

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 378 OF 2018****Laxman Baban Jadhav****..... Petitioner****VERSUS****The Additional Commissioner & Ors.****..... Respondents**

Mr.Dilip Bodake for the Petitioner.

Mr.S.H.Kankal, A.G.P. for the State, Respondent nos.1 and 2.

Mr.Purushottam Chavan for the Respondent no.4.

CORAM : R.D. DHANUKA, J.**DATE : 10th APRIL, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 16th June, 2017 passed by the Additional Commissioner, Pune Division, Pune in Grampanchayat Appeal No.19 of 2016.

2. The respondent no.4 had contested the election of the Grampanchayat and was elected as a member of Grampanchayat Nere, from Ward No.4 for five years from 4th August,2015. The petitioner has filed a Dispute Application No.75 of 2015 before the learned Additional Collector, Pune under section 14(1)(j-3) and section 16 of Maharashtra Village Panchayat Act, 1958 for disqualification of the respondent no.4 on the ground that the family members of the respondent no.4 had carried out encroachment on the Government land. The learned Additional Collector passed an order on 18th

February,2016 allowing the said dispute application filed by the petitioner. On 5th March,2016 the respondent no.4 preferred an appeal i.e. Grampanchayat Appeal No.19 of 2016 under section 16(2) of the Village Panchayat Act before the Additional Commissioner, Pune Division, Pune. On 16th June,2017, the Additional Commissioner, Pune Division, Pune allowed the said appeal filed by the respondent no.4 and has set aside the order passed by the learned Additional Collector of 18th February,2016.

3. Mr.Bodake, learned counsel for the petitioner invited my attention to the findings rendered by the learned Additional Collector and also by the Additional Commissioner. He submits that though the encroachment was carried out by the family members of the respondent no.4 since the respondent no.4 was admittedly staying in the said premises, she was disqualified under section 14(1) (j-3). The learned Collector was justified in disqualifying the the respondent no.4 from the membership of the Grampanchayat. He submits that the learned Additional Commissioner thus could not have set aside the order passed by the learned Additional Collector.

4. Learned counsel for the respondent no.4 and the learned A.G.P., for learned nos. 1 and 2 invited my attention to the findings rendered by the learned Additional Commissioner. They also placed reliance on the judgment of this court in case of **Sagar Pandurang Dhundare vs. Keshav Aaba Patil and others, AIR 2017 SC 5420** and in particular paragraphs 5, 7 and 9. It is submitted that even if the family member of the respondent no.4 has carried out any encroachment on the

Government land that would not make that member of the Grampanchayat disqualified under section 14(1) (j-3).

5. A perusal of the order passed by the learned Additional Collector indicates that the respondent no.4 was disqualified on the ground that the family members of respondent no.4 had carried out encroachment on the Government land. There was no finding in the said order that the encroachment was carried out by the respondent no.4 on the Government land. The learned Additional Commissioner, Pune has set aside the order passed by the learned Additional Collector on the ground that the encroachment was not carried out by the respondent no.4.

6. Supreme Court in case of **Sagar Pandurang Dhundare** (supra) 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. In my view, the order passed by the learned Additional Collector was in the teeth of the principles of law laid down by the Supreme Court in case of **Sagar Pandurang Dhundare** (supra). The impugned order passed by the learned Additional Commissioner is in conformity with the principles of law laid down by the Supreme Court in case of **Sagar Pandurang Dhundare** (supra).

7. In my view even if the family members of the respondent no.4 have carried out any encroachment on the Government land, the same

would not disqualify the respondent no.4 from the membership of the Village Panchayat under section 14(1)(j-3) of Maharashtra Village Panchayat Act, 1958. The principles of law laid down by the Supreme Court in case of ***Sagar Pandurang Dhundare*** (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment. In my view, there is no infirmity in the order passed by the learned Additional Commissioner.

8. Writ petition is devoid of merit and is accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]