

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

28 WRIT PETITION NO. 6568 OF 2017

SATYABHAMA SANTOSH BARSE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

Advocate for Petitioners : Mr. Gaikwad Anil M.
AGP for Respondent Nos. 1 to 4: Mr. S.N. Morampalle
Advocate for Respondent No.5 : Mr. Savangikar Subhash K.

.....

CORAM : V. K. JADHAV, J.
DATED : 16th APRIL, 2018

PER COURT:-

1. Heard both the sides.
2. The issue raised in this writ petition is squarely covered by the Supreme Court judgment in the case of *Sagar Pandurang Dhundare Vs. Keshav Aaba Patil and Others* reported in *(2018)(1) Mh.L.J.* The petitioners are held to be disqualified on the ground that they have made an encroachment over the Government property situated in Village Vishnupuri, Taluka and District Nanded.

3. In case of **Sagar Pandurang Dhundare Vs. Keshav Aaba Patil and Others** referred (Supra) in paragraph no.15 and 16, the Supreme Court has made the following observations.

“15. From the Statements of Objects and Reasons for the amendment introduced in 2006, it is seen that the purpose was “to disqualify the person who has encroached upon the Government land or public property, from becoming member of the Panchayat or to continue as such”. 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. However, in view of Section 53(I) of the Act, in case a member has been punished for encroachment, he shall be dismissed. Similarly, a member against whom there is a final order of eviction under Section 53(2) or (2A), shall also not be entitled to continue as a member.

16. In case, the appellants suffer from any of the three situations indicated above, they shall be unseated. The rest is for the State for clarify by way of a proper amendment in case they really and truly want to achieve the laudable object of preventing persons with conflicting interest from becoming or continuing as members of the Panchayat. The extent of conflicting interest is also for the Legislature to specify.”

4. The Supreme Court has laid down three tests:

(I) 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.

- (II) In view of Section 53(I) of the Act, in case a member has been punished for encroachment, he shall be dismissed.
- (III) Similarly, a member against whom there is a final order of eviction under Section 53(2) or (2A), shall also not be entitled to continue as a member.

5. In the instant case, the present petitioners do not suffer from any of the three situations indicated above to unseat them. Hence, in view of the above I proceed to pass the following order:

ORDER

- I) Writ petition is hereby allowed in terms of prayer clause (B).
- II) Writ petition is accordingly disposed of. No costs.

(V. K. JADHAV, J.)

Muj/