divisional Commissioner in the impugned order dated 27<sup>th</sup> September, 2017 is a possible view and no interference under Article 227 of the Constitution of India is warranted.

6. Accordingly, petition dismissed. No order as to costs.

**(M. S. SANKLECHA, J.)**