

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

WRIT PETITION NO.11259 OF 2018

Savita Devidas Adhane,
Age 37 years, Occ. Social Worker
and Sarpanch, R/o Viramgaon,
Tq. Khultabad, Dist. Aurangabad.

..Petitioner

Versus

1. The State of Maharashtra
(Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai).

2. The District Collector,
Aurangabad.

3. The Additional Divisional Commissioner,
Aurangabad Division, Aurangabad.

4. Sanjay Vithal Adhane
age 32 years, Occ. Agriculture,
R/o Viramgaon, Tq. Khultabad,
Dist. Aurangabad.

5. The Tahsildar,
Tahsil Office Khultabad,
Tq. Khultabad, Dist. Aurangabad.

6. The Block Development Officer,
Panchayat Samiti, Khultabad,
Tq. Khultabad, Dist. Aurangabad.

7. The Gram Panchayat, Viramgaon
Tq. Khultabad, Dist. Aurangabad
Through it's Gram Sevak.

..Respondents

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Advocate for Petitioner : Shri Bondar U.B.
AGP for Respondents 1 to 3 & 5 : Shri Munde S.W.
Advocate for Respondent 4 : Shri Thombre S.S.
Advocate for Respondent 6 : Shri Sawant E.P.
Advocate for Respondent 7 : Shri Kamble Shirish M.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: April 10, 2019

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ORAL JUDGMENT:-

1. Heard the learned counsel for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final hearing.
4. On 10.10.2018, I had passed the following order, while issuing notices:-

" 1 The Petitioner, who is disqualified as a Sarpanch of Village Panchayat, Viramgaon, Taluka Khultabad, District Aurangabad, seeks to challenge the decision of the District Collector, Aurangabad dated 04.08.2018 by which, she has been disqualified as a Sarpanch under Section 14-1(j-3) of the Maharashtra Village Panchayats Act. The Petitioner is also aggrieved by the order of the Additional Divisional Commissioner dated 04.10.2018 by which, the appeal preferred by the Petitioner has been dismissed. Consequentially, the Petitioner is no longer the Sarpanch and the charge is presently handed over to the Up-Sarpanch.

2 *The learned Advocate for the Petitioner has strenuously drawn my attention to the dates and sequence of events that have occurred prior to the Petitioner becoming the Sarpanch for the first time in September, 2012 till 2017 and then, getting elected directly as a Sarpanch from September, 2017 for the term which is to end in September, 2022 (It should have been 2022).*

3 *It is pointed out that Shrisangmeshwar Dudh Utpadak Sahakari Sanstha Maryadit, Viramgaon (hereinafter to be referred as "the Society") was registered on 01.12.1977 under the Maharashtra Cooperative Societies Act, 1960. At some point in time, the husband of the Petitioner had been the Chairman of the Society from 1977 till 2007. Instances of misuse of powers and position as a Sarpanch have been alleged by Respondent No.4. The District Collector has concluded that since the Petitioner's husband is the Chairman of the said Society and certain benefits have been extended to the said Society by way of allotment of the government land, which is treated to be an act of encroachment, the Petitioner has been disqualified.*

4 *Respondent No.4 has filed an affidavit in reply. Shri Thombre, learned Advocate appearing for Respondent No.4, places reliance upon the judgment of the Honourable Supreme Court in the matter of Janabai vs. Additional Commissioner and others, Civil Appeal No.6832/2018 decided on 19.09.2018, to support the contention that the Sarpanch has extended the benefits to the said Society which was headed by her husband. He contends that she is also the member of the said*

Society, which is specifically denied by the Petitioner contending that she has resigned from the simple membership of the Society in 2011. Shri Thombre vehemently submits that the entire record has been manufactured by the Petitioner and her husband so as to ante-date the record to her pre- Sarpanch period.

