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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.1392 OF 2018

Smt. Meenabai Fattelal Patil,
Age 47 years, Occ. Household,
R/o Eklahare, Tq. Amalner,
District Jalgaon

... PETITIONER

VERSUS

1. The Divisional Commissioner,
Nashik Division, Nashik
2. The Collector, Jalgaon,
District Jalgaon
3. Dayaram Madhav Patil,
Age major, Occ. Nil,
R/o Eklahare, Tq. Amalner,
District Jalgaon
4. Dnyaneshwar Vinayak Patil,
Age major, Occ. Nil,
R/o Eklahare, Tq. Amalner,
District Jalgaon
5. Gram Sevak,
Gram Panchayat, Eklahare,
Tq. Amalner, District Jalgaon

... RESPONDENTS

.....
Shri V.D. Hon, Senior Counsel with
Shri A.V. Hon, Advocate for petitioner
Shri S.K. Tambe, A.G.P. for respondents No.1 and 2
Shri Prakashsing Patil, Advocate for respondent No.3

((2))

Shri M.G. Kochar, Advocate for respondent No.4
Shri R.S. Deshmukh Amicus Curiae to assist the Court

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CORAM: R.G. AVACHAT, J.

Date of reserving judgment : 14th October, 2019

Date of pronouncing judgment : 18th October, 2019

JUDGMENT:

Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel for the parties.

2. The challenge in this Writ Petition is to the order dated 25.9.2017, passed by District Collector, Jalgaon in Grampanchayat Dispute – Application No.100/2017, and the order dated 1.1.2018, passed by the Divisional Commissioner, Nashik Division, Nashik in Grampanchayat Appeal No.595/2017.

By the impugned order dated 25.9.2017, the petitioner was declared to be disqualified from being a Member of the Village Panchayat, and consequently, to hold the office of

the Sarpanch. The Additional Divisional Commissioner, Nashik has affirmed the order passed by the Collector, Jalgaon. The petitioner has, therefore, preferred the present Writ Petition.

3. The petitioner is an elected member of Grampanchayat, Eklahare, Taluka Amalner, District Jalgaon, for the term 2015-2020. Her husband is said to be an agriculturist by profession. Agricultural lands Gat No.101/2C, 101/1A, 101/1B and 94/1 are owned and possessed by the petitioner's family. The said agricultural lands abut the Government lands, comprised in Gut No.275/1 and 275/2.

4. The respondents No.3 and 4 are stated to have been political rivals of the petitioner and her husband. Both of them made a complaint to the Collector, alleging the petitioner's husband to have made encroachment on the Government land in Gat No.275/1 and 275/2, and urged for disqualifying the petitioner. The Collector, Jalgaon was pleased to disqualify the petitioner after holding an enquiry into the complaint made by the respondents No.3 and 4.

5. Shri V.D. Hon, learned Senior Counsel appearing for the petitioner, would submit that, the petitioner's husband had moved an application for measurement of the lands held by him with a view to bring on record that he has not made any encroachment on the Government land. Pursuant to the application for measurement, the Surveyor had visited the site. Some of the villagers made scene at the time of the proposed measurement and ultimately, the measurement could not take place. The learned Senior Counsel also brought to my notice certain communication made by the Gramsevak to suggest that the petitioner's husband did not make any encroachment on the Government land. Whatever encroachment was alleged to have been made, has been removed. According to learned Senior Counsel, the respondents No.3 and 4 are the political rivals of the petitioner's husband, the complaint was made out of a grudge.

6. Learned A.G.P. representing respondents No.1 and 2 would, on the other hand, submit that, the name of the petitioner's husband has been recorded in the list of the encroachers on the Government land. The said list was

prepared way back in 2013 i.e. about two years before the Grampanchayat elections. The petitioner was occupying the encroached portion of the Government land along with her husband. Although the encroachment has now been removed, the disqualification incurred by the petitioner would not be washed away.

7. Learned counsel appearing for respondents No.3 and 4 made submissions consistent with the submissions made by learned A.G.P.

Shri Rajendra Deshmukh, learned Counsel has assisted this Court in this matter. His assistance is appreciated.

8. The two authorities below namely the Collector and the Additional Commissioner have observed the petitioner's husband to have encroached upon the Government land. In exercise of jurisdiction under Article 227 of the Constitution of India, I do not propose to re-open the finding of fact recorded by these authorities.

9. It is the case of the petitioner that, the respondents No.3 and 4 made a false complaint post election of the petitioner. The record, however, indicates that, the name of the petitioner's husband did figure in the list of encroachers on the Government land prepared in 2013 i.e. two years before the election for the Village Panchayat was held. It was also tried to be shown that, the petitioner had moved an application for measurement of the lands of her husband with a view to show that no encroachment had in fact been made. True, there is record to indicate that, such application was moved. The measurement could not be made since some of the villagers made scene at the spot. There is, however, a counter affidavit of Dayaram Patil, stating that, measurement could not be drawn due to thorny bushes in the land. Be that as it may. The name of the petitioner's husband appears in the list of encroachers on Gaothan land. The petitioner produced on record a certificate issued by Gram Sevak on 6.10.2018. The certificate is to the effect that Fattelal Patil, the husband of the petitioner, had made an encroachment on Gaothan land in Gut No.275/1 and 275/2 by raising tin shed. The certificate further states that, the husband of the petitioner has removed the said encroachment

in March 2018. Thus, the petitioner admits that, her husband had made an encroachment on the Gaothan land.

10. The question is, whether removal of the encroachment by the petitioner's husband himself is of any consequence.

11. Section 14(j-3) of the Maharashtra Village Panchayats Act (for short the Act) provides that, no person shall be a member of a Panchayat or continue as such, who has encroached upon Government land or public property.

