

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

WRIT PETITION NO. 8359 OF 2017
WITH
WRIT PETITION NO. 8365 OF 2017
WITH
WRIT PETITION NO. 8366 OF 2017
WITH
WRIT PETITION NO. 8367 OF 2017

Shri Ramesh Maruti Biranage

.. Petitioner

Vs.

The Additional Commissioner
(Revenue), Pune & Ors.

.. Respondents

...

Mr. Prajakt M. Arjunwadkar for the Petitioner in all Writ Petitions.

Mrs. K.R. Kulkarni, AGP for the Respondent Nos. 1 and 2 in all Writ Petitions.

Mr. Rahul S. Kadam for the Respondent Nos. 3 and 4 in all Writ Petitions.

CORAM : V.L.ACHLIYA, J.

DATE : 20th FEBRUARY, 2018.

P.C. :

1. Petitioner herein has preferred these Writ Petitions under Article 227 of Constitution of India challenging the identical orders dated 23.02.2016 passed in above mentioned petitions by the Additional Collector Kolhapur- Respondent No.2 which in turn confirmed in Appeals by the Additional Commissioner (Revenue), Pune Division, Pune. - Respondent No.1 vide orders dated 23.06.2017.

2. Heard the learned counsel for the petitioner, learned AGP for Respondent No.1, 2 and 4 as well as the counsel representing the Respondent No.3.

3. Facts in Brief

Petitioner herein preferred separate application under Section 16(2) of the Maharashtra Village Panchayats Act before the Respondent No.2 alleging therein that Respondent No.3 in respective petitions have made the encroachment over the Government Land/Public Property and thereby they have incurred disqualification, as contemplated under Section 14 (1) (j-3) of the Maharashtra Village Panchayats Act, 1958. It is alleged that they are disqualified to continue as the member of the village panchayat Takliwadi, Tal. Shirol, Dist. Kolhapur and sought the declaration to that effect. The Respondent No.3 in respective petitions resisted the application by denying the allegations made by the petitioner. On due consideration of rival contentions and the report obtained from Tehsildar Shirol, the Respondent No.2 reached to the conclusion that no case is made out to disqualify the Respondent No.3. It is observed that alleged act of encroachment regularised by charging the penalty to the father / father in law of Respondent No.3. It is specifically observed that the Respondent No.3 has not made any act amounting to encroachment over the Government land or Public Property on and after becoming member of village panchayat so as to attract the disqualification under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958. The order to this effect was passed on 23.02.2016. Being aggrieved by order dated 23.02.2016, the petitioner preferred appeals before the Respondent No.1 i.e Additional Commissioner (Revenue), Pune Division, Pune. The Respondent No.1 dismissed the appeals by order dated 23.06.2017. Being aggrieved the petitioner has preferred these petitions.

4. Learned counsel for the petitioner strenuously contended that both the authorities below have not taken into consideration the undisputed fact that the encroachment has been made over the gairan land by none else than the members of the family of Respondent No.3 in respective petitions. It is contended that as per the report filed by the Tahsildar, Shirol and resolutions passed by the Municipal Village Panchayat, it is evident that though the penalty has been levied and deposited by the father / father in law of respective Respondent No.3, the Kabja Patra and certificate is yet to be issued in their name. Which demonstrate that the occupation of respective Respondent No.3 in the petitions and their family members over the Government land is illegal and amounts to an act of encroachment over the Government land.

5. On the other hand, the learned counsel representing the Respondent No.3 opposed the petition with contention that there are concurrent findings of fact recorded by both the authority below in favour of Respondent No.3 in each of the petition. It is pointed out that undisputed fact emerges that no act of encroachment inviting disqualification under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958 was ever actually made on the part of the Respondent No.3 in respective petitions and the alleged act of encroachment have been attributed to the father / father-in-law and other family members of Respondent No.3 in respective petitions. While conducting inquiry, the Respondent No.2 has dealt this aspect in detail and observed that the alleged encroachment which was made by the father / father-in-law of Respondent No.3 in respective petitions have been regularized and consequential penalty also deposited by those persons much prior to election of Respondent No.3 in respective petitions as the members of Village Panchayat. By referring to Section

