IN THE HIGH COURT OF JUDICATURE AT BOMBAY, BENCH AT AURANGABAD

WRIT PETITION No. 13436 of 2017

1. Dilawar Mirza Beg,
age 37 years occupation business
R/o Varud Kazi Taluka and District Aurangabad

2. Rameshwar S/o Dadarao Dandge,
age 30 years occupation agriculture
R/o as above

3. Shaikh Raheman Shaikh Hamid,
age 29 years occupation and R/o as above

...Petitioners

VERSUS

1. The State of Maharashtra
through its Secretary,
Rural Development Department,
Mantralaya, Mumbai.

2. The Divisional Commissioner,
Divisional Commissioner Office,
Aurangabad.

3. The Additional Collector,
Collector Office, Aurangabad.

4. Sanjay S/o Nanasaheb Dandge,
age 39 years occupation agriculture
R/o Varud Kazi Taluka and District Aurangabad.

...Respondents

Mr E. S. Murge, Advocate for petitioner.
Mr S.N. Morampalle, Asstt. Govt. Pleader for respondents No.1 to 3
Mr S.B. Solanke, Advocate for respondent No.4

CORAM : SUNIL P. DESHMUKH, J.

DATE : 28th August, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned

counsel for appearing parties finally with consent.

2. Petitioners in present writ petition are before this court challenging propriety, legality and validity of order dated 26th October, 2017 passed by respondent No.2-Additional Divisional Commissioner, Aurangabad, dismissing appeal filed by present petitioners against order dated 28th November, 2016 passed by Additional Collector, Aurangabad.

3. After hearing learned counsel for parties and perusal of orders, it transpires that present petitioners had raised dispute for disqualification of respondent No.4, who was member and *Sarpanch* of *Gram-Panchayat*, Varud Kazi Taluka and District Aurangabad, contending that respondent No.4 incurs disqualification pursuant to section 14(1)(h) of the Maharashtra Village Panchayat Act, reading thus;

> " **Section 14 - Disqualifications**:- *(1) No person shall be a member of a panchayat continue as such, who -*
> *(h) 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 a bill for the purpose is duly served on him."*

4. It is the case of present petitioners that in the election held in August 2015 for membership of *Gram Panchayat*,

respondent No.4 had not been eligible to contest the same since he had been in arrears of payment of tax in respect of property bearing No. 116/3/2 situated at Varud Kazi for financial year 2015-2016 and, further that a notice of arrears in respect of said property had been issued to respondent No.4 by the *Gram Panchayat*.

5. Aforesaid case of petitioners had been resisted by respondent No.4 submitting that notice about falling in arrears in respect of property referred to had never been served on respondent No.4 and further that the Government had stayed recovery of arrears in respect of *Gram Panchayat* property for financial year 2015-2016 by issuing a circular dated 6th April, 2015. A report was directed to be prepared upon aforesaid dispute having been launched and in the report by the Block Development Officer, *Panchayat Samiti*, Aurangabad, it has been observed that there is no report indicating service of notice on property holders and further that respondent No.4 had relinquished his right in respect of the said property in favour of his brother and his brother had paid the tax in December 2015.

6. Having regard to aforesaid, Additional Collector had appreciated that allegations about respondent No.4 being in default of payment of tax in respect of property would not carry any substance and had dismissed the dispute. In appeal

therefrom, pursuant to section 15 of the Maharashtra Village Panchayat Act, the appellate authority as well concurred with the decision rendered by Additional Collector and had passed impugned order dated 26th October, 2017 finding that the report does not implicate respondent No.4 and further that the material on record does not support allegations and further that the property now being in the name of Aba Nana Dandge, who had paid taxes in respect of the same. It had been also referred to that circular dated 6th April, 2015 had stayed payment of *Gram Panchayat* taxes. The dispute and the appeal had lost significance, finding that having regard to nature of allegations about the information supplied being not correct, recourse to section 15 ought to have been taken and instead of it, dispute had been filed to dislodge respondent No.4.

7. Learned counsel for petitioners contends, may be there is no service of notice for payment of taxes for financial year 2015-2016 on record, yet, respondent No.4 has admitted that he had paid taxes for said financial year in respect of other property standing in his name. He, therefore, submits that it gives rise to a strong presumption that the petitioner ought to have received the notice, which is available on record and referred to in the report. He submits that in such a case, respondent no.4 shall not be allowed to sneak away, fallaciously contending that he had not received notice in respect of property bearing No. 116/3/2. He

therefore, urges to take proper and appropriate view emerging from the aforesaid circumstances.

8. On the other hand, learned counsel Mr Solanke for respondent No.4 submits that submission of tax having been paid in respect of some other property in *Gram Panchayat* for financial year 2015-2016 had been made for the first time at the appellate stage and that had never been foundation for disqualification in the dispute originally filed before the Collector. As such, at appellate stage, such a contention can hardly be available and respondent No.4 ought not to have been taken by surprise. He goes on to submit further that it is not a case of present petitioners about any notice having been issued in respect of other property and served on respondent No.4. He submits that having regard to that respondent No.4 has been elected in the democratic process, is considered to stand on higher footing and, as such, for casual approach and allegations his election as member of *Gram Panchayat* ought not be questioned, especially, while two authorities are concurrent on their decision about disqualification not having been incurred under section 14(1)(h) of the Maharashtra Village Panchayat Act.

9. One may have to take into account that two authorities hitherto, the original and the appellate, on the basis of material made available before them, have appreciated and considered that

the disqualification has not been incurred by respondent No.4. The authorities hitherto have taken into account that the material does not support the contentions about there being service of notice as required under section 14(1)(h) about non-payment of taxes of property. A presumption as contended on behalf of petitioners, that respondent No.4 has paid taxes in respect of other property standing in his name, does not satisfy requirement under section 14(1)(h) of service of notice for payment of taxes of property. The two authorities have found that there is no material placed in respect of service of notice for payment of taxes of property.

10. In the circumstances, the writ petition would not be said to carry any substance for causing interception in orders passed hitherto.

11. The writ petition, therefore, is dismissed.

12. Rule discharged.

(**SUNIL P. DESHMUKH**)
JUDGE.

Madkar