The aforesaid provision unequivocally indicates that no sooner a person encroaches upon the Government land or public property, he becomes ineligible to be a member of the Panchayat or continue as such. The disqualification to continue as a Member of Village Panchayat would continue irrespective of a fact of removal of the encroachment.

12. True, the petitioner is not alleged to have made an encroachment. She however, did not deny to have shared

along with her husband, the alleged encroached property. In para 3 of the petition, it is mentioned :-

“The petitioner's family has the property in the gaothan area of the village bearing Gut No.101/2C, 101/1A, 101/B and 94/1. The petitioner's house is in the property 102. Thus, the petitioner's property are just adjacent to the property Gut No.275/1 and 275/2 which is Government land.”

13. The Hon'ble Supreme Court, in case of **Janabai Vs. Additional Commissioner and others** (Civil Appeal No.6832/2018), in para Nos.26, 27, 28 and 29 observed :

“26. Section 53 that occurs in Chapter III deals with obstruction and encroachment upon public streets and upon sites. It confers power on the Panchayat to remove such obstruction or encroachment or to remove any unauthorizedly cultivated grazing land or any other land. That apart, it also empowers the Panchayat to remove any unauthorized obstruction or encroachment of the like nature in or upon a site not being private property. The distinction has been made between

private property and public property. It has also protected the property that vests with the Panchayat. If the Panchayat does not carry out its responsibility of removing the obstruction or encroachment after it has been brought to its notice in accordance with the procedure prescribed therein, the higher authorities, namely, the Collector and the Commissioner, have been conferred with the power to cause removal. There is a provision for imposition of fine for commission of offence.

27. On a schematic appreciation of the Act including Sections 10, 11 and 53, it is quite vivid that the Members elected in Panchayat are duty bound to see to it that the obstruction or encroachment upon any land, which is not a private property but Government land or a public property, should be removed and prosecution should be levied against the person creating such obstruction or encroachment.

28. Section 184 of the Act provides that every Member of the Panchayat and every officer and servant maintained by or being employed under the Panchayat shall be deemed to be a public servant for the purpose of Section 21 of the Indian Penal Code. Analysing the various provisions, the learned Single Judge in **Sandip Ganpatrao Bhadade** (supra) has opined :-

“11. It is in the background of the aforesaid provisions of law, that the provisions of qualifications and disqualifications to vote, contest the election and being continued as a member of Panchayat, are required to be considered. Section 13 of the said Act deals with the persons qualified to vote and be elected. The persons incurring any disqualification under the provisions of the said Act are neither qualified to vote nor to be elected as a Member of a Panchayat. Section 14 deals with different kinds of disqualifications, as stipulated in clauses (a) to (k) under sub-section (1), which operate against two kinds of persons - (i) who proposes to become a member of a Panchayat, and (ii) who has become a member of a Panchayat. If a person has incurred any one or more disqualifications, then he is prohibited from becoming a member of a Panchayat, and if becomes a member of a Panchayat, then he is not entitled to continue as such. The disqualification under Section 14 is in respect of the acts, events, deeds, misdeeds, transactions, etc., which have not been done, happened or occurred before entering into the office as a member of a Panchayat as well as those which take place during continuance as a member of a Panchayat.”

And again :--

“13. The very object of introducing the provision of disqualification under Section 14 (1)(j-3) of the said Act is to avoid the conflict of interest by prohibiting the persons, who are the encroachers upon the Government land or public property to get elected or

continued as a member of the Panchayat, which is democratically elected body of the villagers. It is beyond comprehension to assume that a person under statutory obligation or a duty to protect the Government land or public property from encroachment, commits an act of such an encroachment. To permit person, who proposes to become a member or becomes a member of the Panchayat to be the encroacher upon the Government land to public property, would be anathematic, acting in breach of statutory duty, exposing himself to prosecution under sub-sections (1) and (4) of Section 53, resulting ultimately in losing the protection under Section 180 read with Section 184 of the said Act. It is in this context that the text of the disqualification under Section 14(1)(j-3) of the said act is required to be analyzed and interpreted."

In the case of **Devidas Surwade** (supra), it has been clearly stated, as noticed earlier, that the term 'person' has to include the legal heirs, if any, of the encroacher who continue to occupy the government land. Emphasis has been laid on encroachment and continued encroachment. After the said Division Bench judgment, number of learned Single Judges have adopted a different approach without noticing the judgment which is against judicial discipline.

29. We may note here with profit that the word

'person' as used in Section 14(1)(j-3) is not to be so narrowly construed as a consequence of which the basic issue of "encroachment" in the context of disqualification becomes absolutely redundant. The legislative intendment, as we perceive, is that encroachment or unauthorized occupation has to be viewed very strictly and Section 53, therefore, provides for imposition of daily fine. It is also to be borne in mind that it is the Panchayat that has been conferred with the power to remove the encroachment. It is the statutory obligation on the part of the Panchayat to protect the interest of the properties belonging to it. If a member remains in occupation of an encroached property, he/she has a conflict of interest. If an interpretation is placed that it is the first encroacher or the encroachment made by the person alone who would suffer a disqualification, it would lead to an absurdity. The concept of purposive interpretation would impel us to hold that when a person shares an encroached property by residing there and there is continuance, he/she has to be treated as disqualified. Such an interpretation subserves the real warrant of the provision.. . . ."

14. In view of the aforesaid, this Court does not find any reason to interfere with the impugned order. The Writ Petition, therefore, fails. The same is dismissed. Rule discharged.

At the request of learned counsel for the petitioner, the operation of this order is stayed for a period of six weeks from today.

15. The amount of Rs.1,00,000/- deposited by the petitioner be returned to her.

(R.G. AVACHAT)
JUDGE

fmp/-