

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1414 OF 2018

SUNANDA NAMDEV PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Shri N.B. Suryawanshi
h/f. Shri S.N. Suryawanshi.
AGP for Respondent Nos. 1 & 2 : Shri S.K. Tambe.
Advocate for Respondent No. 3 : Shri Paresh B. Patil.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 07th February, 2018

PER COURT :

1. Learned counsel for the petitioner seeks leave to delete respondent No. 3, who is the Village Development Officer and is not a contesting respondent. Deletion is allowed at the risk of the petitioner. Deletion be carried out forthwith.

2. I have heard the submissions of the learned advocates for the petitioner, respondent No. 4 and the learned AGP on behalf of respondent Nos. 1 and 2.

3. The petitioner is aggrieved by the order dated 25/09/2017, passed by the District Collector, Jalgaon, thereby allowing the complaint filed by respondent No. 4 and disqualifying the petitioner as a Sarpanch under Section 14 (1) (j-3), for having encroached

upon the government land. The petitioner is also aggrieved by the order dated 16/01/2018, delivered by the Additional Commissioner, Nashik, rejecting her Gram Panchayat Appeal No. 593/2017.

4. I have considered the strenuous submissions of the learned advocates and have gone through the record.

5. I have considered the law laid down by the Hon'ble Apex Court in the matter of **Sagar Pandurang Dhundare Versus Keshav Aaba Patil [AIR 2017 Supreme Court 5420]**. The election which has been held today at 2.00 p.m., was permitted to be conducted and by the assistance of the learned AGP, it was directed that the result of the said election shall not be declared till this Court passes an order in this matter, today.

6. Post lunch, this matter has been once again taken up and the parties have been heard.

7. Since, I am remitting the matter back to the District Collector, Jalgaon/respondent No. 2 herein, for a fresh decision, I am not expressing any opinion about the rival contentions put forthwith by the litigating sides. However, the reasons for which I am passing this order, would follow hereunder in this order.

8. Respondent No. 4/complainant had lodged the complaint with the District Collector, contending that the petitioner/Sarpanch has indulged in different types of encroachments along with her husband. She was elected as a member of the Nagar Deola Gram Panchayat and subsequently, as a Sarpanch on 11/09/2015. Pursuant to the complaint by respondent No. 4/Sunil, the Block Development Officer, Panchayat Samiti, Pachora, conducted an enquiry upon being ordered to do so by the superior authority. He submitted his report dated 06/06/2016, indicating that the encroachment allegation with regard to house No. 842, to the extent of construction of Ota (Platform) and three steps covering the public Gutter, was noticed. Encroachment as regards a fabricated metal staircase from the residence of petitioner, landing on the public road, water connections unauthorizedly taken and a Tapri operated by the husband of the petitioner, were not noticed. As such, the whole issue turned upon the Ota and concretes steps said to be connecting the door steps of the petitioner's house, over a public Gutter.

9. The Hon'ble Apex Court in Sagar Pandurang Dhundare's case (Supra), has concluded that a notice with regard to the encroachment should be issued by the Panchayat or the concerned body as the case may be and after it is found that the encroachment

has indeed occurred, further steps for disqualification on the ground of encroachment could be initiated. This Court in the matter of **Sandhya Hemant Salunke Versus The State of Maharashtra and others, [2014 (5) Mh.L.J. 946]**, has taken a view that it needs to be identified as to who has committed the encroachment, whether the encroachment is at the behest of the petitioner and whether she has been enjoying the said property along with the encroached area.

10. The petitioner has consistently taken a stand that she has started residing in the said house after her marriage with Namdev Patil. The said house earlier belonged to the father and mother of her husband. Eventually, both have passed away and she is residing in the said house by virtue of the marriage with Namdev who has inherited the property.

11. Issue, therefore, is as to when was the encroachment caused and whether the said encroachment was committed years ago at the behest of the mother-in-law of the petitioner, as is the contention of the petitioner. Complainant Sunil, besides raising an issue about the encroachment, has not brought forth any such evidence which would indicate that the encroachment was committed during the tenure of the petitioner as a Sarpanch or during the tenure of her husband as a member of the Panchayat or his tenure as a Sarpanch

of the Panchayat. In the absence of such findings on facts, merely because Sunil has brought to the notice of the authority the construction of the Ota (Platform) and the three steps over the public Gutter, would not mean that the petitioner herself caused the said encroachment, as is the view taken by the Hon'ble Apex Court in Sagar Pandurang Dhundare's case (Supra).

12. Considering the above, this petition is partly allowed. The impugned orders dated 25/09/2017 and 16/01/2018 are quashed and set aside and Village Panchayat Dispute No. 94/2016 is remitted to respondent No. 2/District Collector for a hearing.

13. The litigating sides would appear before the District Collector on 23/02/2018 at 3.00 p.m. and thereafter shall abide by the dates of hearing in the matter. The District Collector would be at liberty to cause a fresh enquiry in order to find out when the encroachment had been caused, notwithstanding the fact that the petitioner contends that the said encroachment is completely removed in the year 2016. The District Collector has the mechanism to research as to when the encroachment was committed as observed above. It is expected that the said proceedings would be concluded on/or before 17/04/2018.

14. As such, the elections held today are rendered infructuous and the business transacted shall be of no consequence and would lose its efficacy. However, in order to ensure an uninfluenced investigation by the District Collector, the Administrator who is said to be incharge of the affairs of the Village Panchayat, would continue to exercise such authority till the decision of the District Collector and subject to further litigation, if any.

15. The petitioner as well as complainant Sunil will be at liberty to adduce fresh evidence, if they so desire. All contentions of the litigating sides are kept open with regard to the origin of the said encroachment.

(RAVINDRA V. GHUGE, J.)

S.P.C.