

Anand

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

WRIT PETITION NO. 8317 OF 2017

Ramesh Dnyandeo Pisal & anr. .Petitioners

Vs.

The State of Maharashtra & ors. .Respondents

Mr. R. S. Kadam, Advocate, for the Petitioners
Mr. P. J. Gavhane, AGP, for the Respondent – State
Mr. S. S. Salunkhe, Advocate, for the Respondent No. 7

CORAM : REVATI MOHITE DERE, J.

DATE : 29.08.2018

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner has impugned the Order dated 23.06.2017 passed by the learned Additional Commissioner, Pune Division, Pune, by which the Appeal filed by the Respondent No. 7 was allowed and his dis-qualification was set aside.

3. Learned counsel for the Petitioners submitted that as the father-in-law of the Respondent No. 7 had encroached on

Government land, the Respondent No. 7 was dis-qualified from contesting the election as a member of the Grampanchayat.

4. Learned counsel for the Respondent No. 7 opposed the Petition. He relied on the Judgment of the Apex Court in the case of *Sagar Pandurang Dhundare Vs. Keshav Aaba Patil and ors.*, reported in *2018(1) Mh. L. J. (S. C.) 1* as well as the Judgment of this Court rendered in *Shobha Pradeep Patil (Gaikwad) and others Vs. Additional Divisional Commissioner, Pune and others*, reported in *2018(4) Mh. L. J.*

5. Perused the papers. The Respondent No. 7 was elected to the post of Sarpanch of Grampanchayat Rise, Taluka – Purandar, Pune, in 2015. According to the learned counsel for the Petitioners, the Respondent No. 7 was staying in a joint family with her father-in-law and as the Respondent No. 7's father-in-law had encroached on Government land, the Respondent No. 7 stood dis-qualified, having regard to the provision of Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958. The Petitioners filed a complaint before the Additional Collector, Pune Division,

Pune seeking dis-qualification of the Respondent No. 7 from the post of Sarpanch on the said ground i. e. the Respondent No. 7's father-in-law – Dinkar Sakharam Kamthe had encroached property No. 379. The learned Additional Collector after hearing the parties, was pleased to allow the Petitioners' Application and as such dis-qualified the Respondent No. 7 from the post of Sarpanch and as a member of the Gram Panchayat. Being aggrieved by the said order, the Respondent No. 7 challenged the same before the learned Additional Commissioner, Pune Division, Pune, by way of an Appeal. The learned Additional Commissioner was pleased to allow the said Appeal vide Order dated 23.06.2017. The Petitioners have impugned this order in this Petition.

6. Learned counsel for the Respondent No. 7 submitted that the Additional Commissioner has in fact recorded a finding that the Respondent No. 7's father-in-law had not encroached on the Government land. Be that as it may, the issue raised in this Petition is squarely covered by the Judgment of the Apex Court in the case of *Sagar Dhundare (Supra)* as well as the Judgment of

this Court in the case of *Shobha Patil (Supra)*. The Apex Court in particular paragraphs 1, 3, 6, 10, 11 and 15 has held that 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. Admittedly, there are no allegations that Respondent No. 7 had encroached on Government land. The allegations are qua Respondent No. 7's father-in-law.

7. Considering the aforesaid legal position, nothing survives for consideration in the present Petition. The Petition is accordingly dismissed.

(REVATI MOHITE DERE, J.)