5 I find that this matter requires a detailed hearing and the learned AGP needs to peruse the original record and be prepared in this matter. At the same time, it appears that the Petitioner endeavours to make out the case that the allotment of the land to the Society was on 29.02.1984 when one Shri Vitthalrao Dhondiba was the Sarpanch of the said village panchayat. The funds were received from the District Rural Development Agency (DRDA) for construction of the building to be utilized by the Society, which also dates back to the said period. It also needs to be gone into as to how could the said building be demolished without following the due procedure of law as the Development Officer, Panchayat Samiti has submitted an enquiry report dated 30.01.2012 indicating that without any authorization and without following the due procedure, the building, which appears in the photograph, now has disappeared from the photograph.

6 In view of the above, issue notice to the Respondents returnable on 14.12.2018. The learned AGP waives service for Respondent Nos.1, 2, 3 and 5. Shri Thombre waives service for the caveator/Respondent No.4.

7 Until further orders, the Up-Sarpanch would continue to

hold the charge of the position of the Sarpanch. The State authorities may refrain from initiating the election process for filling up the post of the Sarpanch.

8 Needless to state, the Petitioner shall not officiate as a Sarpanch until further orders and shall not draw any allowances or benefits with regard to the position of the Sarpanch.

9 The parties may note that if possible, this matter would be heard finally at an admission stage. "

5. The learned counsel for the petitioner / Sarpanch, in addition to the contentions recorded in the order dated 10.10.2018 reproduced above, submits as under:-

(a) The said Society was registered under the Maharashtra Cooperative Societies Act, 1960 on 1.12.1977.

(b) By a resolution No.14 passed by the Gram Panchayat on 29.2.1984, the Gram Panchayat resolved to allot the plot of about 25x30 feet to the said Society, so as to enable it to construct its office.

(c) The said resolution was proposed by the Sarpanch Shri Vitthalrao Dhondiba Adhane, who is the father of respondent No.4 Sanjay, the original complainant.

(d) The wife of Sanjay was defeated by the petitioner /

Sarpanch in the direct election to the post of Sarpanch in 2017 and therefore, Sanjay has lodged a false complaint of encroachment against the petitioner.

(e) It was on the recommendation of the Gram Panchayat in 1984 that the land was allotted to the Society.

(f) The husband of the Sarpanch, who was hardly a child when the said Society was registered and granted the plot, was obviously not associated with the said Society in 1984.

(g) The Audit Report of the Society, dated 15.7.2011, would indicate at Clause 13 that the Society received funds from the Government through its Department of Rural Development for the construction of the office of the Society.

(h) To the extent of the movable and immovable property of the Society, the entry No.13, in the report of the Auditor in Marathi indicates as under:-

"संस्थेचे ताळेबंदास शासनाकडून डि. आर. डी. कडून अनुदान इमारत बांधण्यासाठी प्राप्त झालेली आहे व ती रक्कम ताळेबंदास असून व माजी चेयरमन कै. परभतराव सरखाराम अधाने पाटील यांची इमारत बांधकाम अनामत देणे ताळेबंदास दिसून येते व तसेच याबाबत संस्थेचे चेयरमन श्री. संगमेश्वर दुध उत्पादक सह. संस्था म. विरमगाव या संस्थेने श्री. संगमेश्वर दुध उत्पादक सह. संस्था म. विरमगाव या संस्थेची जागा २५ बाय ३० चा इमारत झालेल्या बांधकामाचे जागेचा ८अ चा उत्तरा व फेरफार नक्कल मिळणे बाबत दि. ०३.०२.२०१० रोजी मा. सरपंच, ग्रामसेवक ग्रामपंचायत कार्यालय विरमगाव ता. खुलताबाद यांना रजिस्ट्री एडीद्वारे कळविण्यात आले व त्या पत्राची रजिस्ट्री पोहच व पत्र व ठरावाची सत्य प्रत संस्थेचे दप्तरी आहे."

(i) The petitioner / Sarpanch had entered her resignation of the membership of the Society on 30.4.2011 and the Society has acknowledged the receipt of such resignation on 2.5.2011.

