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

WRIT PETITION NO.11309 OF 2016

Vijay Sopan Dongare

..Petitioner

Versus

Ramesh Narayan Ghadge and others

..Respondents

Avinash Naikwadi, Advocate for the Petitioner.

C.D. Mali, AGP

Vikram Pai, Advocate for the Respondent No.2.

Tukaram Dinkar Shinde, Gramsevak, Loni Devkar Gram Panchayat of
Respondent No.2, Taluka – Indapur, District – Pune.

CORAM : REVATI MOHITE DERE, J.

DATED : 15th OCTOBER 2018

P.C.:

.. Heard learned counsel for the parties.

1] Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned Counsel for the Respondents waives service through their respective counsel.

2] By this Petition, the Petitioner has impugned the order dated 11th April, 2016 passed by the District Collector, Pune disqualifying the Petitioner under Section 14(1)(J)(3) of the Maharashtra Village Panchayat Act, 1958 as well as order dated 10th August 2016 passed by the Divisional

Commissioner, Pune, by which the learned Divisional Commissioner confirmed the order passed by the Learned District Collector dated 11th April 2016.

3] Learned counsel for the Petitioner submitted that both the Authorities had relied on four notices which are at page Nos.26 to 29, dated 27th June, 2011, 22nd April 1999, 8th March 2011 and 16th March 2011, allegedly issued by the Village Development Officer, when in fact there is no noting of issuance of the said notices in the Encroachment Register of the Gram Panchayat. He submitted that the Village Development Officer has issued a certificate to the Petitioner dated 22nd December 2016, wherein, it is stated that there is no entry of any such notice having been issued to the Petitioner in the Encroachment Register maintained by the Gram Panchayat.

4] Pursuant to the aforesaid submission, this Court vide order dated 9th October 2018 had directed the Respondent No.2 to produce the original records for verifying whether such notices were sent to the Petitioner or not. Mr. Pai, Learned counsel Mr. Pai appearing for the Respondent No.2 has produced the original records. Mr.Tukaram Shinde, Gramsevak of Loni Devkar Gram Panchayat, Taluka – Indapur, District – Pune is personally present with the original records. Mr. Pai on examining the said

records, in particular, the Encroachment Register makes a statement that there is no such entry made in the Encroachment Register of the Gram Panchayat vis-a-vis the said notices. He does not dispute the fact, that when any notice is issued for encroachment, there is a corresponding entry made in the Encroachment Register. He also does not dispute the fact, that the Petitioner's name has been recorded in the Record of Rights, in particular, in Extract 8 of the village records and that the Petitioner is being assessed for taxes for the said property since 1994.

5] Perused the papers. On 4th August 2015 elections were held for Loni Devkar Gram Panchayat, Taluka-Indapur, District -Pune, for the year 2015-2020. The Petitioner had contested the said election from Ward No.3. On 6th August, 2015 results of the said elections were declared and the Petitioner was declared elected from Ward No.3. It appears that the Respondent No.1 who had lost the elections against the Petitioner from Ward No.3, filed an application before the Respondent No.3 i.e. the District Collector under the Maharashtra Village Panchayat Act, alleging that the Petitioner had constructed his shop by encroaching on the land belonging to the Respondent No.2, without obtaining any prior permission from the Planning Authority. The Petitioner appeared in the said proceedings and filed his say. The Respondent No.1 did not lead any evidence. It appears

that the Respondent No.2 also did not lead any evidence and only produced photocopies of the four notices dated 27th June, 2011, 22nd April 1999, 8th March 2011 and 16th March 2011. The Petitioner brought to the notice of the Respondent No.3 that the property allegedly encroached is actually assessed to taxes and that the Petitioner had paid all the taxes as demanded from time to time. The Respondent No.3 allowed the application filed by the Respondent No.1 and as such disqualified the Petitioner under Section 14(1)(J)(3) of the Maharashtra Village Panchayat Act.

6] Being aggrieved by the said order dated 11th April 2016, the Petitioner challenged the same before the Respondent No.4 i.e. the Divisional Commissioner, Pune, by way of an Appeal. The Divisional Commissioner was pleased to reject the said Appeal vide order dated 10th August, 2016. Hence, this Petition.

7] The principal submission of the Petitioner is that the Petitioner was disqualified by both the Authorities under Section 14(1)(J)(3) of the Maharashtra Village Panchayat Act, relying on the alleged four notices sent by the Respondent No.2 to the Petitioner. As noted earlier, in view of the submission made by the Petitioner, the records of the Grampanchayat with

respect to the Petitioners case were called for. The Gramsevak of the Grampanchayat is personally present in the Court with the records. Mr. Pai, after verifying the Encroachment Register makes a statement that there is no entry of any of the four notices i.e. notices dated 27th June, 2011, 22nd April 1999, 8th March 2011 and 16th March 2011 in the Encroachment Register. He submits that as per the procedure of the Grampanchayat, whenever notices of encroachment are issued, a corresponding entry is made in the Encroachment Register. It is, thus evident that none of the notices allegedly issued by the Gram Panchayat are reflected in the Encroachment Register. Both the Authorities have relied only upon these four notices and have recorded a finding on the basis of the said four notices, that the Petitioner had encroached on government land. It is also not in dispute that the Petitioner's name is recorded in the Record of Rights i.e. Revenue Extract 8, of Village Panchayat. In the said Extract No.8, it is specifically recorded that the Petitioner is being assessed for taxes on the said property since 1994.

8] Mr. Pai, learned counsel for the Respondent No.2 is unable to show any document/record, evidencing that the Petitioner had encroached on government land.

9] Having regard to what is stated hereinabove, the Petition will have to succeed. Accordingly, the impugned order dated 11th April 2016 passed by the District Collector as well as the order dated 10th August 2016 passed by the Divisional Commissioner are quashed and set aside. Consequently, the disqualification of the Petitioner under Section 14(1)(J)(3) of the Maharashtra Village Panchayat Act is also quashed and set aside.

10 Rule is made absolute on the above terms. Accordingly, the Petition is disposed off.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)