14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958, the learned counsel submits that in order to attract the disqualification under said provision the act of encroachment on Government Land or Public Property must have been committed by the persons sought to be declared as disqualified under Section 14(1)(j-3). In this context, the learned counsel has referred and relied upon the decision of the Apex Court in the case of **Sagar Pandurang Dhudare -Vs- Keshav Aaba Patil and others reported in 2018(1) Mah. Law Journal 1.**

6. On due consideration of submission advanced in the light of the impugned orders, I am of the view that no case is made out to call for exercise of jurisdiction under Article 227 of Constitution of India to interfere with the impugned orders. There are concurrent findings of facts recorded by the both the authority below. There is absolutely no perversity in the reasons and findings recorded by the both authority below. In absence of any illegality or perversity the impugned orders calls for no interference in writ jurisdiction.

7. Undisputedly, there are no specific allegations nor there is any evidence to support the allegation that the Respondent No.3 in respective petitions have committed an act amounting to encroachment over the Government Land or Public Property thereby to attract the disqualification under Section 14(1)(j-3) of Maharashtra Village Panchayats Act, 1958. On the contrary, there is no dispute as to fact that the alleged act amounting to encroachments were committed by the father / father in law or other member of the family of respective Respondent No.3 in petition and that too much prior to election of Respondent No.3. Pursuant to the policy decision of Government to extend the local limits of Gaathan area in the village, the State

Government decided to regularise such construction made outside the Gaothan area. Pursuant to such decision of the Government, the alleged encroachments came to be regularised by charging penalty. The penalty as ordered by Government has been deposited by the father/father-in-law of respective respondent No.3 in petitions. It appears that though the penalty has been deposited the requisite documents as Kabjapatra and certificate is yet to be issued by State Government which leads to filing of application under Section 16 of the Maharashtra Village Panchayats Act, 1958 seeking disqualification of Respondent No.3 in respective petitions. In this background, it can safely stated that no act of actual encroachment has been committed on the part of respondent No.3, so as to attract the disqualification under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958 by respective respondent No.3 in petitions. In the case of Sagar Pandurang Dhundare (supra) the Apex Court while dealing with purport of Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958 held in clear terms that the actual act of encroachment made by member alone invites disqualification and not the act of encroachment made by members of such members. In para 11 the Apex Court has observed as under:

“11. Thus, under the statutory scheme, an encroacher is liable to be evicted by the Panchayat and if the Panchayat fails, the Collector has to take action. The encroacher is also liable to be prosecuted. Encroachment is certainly to be condemned, the encroacher evicted and punished. Desirably, there should not be a member in the Panchayat with conflicting interest. But once a person is elected by the people, he can be unseated only in the manner provided under law. Even with the best of intention, if there is no statutory expression of the intention, the court cannot supply words for the sake of achieving the alleged

intention of the law maker. It is entirely within the realm of the law maker to express clearly what they intend. No doubt, there is a limited extent to which the court can interpret a provision so as to achieve the legislative intent. That is in a situation where such an interpretation is permissible, otherwise feasible, when it is absolutely necessary, and where the intention is clear but the words used are either inadequate or ambiguous. That is not the situation here. In the Act, wherever the law-makers wanted to specify family, they have done so. As noted by some of the judgments of the High Court, in Explanation 2 for Section 14(1)(h), the failure to pay any tax or fee due to the Panchayat or Zila Parishad by a member of a Hindu Undivided Family (HUF) or by a person belonging to a group has been expressly mentioned as a disqualification on others in the family or group. It is, therefore, evident that when the intent of the legislature was to disqualify a member for the act of his family, it has specifically done so. The Court, in the process of interpretation, cannot lay down what is desirable in its own opinion, if from the words used, the legislative intention is otherwise discernible.”

In para 15, the Apex Court has further observed as under:

“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(1) 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.”

8. Thus, in the light of undisputed fact that no act of actual encroachment over the Government being committed by Respondent No.3 in respective petitions, the order passed by both authorities below, calls for no interference in exercise of writ jurisdiction. However, it is clarified that the dismissal of the petition shall not preclude the petitioner to take recourse under law seeking removal of encroachment over the Government land by adopting appropriate remedy.

9. In the result, petitions stand dismissed, with no order as to costs.

(V. L. ACHLIYA, J.)