(j) The petitioner was elected as the Sarpanch for the first time in 2012 for the term ending in 2017 and thereafter, was directly elected as a Sarpanch in 2017 for a period of five years.

6. Respondent No.4 is the complainant before the District Collector, who contends that the petitioner / Sarpanch has indulged in an encroachment. The Society is headed by the husband of the Sarpanch as a Chairman. The Sarpanch is also a member of the said Society. Reliance is placed upon the affidavit-in-reply dated 10.9.2018 and the following contentions are set out in the said affidavit-in-reply:-

(a) The Sarpanch has fabricated documents with the intention to grab the property of the Gram Panchayat in collusion with her husband and the Gram Panchayat record has been manipulated.

(b) The Collector and the Additional Divisional Commissioner have rightly concluded that the Sarpanch has encroached upon the Gram Panchayat land.

(c) Concurrent findings should not be interfered with by this Court under Article 227 of the Constitution of India.

(d) The said Society is only a paper arrangement and is not in existence.

(e) The Society is formed for grabbing the property of the Gram Panchayat and the Sarpanch and her husband intend to use the said property by encroachment for personal gains.

(f) The Gram Panchayat resolution dated 15.8.2013 indicates that the Sarpanch herself has manipulated the record of the Gram Panchayat in relation to the years 2008-09 and the name of the Society is inserted in the records.

(g) The resolution at page No.33 is passed on 23.2.2016, so as to record the name of the Society in form No.8.

(h) The concerned land indicates the name of the Gram Panchayat as being the possessor for the years 2001-04. When the Gram Panchayat passed a resolution on 15.8.2013, proposing the allotment of the land to the Society, the petitioner was the Sarpanch and her husband was the Chairman.

(i) The Society had filed RCS No.99 of 2011 against the Gram Panchayat for demolishing a constructed office on the plot at issue.

(j) The said suit initially fetched an injunctory order in favour of the Society and subsequently was dismissed in

default on 22.11.2013. The Society did not attempt to have the suit restored.

7. The Village Extension Officer, Panchayat Samiti, Khultabad has submitted a report, dated 30.1.2012 that he has noticed that though the record indicates that the Society had an office on the concerned plot, he did not find any such office in his spot inspection and was informed that the Gram Panchayat had caused the demolition, though there was no resolution passed in the Gram Sabha to demolish the office.

8. A resolution No.16 was passed on 15.8.2013 by the Gram Sabha resolving to allot an entry in the form No.8 - Extract and permit the Society to erect the construction of its office. Only one person, namely, Shankar Adhane took an objection and the resolution was passed by all other members.

9. The form 8 extract, placed on record and signed by the Gram Sevak, dated 12.4.2016 would indicate that the name of the Society was entered in the said Property No. 272. The said entry was carried out pursuant to the resolution passed by the Gram Sabha on 15.8.2013.

10. To the extent of the entry made in the record of the Gram

Panchayat for the years 2008-09, the statement made by the Gram Sevak Shri Sanjay Baliram Mahale in paragraph No.4 of his affidavit-in-reply dated 10.12.2018, suggests that the property tax assessment register extract No.8 bears the entry of the name of the Society as per the resolution No.16, dated 15.8.2013. The said entry has to be taken in the property tax assessment register on the page where the property serial number in the said register has been maintained.

11. The affidavit of the Gram Sevak indicates that the Gram Sabha resolved to enter the name of the Society in the property register pursuant to the decision to allow the Society to use the said plot. The Gram Sevak has further stated that the online process has been introduced and the extract has been issued by Maha-E Seva Kendra and other authorized centers. The said property in the name of the Society is renumbered as property No.272 and the said entry is now available on the online portal of Maha- E Seva Kendra.

