

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION STAMP NO.35350 OF 2016**

Jijabai Tukaram Gaikwad

Age:- 60; Occupation:- Housewife;

Residing at Village:- Takave (Budruk),

Taluka:- Maval, District:- Pune

..Petitioner

Vs.

1. State of Maharashtra

Through :-

**(a) Office of Additional Commissioner,
Pune Division, Pune.**

(b) Office of Additional Collector, Pune.

2. Maruti Tukaram Asavale,

Age:- 50 years; Occupation:- Service;

3. Anil Bandu Asavale,

Age:- 35 years; Occupation:- Business;

4. Shivaji Chindhu Asavale,

Age:- 36 years; Occupation:- Agriculturist;

5. Rohidas Raghu Asavale,

Age:- 35 years; Occupation:- Agriculturist;

Residing at Village:- Takave (Budruk),

Taluka:- Maval, District:- Pune.

6. Gram Panchayat Takave,

Gram Vikas Officer, Gram Panchayat,

Having Office at Village:- Takave (Budruk),

Taluka:- Maval, District:- Pune.

..Respondents

**Mr. S. M. Gorwadkar, Senior Advocate a/w Mr. N. A. Mogre for the
Petitioner.**

Mr. S. D. Rayrikar, AGP for the Respondent Nos.1, 1(a) and 1(b).

Mr. Vaibhav V. Ugle for the Respondent Nos.2 to 4.

CORAM : R. M. SAVANT, J.
DATE : 27th JANUARY, 2017

ORAL JUDGMENT

1 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court is invoked against the order dated 20-12-2016 passed by the Additional Commissioner, Pune Division Pune, by which order the appeal filed by the Petitioner came to be dismissed and resultantly the order dated 25-10-2016 passed by the Additional Collector, Pune, disqualifying the Petitioner as a member of the Grampanchayat Takave (Budruk) Taluka-Maval, District Pune, came to be confirmed.

3 The facts necessary to be cited for adjudication of the above Petition in brief can be stated thus :

The Petitioner herein contested the elections to the group Grampanchayat Takave (Budruk) in the year 2015. The Petitioner was elected as member. The election to the post of Sarpanch of the said group Grampanchayat was held. The Petitioner was elected as a Sarpanch of the said Grampanchayat. It seems that the Petitioner herein owns certain properties in the jurisdiction of the said Grampanchayat as well as is a joint owner along

with her husband Tukaram Gaikwad in respect of house property No.636 in which admittedly a hotel is being run. It seems that the State Government vide resolution dated 20-11-2003 has provided for inclusion of the names of the spouse in the revenue record of the residential premises wherein the husband and the wife are residing together. It is the claim of the Petitioner that it is pursuant to the said resolution that her name came to be included qua the said house property No.636 along with her husband though the said property is a commercial property. In so far as the hotel business is concerned, it is the case of the Petitioner that all the licences in respect of the said hotel are in the name of the Petitioner's husband and that the property taxes are paid by him. The aforesaid facts have been adverted to as they are germane to the adjudication of the controversy involved in the present Petition.

4 The Respondent Nos.2 to 5 are the residents of the said village Takave and filed an application before the Additional Collector Pune seeking disqualification of the Petitioner under Section 14(h) of the Maharashtra Village Panchayat Act 1958 (for short the MVP Act). The disqualification is sought on the ground that the Petitioner had failed to pay taxes within a period of 3 months after they had become due in respect of the property being House No.636 wherein a hotel is being run. The said complaint of the Respondents triggered of an inquiry by the Block Development Officer (for short BDO), Panchayat Samiti, Taluka Maval. The BDO on 21-4-2015

submitted his report and in the said report mentions that at the time of filing of the nomination for 2015 elections that the Petitioner had not cleared the arrears of property tax in respect of House No.636 which is jointly in the name of the Petitioner and her husband. The report further stated that in respect of property No.31/3 which is standing in the sole name of the Petitioner all the arrears of taxes were cleared by the Petitioner before filing the nomination papers. It seems that report recommended action to be taken against the Petitioner under Section 14(h) of the MVP Act on account of the non payment of taxes within 3 months of the issuance of notice.

