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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.33885 OF 2017

Sou Anita Hemantkumar Barawade)
Age 41 years, occupation Agriculture)
R/O Shigaon, Tal. Walwa, Distt. Sangli.) ...Petitioner

....Versus....

1). The State of Maharashtra,)
Mantralaya, Mumbai – 400 032.)
2). The Divisional Commissioner, Pune)
3). The District Collector, Sangli)
4). Grampanchayat, Shigaon)
Tal. Walwa, District Sangli)
5). Rajendra Shivaji Pawar)
Age 36 years, Occupation Agriculture)
R/O Shigaon, Tal. Walwa,)
District Sangli.) ...Respondents

Mr.S.A. Rajeshirke for the Petitioner.

Mr.S.D. Rayrikar, A.G.P. for the State – Respondent Nos.1 to 3.

Mr.R.N. Gite for the Respondent No.5.

CORAM : R.D. DHANUKA, J.
DATE : 19TH DECEMBER, 2017.

ORAL JUDGMENT :-

1. Rule. Learned A.G.P. for the respondent nos.1 to 3 waive

service. The respondent no.4 has been served. Learned counsel for the respondent no.5 also waives service.

2. By consent of parties, who are present in Court heard finally.

3. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 19th August, 2017 passed by the learned Additional Commissioner, Pune allowing the appeal filed by the respondent no.5 thereby disqualifying the petitioner under section 14(1)(j-3) of the Mumbai Village Panchayat Act, 1958 and disqualifying her as a member of the respondent no.4 Grampanchayat. Some of the relevant facts for the purpose of deciding this petition are as under :-

4. The petitioner was elected by majority as the member of Shigaon Grampanchayat in the year 2012 on the seat reserved for Scheduled Caste Eoman Category and was thereafter elected as Sarpanch on the reserved post. On 12th April, 2016, the respondent no.5 filed an application before the respondent no.3 seeking disqualification of the petitioner on the ground that the husband of the petitioner had alleged to have committed an encroachment on the Government property. The said application was opposed by the petitioner by filing reply on 24th May, 2016. By an order dated 28th June, 2016, the respondent no.3 rejected the said application filed by

the respondent no.5 on the ground that for the alleged encroachment, if any, by the husband of the petitioner on the Government property, the petitioner could not have been disqualified as member of the Village Panchayat.

5. Being aggrieved by the said order dated 28th June, 2016, the respondent no.5 preferred an appeal before the learned Divisional Commissioner, Pune. By an order dated 19th August, 2017, the learned Divisional Commissioner, Pune allowed the said appeal filed by the respondent no.5 and declared the petitioner as disqualified as a member of the Village Panchayat. This order of the learned Divisional Commissioner, Pune is impugned by the petitioner in this petition.

6. Learned counsel appearing for the petitioner invited my attention to the annexures to the petition including the impugned order passed by the respondent nos.2 and 4. He also invited my attention to the decree passed by the learned 7th Joint Civil Judge, Junior Division, Islampur in Regular Civil Suit No.111 of 2016 which was filed by Mr.Mahesh B. More against Gramsevak and also against the husband of the petitioner *inter-alia* praying for perpetual injunction. He submits that even in the said suit, a finding was recorded that the husband of the petitioner has not carried out any encroachment on the Government property.

7. It is submitted by the learned counsel that even if the husband of the petitioner would have carried out an encroachment on the Government property, on that ground, the petitioner could not have been disqualified as a member under section 14(1)(j-3) of the Mumbai Village Panchayat Act, 1958. In support of this submission, he placed reliance on the unreported judgment of the Supreme Court delivered on 13th November, 2017 in case of **Sagar Pandurang Dhundare vs. Keshav A. Patil & Ors.** in Civil Appeal Nos(s).2306-2307 of 2017 with other connected matters. He also placed reliance on the unreported judgment of this Court delivered on 20th November, 2017 in case of **Sou.Rohini D. Zagade vs. Shri Sangramsinh M. Rajenimbalkar & Ors.** in Writ Petition No.11401 of 2017 holding that if any encroachment even if carried out by the husband of the member, such member cannot be disqualified on the ground of such alleged encroachment under section 14(1)(j-3) of the Mumbai Village Panchayat Act, 1958.