12. The contention of the petitioner is that respondent No.4 has initiated the proceedings only under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act, which pertains to incurring a disqualification by a member of the Panchayat for encroachment on the Government land or a public property. Learned counsel for respondent No.4 / complainant submits that no person can be a

member of a Panchayat or continue as such, if he has encroached upon the Government land, either during his membership or even before he was elected to such membership of the Gram Panchayat. Reliance is placed upon the judgment of this Court in the matter of Mainabai Kacharu Pacharne Vs. State of Maharashtra and others [2017 (1) Mah. L.J. 920].

13. I find it appropriate to reproduce Section 14(1)(j-3), 14(1)(g) and Section 39 of the Maharashtra Village Panchayat Act as under:-

"14. Disqualifications. - (1) No person shall be a member of a panchayat continue as such, who-

(j-3) has encroached upon the Government land or public property;

(g) has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the panchayat or in any contract with, by or on behalf of, or employment with or under, the panchayat;"

39. Removal from office. - (1) The Commissioner may,-

(i) remove from office any member or any Sarpanch or Up-Sarpanch who has been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct, or of neglect of or incapacity to perform his duty, or is persistently remiss in the discharge thereof. A Sarpanch

or an Up-Sarpanch so removed may at the discretion of the Commissioner also be removed from the panchayat', or

(ii) remove from office the member, Sarpanch or, as the case may be Up-Sarpanch, if not less than twenty per cent of the total number of voters in the village who have paid all dues of the panchayat regarding taxes on buildings and lands and water charges, make a complaint that the annual accounts and the report of the expenditure incurred by the panchayat on the development activities are not placed before the Gram sabha; and the information thereof is not displayed on the notice board as required by sub-section (1) or (1A) of section 8:

Provided that, no such person shall be removed from office unless, in case of clause (i), the Chief Executive Officer or in case of clause (ii), the Deputy Chief Executive Officer as directed by the Chief Executive Officer; under the orders of the Commissioner, holds an inquiry after giving due notice to the panchayat and the person concerned; and the person concerned has been given a reasonable opportunity of being heard and thereafter the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer concerned, through the Chief Executive Officer, submits his report to the Commissioner. The inquiry officer shall submit his report within a period of one month:

Provided further that, the Commissioner shall,

after giving the person concerned a reasonable opportunity of being heard, take a decision on the report submitted by the Chief Executive Officer or, as the case may be, the Deputy Chief Executive Officer, within a period of one month from the date of receipt thereof.;

(1A) Where a person is removed from office of the Sarpanch or Upa-Sarpanch, he shall not be eligible for re-election as Sarpanch or Upa-Sarpanch during the remainder of the term of office of members of the panchayat.

(2) The Commissioner may subject to like condition disqualify for a period of not exceeding five years, any person who has resigned his office as a member, Sarpanch or Upa-Sarpanch and has been guilty of the acts and omissions specified in sub-section (1).

(3) Any person aggrieved by an order of the Commissioner under sub-section (1) or (2) may, within a period of fifteen days from the date of the receipt of such order, appeal to the State Government and the Government shall decide the appeal within a period of one month from the date of receipt thereof. "

14. It would be appropriate to make it clear that the proceedings before this Court are restricted to seeking a disqualification under Section 14(1)(j-3), which is with regard to encroachment on the Government or public land. Section 14(1)(g) pertains to developing a share or interest, directly or indirectly, in any work done by the order of the Panchayat or in any contract with, by or for the Panchayat.

Section 39 permits the Commissioner to remove a member or a Sarpanch or Up-Sarpanch, who has been guilty of a mis-conduct in the discharge of his duties or for any disgraceful conduct.

15. As such, it is necessary to discern from the facts of this case, as to whether the conduct of the petitioner would amount to an act of encroachment. Whether her acts amount to a disgraceful conduct or may indicate an interest or share in the work done by the order of the Panchayat, are not the issues before me.

