

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2760 OF 2019

Umesh Balasaheb Patil ..Petitioner.

V/s.

Pratap Balasaheb Patil & Ors. ..Respondents.

Mr.Surel Shah I/b. Mr.Drupad S.Patil for the petitioner.

Mr.Makarand Kale with Ms.Anupama Kolekar i/b. Vivek Patil for respondent No.1.

Mr.Sandeep S.Koregave for respondent No.2.

Mr. S.H. Kankal, AGP for respondent No.6.

CORAM: NITIN W.SAMBRE, J.

DATE : JUNE 10, 2019

P.C.:-

Heard the respective parties.

2. The petitioner was elected as Sarpanch of the village for the period from 2017 to 2022.

3. Since the petitioner has carried out encroachment to the extent of 6.60 mtrs. on village road, the proceedings under section 16-1(j-3) of the Village Panchayat Act, 1959 ('the Act' for

short) were taken out. The competent authority viz. the Collector, Kolhapur vide order dated December 6, 2018 ordered disqualification of the petitioner which was confirmed by the Appellate Authority i.e. the Divisional Commissioner. As such this petition.

4. The submission of learned counsel for the petitioner is, the order impugned thereby disqualifying the petitioner, is based on presumption and assumptions, as according to him, there are no positive findings recorded by both the authorities that the petitioner has encroached on a public way or a public property. He would urge that in the village road no building line is demarcated till date. That being so, the construction carried out by the petitioner on his own property cannot be termed as encroachment so as to incur or attract disqualification under section 16-1(j-3) of the Act.

5. *Per contra*, learned Additional Government Pleader and learned counsel for respondent Nos.1 and 2 would support the impugned order and submit that the order of disqualification is based on sufficient and demonstrative evidence which was brought on record. According to them, the petition is liable to be rejected.

6. At the outset, the factual matrix as is reflected in the petition and the orders speaks of ancestral holdings of the property No.96 by the father and uncle which subsequently underwent partition. The petitioner demolished the old structure which was existing on property No.96A and also purchased adjoining property by registered deed. The petitioner then constructed a new house thereon.

7. Pursuant to a complaint, the Block Development Officer with the assistance of technical staff viz. Assistant Engineer from the Zilla Parishad carried out inspection. As per rules, measurement was carried out from centre of the village road. The report of encroachment made by the petitioner to the extent of 6.60 mtrs was submitted to the Collector. The said report is found to be the basis for ordering disqualification of the petitioner.

8. If the petitioner has carried out construction in the village i.e. being a responsible public servant in the capacity of Village Sarpanch, the least that was expected of him was to adhere to the provisions of Maharashtra Regional Town Planning Act, 1966, pursuant to which the Collector is the Competent Authority to grant sanction to the building map. The petitioner should have

got the building plan approved, instead of the same, the petitioner has carried out construction without getting building plan sanctioned. As such, defence of non marking of the building line is not available to the petitioner.

9. I have perused the measurements submitted by the Block Development Officer which in categorical terms speaks of the encroachment of the petitioner to the extent of 6.60 mtrs. on the village road. Once the measurements are carried out with the assistance of technical staff by the Block Development Officer and in the light of the relevant rules and regulations having noticed that the petitioner has carried out encroachment, such construction has to be ruled as encroachment on public way.

10. Apart from above, the fact remains that the act of carrying out development was very much accepted by the petitioner.

11. The submissions of the petitioner that the petitioner has title to the land and the building was constructed on it as such same can not be termed as encroachment, is also required to be rejected as the building is on a public property. Before carrying out construction, it was expected of the petitioner to obtain

building permission from the competent authority, as observed above. Even if the land of the petitioner is not acquired for public road. That by itself will not give no liver to the petitioner to develop his own property as per his whims and fancies and particularly when he is holding the post of Sarpanch.

12. In the aforesaid backdrop, the finding of fact recorded by both the authorities below thereby ordering the disqualification of the petitioner under section 16-1(j-3) of the Act appears to be justified. No material irregularity or illegality can be noticed which warrants interference in the extra ordinary writ jurisdiction.

13. The petition as such fails and is dismissed.

(NITIN W.SAMBRE, J.)