5 After the report was submitted by the BDO, the Petitioner it seems addressed a letter dated 20-5-2016 through her son who informed the Chief Executive Officer, Zilla Parishad Pune (Panchayat), making a grievance that the certificates issued by the Grampanchayat to the effect that no dues were due from the Petitioner was not at all considered by the BDO before submitting his report. It seems that the said letter dated 20-5-2016 along with two certificates dated 27-3-2015 and 8-7-2015 issued by the Grampanchayat were forwarded to the office of the Chief Executive Officer, Pune Zilla Parishad Pune. It seems that the Chief Executive Officer, Pune forwarded the said letter along with the report of the BDO to the Collector Pune. This was in view of the fact that it is the Collector who is vested with the powers to take action for disqualification. In so far as the report of the Chief Executive Officer is

concerned, the grievance of the Petitioner is that the said report also did not take into consideration the two certificates received by the Petitioner showing no tax liability on her part.

6 In view of the report submitted by the Chief Executive Officer to the Collector, the proceedings commenced before the Additional Collector Pune for disqualifying the Petitioner under Section 14(h) of the MVP Act. The Petitioner was issued a notice by the Additional Collector in response to the said notice the Petitioner filed her reply and pointed out that in respect of all the properties exclusively owned by her, there were no arrears of taxes. In so far as the joint property is concerned, the stand taken by the Petitioner was that the demand notice was never served on the Petitioner and therefore no action could be taken against the Petitioner under Section 14(h) of the MVP Act.

7 The Additional Collector adjudicated upon the said complaint of the Respondent Nos.3 to 5 herein and by his order dated 25-10-2016 allowed the said complaint. The Additional Collector went into the aspect of whether there were arrears of taxes in respect of the said House Property No.636. The Additional Collector observed that there were arrears from the year 2011-2012 to 2015-2016. It is only in the year 2015-2016 that the arrears were cleared and therefore the taxes were not paid within the time stipulated so as to get

out of the rigors of Section 14(h) of the said Act. The Additional Collector accordingly disqualified the Petitioner under Section 14(4) of the MVP Act.

8 The Petitioner aggrieved by the said order dated 25-10-2016 took exception to the same by filing an Appeal before the Additional Commissioner. The Additional Commissioner having regard to the material on record did not find any reason to disagree with the order passed by the Additional Collector and accordingly by the impugned order dated 20-12-2016 the Appeal filed by the Petitioner came to be dismissed. In the course of the adjudication of the Appeal filed by the Petitioner the Additional Commissioner has recorded the fact that the taxes in respect of the property in question were not paid from the year 2011-2012 and were paid in the year 2015-2016 i.e. on 18-2-2016 and 25-2-2016. In so far as the contention of the Petitioner that her name was involuntarily included against the House Property No.636 is concerned, the Additional Commissioner held that the Petitioner had not made any grievance about the inclusion of her name right from the beginning and therefore now cannot be heard to make a complaint about the same. The Additional Commissioner in her order has reproduced a table after paragraph 5.3(1) mentioning the year, date on which the notice was served in respect of the taxes and whether the taxes were paid for that particular year. In so far as the service of the notices are concerned, qua all the notices, the remark is that the said notices were served and that there is default in payment of the taxes

which as indicated above have been paid of at one time on 18-2-2016 and 25-2-2016. The Additional Commissioner therefore by the impugned order dated 20-12-2016 has dismissed the Appeal and has thereby confirmed the order passed by the Additional Collector disqualifying the Petitioner.