16. The Honourable Apex Court in the matter of Janabai Vs. Additional Commissioner and others [AIR 2018 SC 5068], has overruled its earlier judgment in the matter of Sagar Pandurang Dhundare Vs. Keshav Aba Patil and others [AIR 2017 SC 5420]. The observations in Janabai (supra), while dealing with the issue of encroachment, in paragraph Nos. 1 to 4, 12, 13 and 24 are as under:-

"1. The singular question that emanates for consideration in this appeal is whether the forums below as well as the High Court is justified in disqualifying the Appellant for continuing as a member of the Gram Panchayat Kalamba (Mahali) on the ground that there has been encroachment upon the government land since 1981 by her father-in-law and husband and she is using the said land. There are concurrent findings of fact that the father-in-law and the husband of the Appellant have

encroached upon the government land and despite notice, they have not vacated the same on one pretext or the other. As far as these findings are concerned, we are not inclined to interfere with the same as we are of the considered opinion that it is based on apposite analysis of the materials on record.

2. *The pivotal issue that we have to address is whether the Appellant incurs disqualification under the Maharashtra Village Panchayat Act, 1958 (for short, 'the Act'). Section 14 of the Act deals with the said disqualification. The relevant part of Sections 14(1) and 14(1)(j-3) reads as under:*

14. Disqualifications.- (1) No person shall be a member of a Panchayat continue as such, who-

(a) to (j-2) xxx xxx xxx

(j-3) has encroached upon the Government land or public property.

3. *The High Court, by the impugned order, has ruled:*

'The learned Additional Commissioner has independently examined the material on record and has found that Gram Panchayat had issued notice in 2012 to father-in-law of the Petitioner to remove the encroachment. However, it was not complied with and then again Gram Panchayat had sent another communication asking for removal of encroachment to which Shri Kashiram Gaikwad-husband of the Petitioner gave reply on 29th June, 2012, accepting that there was an encroachment and justified. The Petitioner has not been able to point out any

perversity in the findings of fact recorded by the subordinate authorities. I see no reason to interfere with the impugned order.'

4. *The order passed by the High Court is seriously criticised by the learned Counsel for the Appellant on two counts, namely, it is absolutely laconic and further, on a proper interpretation of the provisions, by no stretch of imagination, it can be concluded that the Appellant, as a person, has encroached upon the government land or public property. "*

.....

12. *In Sandip Ganpatrao Bhadade v. Commissioner, Amravati, the authorities below had held that the elected candidate was an encroacher being in occupation of the government land. The High Court, elaborating the scheme of the Act and the purpose of the provision, ruled thus:*

16. *In view of the aforesaid meaning of the terminologies "to encroach", "encroachment", "encroacher" and "encroached", whoever resides in the property or any portion thereof, which is an encroachment upon the Government land or public property, can be said to have "encroached" upon it and becomes an "encroacher". Whether such an encroachment is jointly with others and/or individually, either at one time or at different times remains hardly of any significance as he becomes liable to be removed and prosecuted Under Section 53 of the said Act. Whether a person has become liable to be removed and/or prosecuted Under Section 53 of the said Act from the Government land or public property, becomes a real test of attracting disqualification Under Section 14(1)(j-3) of the said*

Act. If the answer is in the affirmative, the disqualification is incurred.

17. In view of the aforesaid position, the provision of Section 14(1)(j-3) of the said Act is attracted even in a case where a member of a Panchayat resides in the property or any portion thereof, which is an encroachment upon the Government land or public property. The question as to whether any other person or a member of a family has already made an encroachment, loses its significance and as soon as a member or proposed member joins such act, he cannot escape from the clutches of disqualification Under Section 14(1)(j-3) of the said Act. The question framed is answered accordingly.

18. If an intention of the Legislature is to prevent an encroachment upon the Government land or public property by a person, who is deemed to be a "public servant" Under Section 184 entitled to enjoy all privileges attached to it Under Section 180 of the said Act, can it be said that such an intention of the Legislature be defeated by adopting circuitous way of occupying the property, which is an encroachment on the Government land or public property. The answer would obviously be in the negative, for two main reasons - (i) the act, which is prohibited directly, cannot be promoted or encouraged indirectly to defeat the object and purpose of such prohibition, and (ii) it would amount to promoting or encouraging the conflicting interest, necessarily resulting in the disqualification Under Section 14(1)(j-3) of the said Act.