8. Learned counsel for the respondent no.5 on the other hand submits that the tenure of the petitioner as a member of the Village Panchayat is already completed and thus this petition has become infructuous. Learned A.G.P. supports the orders passed by the learned Divisional Commissioner, Pune and submits that there being no infirmity in the said order passed by the learned Divisional

Commissioner, Pune, this Court shall not interfere with the said order.

9. Learned counsel in rejoinder submits that though the tenure of the petitioner is over, any such findings and conclusions in the impugned order passed by the Divisional Commissioner, Pune thereby disqualifying the petitioner as a member of the Village Panchayat under section 14(1)(j-3) of the Mumbai Village Panchayat Act, 1958 if not set aside, it would affect the petitioner in future.

10. A perusal of the order passed by the respondent no.2 indicates that the learned Divisional Commissioner, Pune has disqualified the petitioner as a member of the Village Panchayat in question under section 14(1)(j-3) of the Mumbai Village Panchayat Act, 1958 only on the ground that the husband of the petitioner has carried out an encroachment on the Government property. Learned Divisional Commissioner, Pune has reversed the order passed by the respondent no.3, who had adverted the judgment of the Supreme Court and has followed the said judgment while rejecting the application for disqualification made by the respondent no.5.

11. The Supreme Court in case of **Sagar Pandurang Dhundare** (supra) has specifically dealt with and has construed the provisions of section 14(1)(j-3) of the Mumbai Village Panchayat Act, 1958 and after adverting to the various judgments of this Court, has

held that the person, who has encroached upon the Government land or public property, as the law now stands, for the purpose of disqualification, can only be the person, who has actually, for the first time, made the encroachment. The Supreme Court also dealt with the objects and the reasons of the amendment introduced in 2006 while dealing with the issue whether a family member of the person who has carried out such encroachment can be disqualified on the ground that his family member has carried out some encroachment on the Government property.

12. A learned single Judge of this Court in the judgment delivered on 20th November, 2017 in case of **Sou.Rohini D. Zagade** (supra) has adverted to the judgment of the Supreme Court in case of **Sagar Pandurang Dhundare** (supra) and has held that if the member himself has committed encroachment on a Government land and/or public property or an order has been passed against the member for encroachment and/or eviction under section 53(1) or 53(2) of the Act, an action of disqualification can be issued only against the member. In the facts of this case, admittedly it is not the case of the respondent no.5 that any encroachment on the Government property was carried out by the petitioner herself. The judgment of the Supreme Court in case of **Sagar Pandurang Dhundare** (supra) and the judgment of this Court in case of

Sou.Rohini D. Zagade (supra) would squarely apply to the facts of this case. I am respectfully bound by these two judgments.

13. In my view, since the petitioner had not allegedly carried out any encroachment upon the Government land or the public property, even if the husband of the petitioner would have carried out any such encroachment upon the Government land or the public property, the petitioner could not have been disqualified under section 14(1)(j-3) of the Mumbai Village Panchayat Act, 1958 on that ground. The impugned order passed by the respondent no.2, in my view, is thus passed in the teeth of the judgment delivered by the Supreme Court in case of **Sagar Pandurang Dhundare** (supra) and the judgment of this Court in case of **Sou.Rohini D. Zagade** (supra) and is *ex-facie* perverse and thus deserves to be set aside.

14. Insofar as the submission of the learned counsel for the respondent no.5 that since the term of the petitioner has expired and thus this petition shall be simplicitor dismissed as infructuous is concerned, I am not inclined to accept this submission of the learned counsel for the simple reason that the order of disqualification of the petitioner on such illegal reasoning if is allowed to remain on the record of the authorities, it would affect the petitioner in future. The submission of the learned counsel for the respondent no.5 is rejected.

15. I therefore, pass the following order :-

a). The Writ Petition (Stamp) No.33885 of 2017 is allowed in terms of prayer clauses (a) and (b). Rule is made absolute in aforesaid terms. There shall be no order as to costs.

16. If any authority proposes to take any action against the husband of the petitioner for allegedly carrying out any encroachment on the Government property, it is made clear that this order will not prevent the authorities to initiate such action and the same may be decided on its own merits.

(R.D. DHANUKA, J.)