9 Heard the Learned Counsel for the parties.

10 The Learned Senior Counsel appearing for the Petitioner Mr. Gorwadkar would contend that the notice in respect of the taxes was never served upon the Petitioner and therefore the basic requirement for disqualifying the Petitioner under Section 14(h) does not exist and therefore the Petitioner could not have disqualified under the said provision. A reliance is sought to be placed on the judgment of a Division Bench of this Court in the matter of **Chandkhan Vs. W. N. Gound, Returning Officer & ors.**¹ and the judgment of a Learned Single Judge of this Court in the matter of **Gangubai Laxman Bansode & Ors. Vs. State of Maharashtra & Ors.**² It was also the contention of the Learned Senior Counsel that the Petitioner has nothing to do with the said House Property No.636 and that her name has been included by virtue of the Government Resolution dated 20-11-2013. It was the submission of the Learned Senior Counsel that the consequence of the provision being penal, the same would have to be given strict interpretation and if there no

1 1972 MhLJ 792

2 2008(1) MhLJ 619

compliance of the said provision in the matter of notice not being served upon the Petitioner, the Petitioner could not be unseated as Sarpanch of the Grampanchayat. It was lastly the submission of the Learned Counsel that though the Additional Commissioner had crystalised the issue as to whether the Petitioner was served, the said issue was not adjudicated upon by the Additional Commissioner.

11 Per contra, the Learned AGP Mr. Rayrikar appearing for the Respondent Nos.1, 1a & 1b and the Learned Counsel Mr. Ugle appearing for the Respondent Nos.2 to 4 support the orders passed by the Additional Collector and the Additional Commissioner. It was the submission of the Learned Counsel that the Petitioner could not take refuge behind the fact that the notice was not served upon her when in fact it was served upon her husband who is a joint owner. It was the submission of the Learned Counsel that as a Sarpanch the Petitioner could not feign ignorance of the fact that the property taxes were required to be paid in respect of House Property No.636 in which admittedly a hotel is being run.

12 Having heard the Learned Counsel for the parties, I have considered the rival contentions. The issue which arises is whether the Petitioner is liable to be disqualified under Section 14(h) of the MVP Act. It would therefore be apposite to refer to the said provision :

14(h)- fails to pay any tax or fee due to the Panchayat (or the Zilla Parishad within three months from the date on which the amount of such tax or fee is demanded and a bill for the purpose is duly served on him)

13 The disqualification under clause (h) is one of the disqualifications, for being a member as also to continue as such, which is posited in the said Section 14(h). In so far as the clause (h) is concerned, it is attracted when a person fails to pay any tax or fee due to the Panchayat or the Zilla Parishad within three months on the date on which the amount of such taxes or fee is demanded and the bill is served for the said purpose, is duly served on him. In the instant case, there is no dispute about the fact that the taxes which are remaining to be paid are in respect of House Property No.636 which is in the joint name of the Petitioner and her husband. In so far as the inclusion of the name of the Petitioner is concerned, except the ipse-dixy of the Learned Senior Counsel there is no material on record to indicate that the Petitioner's name was included pursuant to the said Government Resolution. It is required to be noted that the taxes in respect of the said House Property No.636 were defaulted right from the year 2011-2012 and were paid in lumpsum i.e. Rs.57,581/- on 18-2-2016 and Rs.50,008/- on 25-2-2016. The said facts are not disputed on behalf of the Petitioner. However, the contention of the Petitioner is that no notice was served upon her. It would have to be

borne in mind that the Petitioner is a Sarpanch of the said Grampanchayat Takave. The property is standing in the joint names of the Petitioner and her husband. There is no dispute about the fact that the notice was served upon the husband as recorded by both the authorities below in their impugned orders. The question is whether the Petitioner can take refuge behind the fact that the notice was not served personally on her though served on her husband. The answer to the said question would lie in the fact that the provisions whereby disqualifications have been provided have been introduced with the objects of bringing purity in elections and probity in public life. The Petitioner as a Sarpanch is therefore expected to set an example to the other villagers in the matter of fulfilling her obligations towards the Grampanchayat of which she is a Sarpanch. She therefore cannot take refuge behind the fact that no personal notice was served upon her. In my view since the notice was served upon the husband of the Petitioner in respect of taxes for the period over 5 years i.e. 2011-2012 to 2015-2016, it is impossible to believe or accept that the Petitioner was not aware of the non payment of the taxes of the House Property No.636 in which a hotel is being run. Hence knowledge of the service of the notice on the husband of the Petitioner would have to be attributed to the Petitioner. This is not a case where the notice has been served on any other adult member of the family, but notice has been served on the husband of the Petitioner who is a joint owner along with her. Hence in the facts of the present case the non-service of the notice would not make any

difference and service of notice on the husband of the Petitioner is sufficient compliance. Hence the Petitioner cannot escape the liability under Section 14(h) of the MVP Act. In my view therefore there is no merit in the contention urged on behalf of the Petitioner that since the notice was not personally served upon the Petitioner she could not be disqualified under Section 14(h) of the MVP Act.