6.... For attracting disqualification Under Section 14(1)(j-3), in a case like this, the crucial question to be answered is: Does

the legal representative or member of the original encroacher's family continue to occupy the government land or property. If he does, he attracts the disqualification Under Section 14(1)(j-3). It is not an answer then for such person that the original encroachment was by his predecessor or family member and not by himself. If that encroachment is continued by him, he attracts the disqualification. That was the case in Devidas Surwade. The original encroachment may have been by the Petitioner's father, but after the death of his father, he continued to occupy the property and thereby attracted the disqualification of Section 14(1) (j-3). On the other hand, in Kanchan's case, it was the Petitioner's father-in-law, who was the encroacher; she had nothing to do with it. It was not the case of the State that she continued to occupy the property either as a legal heir of her father-in-law or as a member of her husband's family. The emphasis is really on the continued encroachment and not so much on the original act of encroachment. Encroachment, after all, is not a one-time act. It is a continuous act. If someone's encroachment is continued by another, that other is equally an encroacher, as much as the original encroacher.

.....

24. As we understand from the above paragraph, the two-Judge Bench has been guided by the word 'person' as used in Section 14(1) and further influenced by the language employed in Section 53. That apart, the analysis made by the two-Judge Bench, as we notice, has given a restricted meaning to the word 'person' who has encroached upon the government land or public land. It has also ruled that such a person is one who has actually for the first time encroached upon the government or public

land. In Devidas Surwade (supra), the Division Bench of the Bombay High Court, placing reliance on the Statement of Objects and Reasons and laying stress on the word 'person', noted that the legal heirs of an encroacher who continue to occupy the government land or government property are to be treated as encroachers. It has been held that if such an interpretation is not adopted, the result would be absurd, for the government land would continue to remain encroached and the legal heirs or the assignees or the transferees remaining on the encroached government land shall claim the right to get elected as a member of a democratically elected body. According to the Division Bench of the Bombay High Court, such an interpretation would defeat the very object of the Bombay Village Panchayat (Amendment) Act, 2006. "

17. Finally, it was concluded in paragraph No.29 that the consequences of an encroachment or unauthorized occupation has to be viewed very strictly. Paragraph No.29 reads thus:-

"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 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. Thus analysed, we are of the view that the decision in Sagar Pandurang Dhundare (supra) does not lay down the correct position of law and it is, accordingly, overruled. "

18. The judgment of the High Court in the case of Janabai (supra), was therefore, sustained by the Honourable Apex Court concluding that an encroachment on Government land would lead to the disqualification of the Member. As the concerned appellant was personally enjoying the property, which was an encroachment on Government land by her father in law and husband, her disqualification was upheld.

19. In the instant case, the record as is available before the Court would indicate that the Society was formed on 1.12.1977. The then Sarpanch, who was the father of respondent No.4, had moved the resolution No.14 on 29.2.1984 and the Gram Panchayat resolved to allot the land to the Society since it was being operated for the

development of the residents of the said Panchayat. An office was permitted to be constructed for the said Society. In that period from 1977 till 1984, neither the husband of the petitioner, nor the petitioner herself, were the members of the said Society. The record further reveals that the name of the Society appeared in the property records in relation to the said plot. The petitioner was not the Sarpanch at that time and the husband of the petitioner has not constructed any house or his personal office on the said land. Neither does the husband of the petitioner, nor the petitioner, were occupying the said land for their personal use. The petitioner Sarpanch has also resigned from the membership of the said Society on 30.4.2011, which now consists of more than 150 members.

