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

WRIT PETITION NO. 8387 OF 2017

Harishchandra Sukhdeo Pune

.....Petitioner

V/s.

The State of Maharashtra and others

.....Respondents

Mr. B. K. Barve a/w Mr. Sandeep Barve, Mr. Santosh Wagh, Laxmi Ingale i/b Mr. B. K. Barve & Co.

Ms. Divya Parab i/b Shri. R. S. Gite for respondent no. 4, Mr. C. D. Mali AGP for the State

CORAM : NITIN W. SAMBRE, J.

DATE : 16th OCTOBER, 2018.

P.C.

The Additional Collector, Nashik registered Grampanchayat Dispute no. 12 of 2015 at the behest of respondent no. 4 wherein following allegations are made against the petitioner in support of case for disability from continuing as a Gram Panchayat member.

(a) Petitioner has carried out encroachment on the Grampanchayat Land Gat no. 222.

(b) The petitioner has fourth child from second wife after cut off date.

2 As such, petitioner has incurred disqualification under section 14 (J-3) and (J-1) respectively of the Bombay Village Panchayat Act 1958 (Hereinafter shall be referred to as 'the Act' for the sake of brevity). The learned Additional Collector by the order impugned dated 07/07/2015 inferred that the petitioner has encroached on the Grampanchayat owned land bearing Gat No. 222 and as such incurred disqualification under section 14 (J-3) of the Act. It was also held that 4th child was born to petitioner on 02/01/2014, as such he has incurred disability to continue as an Elected Member of the Gram Panchayat. Accordingly petitioner was declared disqualified on the said elected post of member of Grampanchayat. The Grampanchayat Appeal no. 24 of 2015 at the behest of the petitioner before the Divisional Commissioner, Nashik, suffered the fate of dismissal. As such, this petition.

3 The learned counsel for the petitioner based on the pleadings in

the petition would urge that the fourth child which is shown to have been born on 02/01/2014, has no relation whatsoever with the petitioner. According to him, the petitioner is lawfully married to Manisha and was blessed with two daughters and a son namely Chaya, Sheetal and Tushar respectively which is prior to the amendment to Section 14 (J-1) of the Maharashtra Village Panchayat Act. According to him, claim of respondent no. 4 of second marriage of the petitioner with Sunita @ Kantabai Laxman Aarkhade and birth of 4th Child Komal on 02/01/2014 is false and concocted story. He would submit that said Sunita has already given an affidavit to that effect and petitioner in categorical terms denied paternity of Komal. He submits that the entry in the birth certificate of alleged fourth child i.e. Komal, showing petitioner as her father is also far away from truth. He claims that he is not a biological father of the said child Komal.

4 He would then urge that there is no enquiry conducted in the matter of allegation of encroachment against the petitioner on the Grampanchayat Land and there is no material to infer the same.

5 The learned counsel for respondent no. 4 supports the impugned order and submits that there is enough material to justify the order of disqualification. The learned APP also supports the order impugned and submits that the petition is liable to be dismissed.

6 The record depicts that birth certificate of Komal born to Sunita Haribhau Pune speaks of name of the petitioner as father. So far as the said birth certificate is concerned, the petitioner has not taken any steps to correct the entries therein to delete his name as father of the child Komal. If the provisions of Section 112 of the Evidence Act, in the aforesaid background are appreciated, there is a presumption against the petitioner as regards the birth of the said child born out of marriage with Sunita. Such burden is not discharged by the petitioner by bringing on record any evidence contrary to the said birth certificate, so as to establish his contention of denial of paternity. But for affidavit of Sunita sworn on 05/06/2015, supporting the case of the petitioner, no other evidence is brought on record to prove the said claim.

7 In the aforesaid background, the claim of the petitioner in regard to denial of the paternity is liable to be rejected. Unless the entry in the birth certificate of Komal is corrected i.e. deletion of the name of the petitioner as her father therein, the said certificate will weigh against the petitioner.

8 That being so, the said issue is rightly answered against the petitioner.

9 As far as the disqualification of the petitioner under Clause 14 (J-3) is concerned, the documents which are brought on record before both the authorities, speaks of the land being mutated in the name of Grampanchayat. The Gramsevak of the Grampanchayat has also stated about the encroachment made by the petitioner on the said Gat no. 222. The Chief Executive Officer of the Zilla Parishad, Nashik has recommended action against the petitioner, he having drawn water from the two wells which are developed under Central Government Scheme. The Block Development Officer has also lodged a complaint

against the petitioner on 15/02/2011 based on to the encroachment made by him in addition to notice by Sarpanch of the Village Panchayat issued on 17/06/2010 asking the petitioner to remove encroachment.

10 In a report submitted by Tahsildar on the issue of encroachment made by the petitioner, it is categorically stated that the petitioner has encroached on the above referred Gat no. 222 whereas in the “गांव नमुना एक-इ” i.e. the encroachment register, at serial no. 30, the name of the petitioner is reflected as encroacher. Once the above referred material is brought on record which is formed to be a basis for ordering dis-entitlement of the petitioner to continue as an elected member of Grampanchayat, the petitioner has failed to demonstrate any other material or any other evidence so as to nullify or falsify the documentary evidence referred above by both the authorities while ordering his discontinuation. There is a presumption about valid entries in the official record and such presumption is not rebutted by the petitioner but for claiming that the prayer for measurement was not allowed.

11 In the aforesaid background, the order of disqualification under Section 16 r/w Section 14 (J-3) does not warrant any interference.

12 In the aforesaid circumstances, having noticed that the petitioner has incurred disqualification under section 16 pursuant to the provisions of Section 14 (J-1) as 4th child was born after the cut off date, in my opinion, there is no substance in the case sought to be put forth by the petitioner which warrants interference. Petition as such fails, dismissed.

13 Liberty to the petitioner to take such steps as are permissible in law to carry out appropriate corrections in the birth certificate of Komal wherein his name is reflected as father.

[NITIN W. SAMBRE, J.]