14 Now coming to the Judgments (Supra) on which reliance has been placed by the Learned Senior Counsel for the Petitioner, in so far as judgment in Chandkhan's case is concerned, the issue before the Division Bench was whether the Petitioner Chandkhan could be disqualified under Section 14(h) for non payment of the fees towards the writ of demand. The Division Bench by adverting to Section 14(h) observed that the two conditions which must be satisfied before a person can be disqualified from being a member of a Panchayat are : (i) that he must have failed to pay any tax or fee due to the Panchayat or the Zilla Parishad within three months from the date on which the amount of such tax or fee is demanded and (ii) that a bill for the purpose is duly served on him. The Division Bench held that bill which is referred to in Section 14(h) is the one contemplated by Section 129(1), whereas Section 129(2) makes a reference to a Writ of demand. The Division Bench held reference to the bill in Section 14(h) is only the bill contemplated by Section 129(1) in respect of taxes and fees levied. Hence the

disqualification can be fastened upon only that person to whom the bill for the amount of tax or fee due from him is presented and such person has failed to pay the tax or fee due from him within 3 months. The Division Bench held that Section 14(h) does not refer to a writ of demand at all. The Division Bench therefore found fault with the Returning Officer and the Tahsildar in rejecting the nomination papers of the Petitioner Chandkhan and the other Petitioners. The Division Bench held that the elections were vitiated and accordingly set aside the elections.

15 In so far as the Judgment In Gangubai Bansode's case is concerned, the Learned Single Judge in the said case culled out the ingredients of Section 14(h) and one of the ingredients was that the failure in payment of House Property tax or fee shall be in relation to service of such bill of tax or fee on the person holding the office of Grampanchayat. Hence the Learned Judge held that the service of the bill of tax or fee has to be on the person holding the office of the Grampanchayat. In my view the said ingredient culled out in Gangubai Bansode's case would not in any manner further the case of the Petitioner in the facts of the present case where admittedly notice has been served upon the husband of the Petitioner and the property stands in the joint names of the Petitioner and her husband.

16 In the context of the disqualification under Section 14(h) it would

be apposite to refer to the judgment of the Division Bench of this Court in the matter of **Devidas Matiramji Surwade Vs. Additional Commissioner & Ors.**³ The disqualification in the said case was under Section 14(j-1) of the MVP Act. A contention was raised on behalf of the Petitioner that he was not the architect of the illegal construction carried out but was only residing in the premises and therefore would not attract the provision of Section 14(j-1) of the MVP Act. The said contention was negated by the Division Bench by referring to the object and reasons for the disqualifications provided under Section 14. The Division Bench on such consideration held that if such an interpretation as sought to be propounded on behalf of the Petitioner before them was to be accepted, then the provision for disqualification would be meaningless in the sense that the Government land would continue to remain encroached and the legal heirs or assignees or transferors would claim to be eligible for contesting elections. The Division Bench accordingly confirmed the order passed by the Learned Single Judge and dismissed the Petition and upheld the order of disqualification. Hence the Division Bench gave primacy to the object and reasons behind prescribing the disqualifications as contained in Section 14 of the MVP Act.

17 In my view, having regard to the facts as afore stated, there is no merit in the challenge to the orders impugned in the Petition. The orders therefore cannot be said to suffer from any error of jurisdiction or any other

³ (2013) 2 ABR 579

illegality or infirmity for this Court to interfere in its Writ Jurisdiction under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed. Rule discharged with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]