20. The issue, therefore, is as to whether the Sarpanch or her husband or their relatives have caused an encroachment on the Government land. It is clear from the record placed before the Court that in 1984, the plot was allotted to the Society by none other than the Village Panchayat. The name of the Society was entered in the form 8 - Property extract, in 2008. The audit report, dated 15.7.2011, indicates that the Society received funds from the Department of Rural Development, Maharashtra State for the construction of an office. The Society had applied for mutation entries vide an application dated 3.2.2010.

21. *Prima facie*, this indicates that the Society was allotted the said plot by the Panchayat, notwithstanding the arguments of the respondents that transfer of such a property cannot be held to be legally formalized without the permission of the Chief Executive Officer of the Zilla Parishad. It is also undisputed that presently there is no construction or office or even a temporary structure on the said land at the behest of the Society, much less the husband of the Sarpanch or by the Sarpanch herself.

22. These factors can be viewed from a different angle. If the land is not legally transferred to the Society and the resolution passed by the Gram Panchayat in 1984 or any time thereafter, would not amount to a legal transfer of the land to the Society, it will have to be construed that the same amounts to an irregularity and no legal sanctity can be accorded to such an irregular recommendation of transfer of the land.

23. Shri Thombre, learned Advocate has heavily relied upon the judgment delivered in the case of Mainabai (supra) by this Court. This Court recorded the facts of the case in paragraph Nos. 2 to 4, which read as under:-

"2. *In the month of August 2015, the petitioner was elected*

to village panchayat Chitegaon for the term 2015-20. The applicants who had filed dispute before the Collector are also the members of this gram panchayat. They had filed the application under Section 14 read with Section 16 of the Act against the petitioner and they had contended that the petitioner had made encroachment over the government land bearing Gut No. 109 situated at Chitegaon, Tahsil Paithan and also on Gut No. 116 situated at village Pangra, Tahsil Paithan. Gut No. 116 was Gayaran land and in the year 1997 the encroachment was noticed and the petitioner had filed application for regularisation of the encroachment in the year 2001. On 22nd September, 2011, the encroachment made by the petitioner on government land bearing Gut No. 109 of Chitegaon was noticed. The original applicants of the dispute application contended that due to the aforesaid circumstances and as the encroachment was suppressed at the time of filing of nomination, the present petitioner was not eligible to contest the election and she cannot continue as a member of the panchayat in view of the provision of Section 14 (1)(j-3) of the Bombay Village Panchayats Act.

3. Notice of the dispute application was given to the petitioner by Additional Collector. The Additional Collector considered the record like panchanama prepared by revenue officers on 11th December, 1997 in respect of encroachment made on Gut No. 116. The petitioner had not only cultivated portion of land but she had constructed a house and that way she had encroached the Gayaran land of village. The Additional Collector considered the record of encroachment made on Gut No. 109 of Chitegaon also which belongs to government. The Collector considered the decision given by Nagpur Bench of this Court in Writ Petition No. 6089 of 2014 and held that the

petitioner cannot continue as a member of panchayat and held that she was disqualified. Additional Commissioner has considered the aforesaid circumstances and also position of law. Additional Commissioner has held that the present petitioner had given up her possession over Gut No. 116 in the year 2004 but she made encroachment on other land i.e. Gut No. 109 at Chitegaon and the encroachment was there on 22nd September, 2011 and due to the circumstance, the petitioner cannot continue as member of village panchayat. The record of 2015, new panchnama prepared on 01st October, 2015 was also considered but the Additional Commissioner held that the said panchanama cannot help the petitioner to save her membership.

