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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4647 OF 2018

Sampada Yogesh Waghdhare	...Petitioner.
VS	
The State of Maharashtra & Ors.	...Respondents

.....
Mr Pradeep D. Dalvi for the Petitioner.
Mr S.H.Kankal AGP for respondent nos.1 and 2/state.
Mr Harshad Bhadbhade a/w Harshad Sathe i/b Saurabh D.
Butala for Respondent No.3.
.....

**CORAM : R.D.DHANUKA, J.
APRIL 19, 2018.**

P.C. :

This Writ Petition is filed by the petitioner under Article 227 of the Constitution of India against the order dated 23rd March, 2018 passed by the learned Minister of State for Urban Development, Government of Maharashtra, Mantralaya, Mumbai confirming the order passed by the Collector, Ratnagiri dated 4th May, 2017.

2 The petitioner had contested the election of Lanja Nagar Panchayat in the month of January 2015 and was elected as a member of the said Nagar Panchayat. The

petitioner thereafter was elected as a President of the said Nagar Panchayat in the month of January-2015.

3 On 7th September, 2013, the husband of the petitioner Yogesh Waghdhare, who was the owner of the land bearing Gat.No. 1932-A/1/2 admeasuring 0.26 ares of village Lanja entered into a development agreement with a developer. The husband of the petitioner thereafter made an application (annexure **A-1**) to the Chief Officer, Nagar Panchayat, Lanja on 30th September, 2017 praying for permission to carry out the construction in accordance with Section 44(1) of the Maharashtra Regional and Town Planning Act, and Section 189 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965. It is the case of the petitioner that since the Chief Officer, Nagar Panchayat, Lanja did not grant any permission on the said application made under Section 44 read with other provisions within the time prescribed, there was a deemed permission to carry out the construction. The husband of the petitioner, accordingly, carried out the construction on the said plot through the said developer.

4 Respondent No.3 filed a complaint under Section 44(1) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 (for short “said Act”) to the Collector, Ratnagiri *inter alia* praying for disqualification of the petitioner in view of violation of Section 44(1) of the said Act. The Collector, Ratnagiri passed an order on 4th May, 2017 disqualifying the petitioner as a member of said Nagar Panchayat on the ground that the husband of the petitioner had carried out unauthorized construction. The said order was upheld by the learned Minister by an order dated 25th March, 2018.

5 Mr Dalvi, learned advocate for the petitioner invited my attention to some of the annexures to the writ petition and placed reliance on Section 44(1)(e) of the MRTP Act and would submit that the developer had made an application for carrying out the construction on the plot owned by the husband of the petitioner and the said permission not having been granted within the time prescribed under the M.R.T.P.,Act, the permission was deemed to have been granted. He submitted that the said

application was made by the developer during the tenure of the petitioner as a member of the said Nagar Panchayat. Since, there was a deemed permission, there was no unauthorized construction carried out by the husband of the petitioner. In support of this submission, learned advocate for the petitioner places reliance on the judgment of this Court in the case of **Javed Sheikh M. Patel Vs. State of Maharashtra** reported in **2009(3) Bom. C.R. 719**. He submitted that impugned orders passed by the learned Collector, Ratnagiri as well as by the learned Minister are in violation of the principles laid down by the Division Bench of this Court in the said judgment.

6 Learned counsel for Respondent No.2, on the other hand, invited my attention to the annexures A and B to the petition and would submit that the said application for permission to carry out the construction was made by the husband of the petitioner through an Architect after the date the petitioner was elected as member of the said Nagar Panchayat. He submits that no notice of availing benefit of such deemed permission was issued to the Nagar Panchayat

as contemplated under the provisions of the Standardized Development Control and Promotion Regulations for Municipal Councils and Nagar Panchayats in Maharashtra and more particularly Section 6.6.3. He submits that since no such notice of availing benefit of alleged deemed permission was issued to the Nagar Panchayat by the husband of the petitioner, the husband of the petitioner could not have carried out the construction and the same being unauthorized and having been carried out during the tenure of the petitioner as member of the Nagar Panchayat, Section 44(1)(e) of the said Act stood attracted. He submits that even the municipal council had issued a separate notice for action for such unauthorized construction to the husband of the petitioner.

7 Mr Dalvi, learned counsel for the petitioner in rejoinder placed reliance on paragraph 23 of the judgment of this Court in the case of **Javed** (supra) and would submit that section 44(1)(e) of the said Act being a penal provision the onus was on the respondent no.2 that the husband of the petitioner had carried out unauthorized construction during

the tenure of the membership of the petitioner of the said Nagar Panchayat.

8 It is not in dispute that the petitioner was elected as a member of the Nagar Panchayat prior to 11th February, 2015. The petitioner was thereafter elected as a President of the said Nagar Panchayat. A perusal of the annexure A annexed to Exh B to the petition clearly indicates that an application was made by the husband of the petitioner through an Architect to the Chief Officer, Nagar Panchayat, Lanja praying for permission to carry out the development on the plot of the land of the petitioner under Section 44(1) of M.R.T.P.Act and Section 189 of the said Act, 1965. It is not in dispute that the husband of the petitioner did not issue any notice to the Nagar Panchayat for availing benefit of the alleged deemed permission. Both the authorities below have recorded findings on facts in the impugned order that the husband of the petitioner could not take benefit of deemed permission without informing Municipal Council of availing of such benefit and thus the construction carried out by the husband of the petitioner was unauthorized. Learned

counsel for the petitioner does not dispute that the Nagar Panchayat also had issued a notice to the husband of the petitioner for carrying out an unauthorized construction.

9 Insofar as the judgment of Division Bench of this Court in the case of **Javed** (supra) relied upon by the petitioner is concerned, it is held by the Division Bench in the said judgment that the councillor is disqualified to hold office, as such if at any time during his term of office, he has constructed or constructs by himself, his spouse or his dependent any illegal or unauthorized structure violating the provisions of the said Act. It is further clarified in the said judgment that such unauthorized construction must have been made during the term of office of such councillor. It is not in dispute that the application for carrying out the construction under the provisions of M.R.T.P. Act was made for the first time by the husband of the petitioner after election of the petitioner as a member of the said Nagar Panchayat. It is thus clear beyond reasonable doubt that the husband of the petitioner had carried out unauthorized construction during the tenure of the petitioner as a member

of the Nagar Panchayat.

10 There is no dispute about the proposition of law as laid down by the Division Bench in the case of **Javed** (supra). However, in view of the fact that the findings of that fact rendered by two authorities below that the construction carried out by the husband of the petitioner was unauthorized and was admittedly carried out during the tenure of the membership of the petitioner, In my view the provisions of Section 44(1)(e) of the said Act attracted to the facts of this case.

11 I do not find any infirmity in the impugned orders passed by the authorities below. The Writ Petition is devoid of merit and is accordingly, dismissed. No order as to costs.

12 Mr Dalvi, learned counsel for the petitioner seeks continuation of the ad-interim relief granted by this court which is opposed by the learned counsel for respondent no.3.

13 This court having come to the conclusion that the husband of the petitioner had carried out unauthorized construction, I am not inclined to continue ad-interim

protection granted by this Court. The application is accordingly rejected.

(R.D.DHANUKA, J.)