

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAO) NO. 1874 OF 2017

IN

M.C.A. ST. NO. 27345 OF 2017 (R)

IN

WRIT PETITION NO.6930 OF 2016(D)

(ASIA PARVEEN MUMTAZ HUSSAIN...VS.. THE ADDITIONAL COMMISSIONER, AMRAVATI &
OTHERS.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.M.Sudame, Advocate for Applicant.
Shri A.M.Kadukar, A.G.P. for Respondent Nos. 1 & 4.

CORAM : Z.A.HAQ, J.

DATED : JANUARY 30, 2018.

CAO NO.1874/2017.

For the reasons stated in the application, delay of
65 days in filing Miscellaneous Civil Application is condoned.

The civil application is allowed accordingly.

M.C.A. ST. NO. 27345/2017.

Though the notice of Civil Application No.1874 of
2017 is served on the non-applicants and along with it copy
of this Misc. Civil Application is also served as per the order
passed by this Court on 21st December, 2017, none appears
for the non-applicant Nos. 2 and 3.

Heard Shri A.M. Sudame, advocate for the
applicant and Shri A.M. Kadukar, A.G.P. for the non-applicant
Nos. 1 and 4.

The applicant seeks review of the order passed by this Court in Writ Petition No.6930 of 2016 on 15th September, 2017 by which the order passed by the subordinate authorities disqualifying the petitioner from continuing as member of the Gram Panchayat is maintained. The applicant is disqualified under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958 on the ground that father-in-law of the petitioner has encroached on the government land. The learned single Judge dismissed the writ petition filed by the applicant, relying on the judgment given by Division Bench of this Court in the case of *Devidas Vs. Additional Commissioner*, reported in **2017(1) Mh.L.J. 102**. The judgment given in the case of *Devidas Surwade* is impliedly overruled by the Hon'ble Supreme Court in the case of *Sagar Pandurang Dhundare Vs. Keshav Aaba Patil*, reported in **(2018) 1 SCC 340**.

The applicant seeks review of the order passed in Writ Petition No.6930 of 2016, relying on the above referred judgment of the Hon'ble Supreme Court.

The learned A.G.P. opposed the application filed by the applicant, submitting that the above referred judgment given by the Hon'ble Supreme Court is prospective and cannot be applied with retrospective effect.

The learned advocate for the applicant has rightly relied on the judgment given in the case of *B.A. Linga Reddy Vs. Karnataka State Transport Authority*, reported in **(2015) 4 SCC 515** in which the law on the point is discussed and held that the law declared by the Court will have retrospective

effect if not declared so specifically. Considering the proposition laid down in the judgment given in the case of *B.A.Linga Reddy* (supra) it is to be held that the judgment given by the Hon'ble Supreme Court in Civil Appeal No.2306-307 of 2017 will have retrospective effect.

It being so, I find that the order passed in Writ Petition No. 6930 of 2016 on 15th September, 2017 has to be recalled.

Hence, the following order:

- i) The order passed in Writ Petition No. 6930 of 2016 on 15th September, 2017 is recalled.
- ii) The writ petition is restored.
- iii) The miscellaneous Civil Application is **allowed** accordingly.

W.P. NO. 6930/2016.

List the petition for consideration on **6th February, 2018.**

JUDGE