4. *The learned Counsel for petitioner placed reliance on some reported cases and submitted that there is nothing with the revenue authority or the applicant who had filed disqualification proceeding to show that on the date of nomination in July, 2015 or after the date of election in August, 2015, the petitioner made encroachment and so the orders under challenge cannot sustain in law. On the other hand, learned Counsel for respondent - original disputant submitted that the amendment to Section 14 came in force in 2006 and due to wording of the relevant provision and the interpretation of provision made by this Court, the record of the year 2011 is sufficient to hold that the petitioner was encroacher and she was disqualified due to the provision introduced in the year 2006. Learned Counsel further submitted that there is no record with the petitioner to show that after 2011 she had surrendered the portion encroached to the government or government had removed the encroachment. He submitted that even if there was such record, that record would not help the petitioner as disqualification was introduced in the*

year 2006 and activities of the petitioner show that she is indulging in such illegal activities. "

24. It was thus noted by this Court that Mainabai herself had the possession of Gut No.116 and had given up her possession in the year 2004. She had then made an encroachment on another land Gut No.109, and the encroachment continued on 22.9.2011. It was also noted that there was no record to indicate that she had surrendered the portion of the encroached land to the Government or that the Government had removed the encroachment.

25. In paragraph No.10, this Court, therefore, concluded as under:-

"10. It is already observed that in the present matter also there is record of 2011 like panchanama prepared to show that present petitioner had made encroachment on government land and she had created construction for residence purpose. Though there is record of another panchnama of 2015 showing that in the month of December, 2015 she was not found on that place, this circumstance even if accepted as it is, cannot save petitioner from disqualification. There is no record with the petitioner to show that she had given back the possession before filing of the nomination or encroachment was removed prior to the date of nomination. Further, in view of wording of the provision of disqualification, it can be said that if encroachment was made after the amendment introduced in 2006 and there is no record

to show that it was removed prior to date of nomination. Such conduct cannot be ignored and the member needs to be declared as disqualified. The record created in the year 2011 is believed by the authority below as there was no dispute of the present nature at that time. There was name of the petitioner in the panchanama and this record was never disputed by the petitioner. Some record is produced in present proceeding to show that in the register of encroachers, the name of petitioner is not mentioned now but this record and new panchanama cannot help the petitioner. "

26. It is thus evident from Mainabai (supra) that the name of the petitioner appeared in the panchanama as having encroached upon the land and this was not disputed by her. This encroachment continued even on the date she filed her nomination papers. Before this Court, a fresh record was produced to show that the name of the petitioner is not mentioned in the new panchanama and, therefore, this Court rightly concluded that this would not assist Mainabai.

27. The facts appearing in the case in hand, as recorded in the foregoing paragraphs, clearly indicate that the land, which is said to be irregularly granted for allotment to the Society and the name of the Society appearing in the property records, would not establish that the Sarpanch or her husband have encroached upon the land. Nevertheless, her husband, in his capacity as the Chairman of the

Society may be held liable for and on behalf of the Society.

28. Respondent No.4 has then argued that the resolution passed on 15.8.2013, recommending permission to the Society to construct an office, was passed by the Gram Panchayat, when the petitioner was the Sarpanch. If this argument is to be analyzed, it would appear that as the petitioner / Sarpanch is the wife of the Chairman of the Society, she should have recused herself from Chairing such a meeting or she should have kept herself away from the said resolution. Such a conduct may have the semblance of an act unbecoming on the part of a Sarpanch and may appear to be a disgraceful conduct. However, this would not amount to an encroachment and the issue raised before this Court is purely in relation to the alleged act of encroachment under Section 14(1)(j-3).

29. The complainant has not invoked Section 14(1)(g) or Section 39 of the Act, insofar as the resolution passed in 2013 is concerned. The said issue is, therefore, left open since it would not be a subject matter of this petition.

30. In view of the above, the Writ Petition is allowed. The impugned orders passed by the District Collector dated 4.8.2018 and the order passed by the Additional Divisional Commissioner dated

4.10.2018, are quashed and set aside. Rule is made absolute in the above terms.

31. Needless to state, this Court has not dealt with the facts, circumstances and contentions of the litigating sides in connection with Section 14(1)(g) and Section 39 of the Maharashtra Village Panchayat Act.

(RAVINDRA V. GHUGE, J.)

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