

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9606 OF 2019

Ramdas Patilbuva Kotwal ... Petitioner
Vs.
Balasaheb Dhondiba Kotwal and others ... Respondents

Mr. Rameshwar Gite for Petitioner.
Mr. C. D. Mali, AGP for Respondent Nos.4 to 6-State.

CORAM : UJJAL BHUYAN, J.
DATE : DECEMBER 03, 2019

P.C. :

Heard Mr. Rameshwar Gite, learned counsel for the petitioner and
Mr. C. D. Mali, learned AGP for respondent Nos.4 to 6-State.

2. The controversy in question was summed up in the order dated
11.11.2019, which is extracted hereunder:

“2. Petitioner was elected as Gram Panchayat member. On the ground that his brother had encroached upon government land, thereby violating provisions of Section 14(1)(j-3) of the Bombay Village Panchayats Act, 1958, petitioner was disqualified.

3. In appeal disqualification was affirmed. Thereafter present writ petition has been filed.

4. Learned counsel for the petitioner submits that in **Sagar Pandurang Dhundare Vs. Keshav Aaba Patil, reported in (2018) 1 SCC 340**, Division Bench of the Supreme Court has clarified the position that the word “Person” appearing in that provision can only mean the person who has actually made the encroachment. Therefore, for encroachment carried out by other person including family members, petitioner could not have been penalized.

5. On the other hand, Mr. C. D. Mali, learned AGP submits that after the judgment rendered in **Sagar Pandurang Dhundare (supra)** a larger Bench of the Supreme Court has taken a different view by holding that the expression “person” has to be given an expanded meaning to be in time with the objective of the Act and has held that for encroachment carried out by family members the person concerned can be disqualified.

6. On the next date, learned AGP to produce copy of the

larger Bench judgment.”

3. Learned counsel for the petitioner while fairly placing the larger Bench judgment of the Supreme Court in the case of *Janabai Vs. Additional Commissioner, Civil Appeal No.6832 of 2018* decided on **19.09.2018** however contends that there is a family partition pursuant to which it is the brother who is in occupation of the encroached land. Petitioner resides separately and does not reside over the encroached land.

3.1. Referring to the judgment in **Janabai** (*supra*), he submits that disqualification will visit the petitioner only if he resides over the encroached land, encroached by his brother thereby enjoying fruits of encroachment.

3.2. He also relies upon a report dated 07.06.2018 of the concerned Circle Officer addressed to the Tahsildar which buttresses his contention that petitioner is not residing with his brother over the encroached land.

4. On the other hand, Mr. Mali, learned AGP has referred to the order passed by the Collector as well as by the Appellate Authority to contend that there is a specific finding that petitioner was also in possession of the encroached land.

5. Be that as it may, Court is of the view that having regard to the report dated 07.06.2018 of the Circle Officer, the matter is required to be looked into afresh by the Divisional Commissioner in appeal.

6. In that view of the matter, the appellate order dated 03.08.2019 is set aside and petitioner is relegated to the appellate forum in Appeal No.11 of 2019, which should be heard afresh by the Appellate Authority i.e., Divisional Commissioner, Pune Division. Petitioner is also given liberty to file additional grounds in support of his appeal. Let the

petitioner appear before the Divisional Commissioner on 18.12.2019 at 10:30 a.m. whereafter Divisional Commissioner shall re-hear Appeal No.11 of 2019 and decide the same in accordance with law within a period of 2 months from the date of appearance.

7. Writ Petition is disposed of.

(UJJAL BHUYAN, J.)

Minal Parab