

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1749 OF 2018

SACHIN PITAMBAR SONWANE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri Dayama Nirmal R.
AGP for Respondents: Shri Bhagat N.T.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 31, 2018
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PER COURT :-

1 The Honourable Apex Court has now delivered its judgment in the case of Janabai Vs. Additional Commissioner and others - Civil Appeal No.6832 of 2018, decided on 19.9.2018 thereby concluding that the view taken in Sagar Pandurang Dhundare Vs. Keshar Aaba Patil [(2018) 1 SCC 340] was not the correct law. Consequentially, a person who has occupied encroached property or has inherited encroached property, notwithstanding whether he has directly caused the encroachment, would stand disqualified as he had occupied an encroached property on the date on which he was elected.

2 The impugned orders of the District Collector and the Additional Divisional Commissioner conclude that this petitioner was residing in the encroached house property, which encroachment was caused by his

father when his mother was a Sarpanch. The petitioner has taken a defense that he resides in House No.283, which is a rented premise and he does not live with his parents in the encroached property No. 1098.

3 The learned AGP has tendered an affidavit-in-reply of the Tahsildar, namely, Bhausahab Dadaji Kharat, dated 29.10.2018. He submits in paragraph No.6 onwards that this petitioner is now residing in House No.301 bearing property No.283. There is a leave and license agreement dated 1.10.2015 between the petitioner and the landlord. The date of purchase of the bond paper is 3.9.2015 and the opening sentence of the leave and license agreement mentions that this agreement is arrived at on 1.10.2015. Clauses 6, 13 and 14 of the said agreement mentions that the petitioner was residing in the rented premises from 1.10.2015. There is a scoring out of the signatures on the last page of the said agreement. The subsequent extension of agreements are on white sheets of paper with court fees stamps of Rs.100/- affixed thereon.

4 Considering the affidavit entered by the Tahsildar, it now needs to be gone into as to whether the Tahsildar has changed his stand by filing this affidavit contrary to the stand taken by him before the District Collector. The impugned order of the District Collector points out that this petitioner has contested the election by submitting a certificate that

he has a toilet which he is using in his own house bearing No.1098. The gram sevak of the Gram Panchayat had issued such a certificate on 15.7.2015 indicating that the petitioner is residing in the accommodation No.1098 and is using the toilet, which is constructed in his house. This declaration is made on an affidavit with the nomination form.

5 It is, therefore, obvious that the petitioner has attempted to mislead the authorities below and has also misled this Court by stating that he is residing in rented premises bearing House No.301 and he has nothing to do with the house property No.1098.

6 In view of the above, this petitioner does not deserve any leniency, much less any protection. For having played a fraud on the system, the case of this petitioner is squarely covered by the judgment delivered by the Honourable Apex Court in the matter of Kishore Samrite Vs. State of UP and others, (2013) 2 SCC 398 and Bhaskar Laxman Jadhav and Ors. Vs. Karamveer Kakasaheb Wagh Education Society and Ors. [AIR 2013 SC 523], wherein the Honourable Apex Court has held that a litigant who suppresses material facts or mislead the Court, should not be granted any relief.

7 When called upon to state as to why costs of Rs.3,00,000/-

should not be imposed on the petitioner for the fraud, learned Advocate sought a pass over till lunch to take instructions, whether his client would desire to withdraw this petition.

8 After lunch this matter has been called out. Learned counsel for the petitioner submits, on instructions, that the petitioner desires to withdraw this petition.

9 In view of the above, as the petitioner has accepted his disqualification, I am not passing further orders on imposition of costs.

10 This petition is, therefore, dismissed as withdrawn and the order of disqualification is sustained.

(RAVINDRA V. GHUGE, J.)

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