

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1106 OF 2018

Shri. Shrikant Shrimant Kadam **..... Petitioner**

VERSUS

Shri. Vishwas Subhash Kadam & ors. **..... Respondents**

Mr. Vaibhav Gaikwad, Advocate for petitioner.

Mr. S.D. Rayrikar, AGP for Respondent No. 3 to 5 & 7.

Mr. Dilip Bodake, Advocate for Respondent No. 1 and 2.

CORAM : S. S. SHINDE

DATED : 1st APRIL, 2019

JUDGMENT

1 Rule. With the learned counsel for the parties, Rule is made returnable forthwith and heard.

2. This petition is filed with following substantive prayer:-

“(b) to quash and set aside the impugned order dated 04.09.2017 passed by the 3rd respondent in the Appeal No. 18 of 2017 as well as impugned order dated 05/06/2017 passed by Respondent No. 4 in dispute application no. 140 of 2016 entirely with costs;”

3. It is the case of the petitioner that, father of the petitioner namely Shrimant Kadam constructed the house in the year 2003 after

obtaining the necessary permissions from Grampanchayat Khodshi. The election of the said grampanchayat was conducted on 04/08/2015 for a period of 2015 to 2020 and the petitioner got elected as a member of the said grampanchayat from ward No. 3 from open category. It is the case of the Petitioner that, the said Grampanchayat carried out measurement of Survey No. 385 on 29/01/2016. Thereafter, the respondent nos. 1 and 2 and others submitted/complaint to the respondent no. 4 and 5 against the petitioner. In the meanwhile, the said Grampanchayat issued notice dated 01/09/2016 to the father of the petitioner under section 54 of the Maharashtra Village Panchayat Act (for short 'said act'). The respondent no. 1 and 2 submitted the application under section 14 (1) (J-3) of the Maharashtra Village Panchayat Act, to respondent no. 4 praying therein to disqualify the petitioner. After receipt of notice in the said application the petitioner appeared and contested the said application by filing reply on the grounds set out in said application. Respondent no. 1 and others also submitted complaint to the Tahsildar's office on 09/09/2016. Thereafter, Tahsildar issued letter on 7/10/2016 to Block Development Officer, Karad to make enquiry in relation to the allegations made in the complaint and to submit report. On the basis of letter issued by Tahsildar, Karad, Block Development Officer caused an inquiry and submitted report by forwarding letter dated 17/1/2017 to the respondent no. 5 Tahsildar, Karad.

3. Learned counsel appearing for the petitioner submits that the respondent no. 4 without considering contents of letter written by Tahsildar, Karad to respondent no. 4, that the petitioner and his father has not encroached upon Survey No. 385 as alleged by the respondent no. 1

and 2, proceeded to pass the impugned order on 5th June 2007, thereby allowing the application submitted by respondent no. 1 and 2 and disqualified the petitioner as member of Grampanchayat Khodshi, Tq. Karad, District Satara. It is further submitted that, the Block Development Officer has issued letter to the Tahsildar, Karab thereby informing that the petitioner has not encroached on Survey No. 385 i.e. the Government land. The respondent no. 3 and 4 ought to have appreciated that the petitioner and his father has separate ration cards. It is submitted that the respondent No. 4 while passing the impugned order has failed to take into consideration the contents of the letter dated 17.1.2017 as well as 20.05.2017, which would clearly demonstrate that the petitioner has not encroached upon the S.No. 385. It is also submitted that the perusal of the order dated 5.6.2017, disqualifying the Petitioner does not reveal any finding in relation to the said letters. The respondent No. 4 while passing the impugned order relied upon the report dated 30.3.2017, submitted by the Taluka Inspector of Land Records, and measurement of concerned land by him carried out on 2.2.2016. It is the contention of the counsel for the petitioner that, while carrying out the said measurement no notice was given to the petitioner and in the absence of the petitioner the measurement of survey no. 385 was carried out. The respondent No. 4 further relied upon the notice dated 1.9.2016 issued to the father of the petitioner by the grampanchayat. As a matter of fact the petitioner is residing separately from his father and he has separate ration card, and even otherwise the petitioner has not carried out the alleged construction on Survey no. 385.

4. It is contended that the respondent No. 3 and 4 ought to have considered, that the dispute application submitted by the respondent No. 1 and 2 against the petitioner was only out of personal grudge against the petitioner, as respondent No. 2 had lost the panchayat election. It is submitted that the respondent Nos. 1 and 2 have themselves encroached upon the government land, however, suppressed the said fact and false allegations of an alleged encroachment on survey no. 385 have been made against the petitioner. It is submitted that the grampanchayat also issued notice to the father of the respondent No. 1 and 2 calling their explanation of encroachment on government land.

5. The learned counsel appearing for the petitioner further submitted that, the father of the petitioner constructed the alleged house in the year 2003, and the petitioner had no role in constructing the said house. It is submitted that the petitioner in fact objected the alleged Map prepared by TILR, Karad, before respondent No.4. However, respondent No. 4 has not considered the said objection of the petitioner. It is submitted that, the construction of house was carried out by father of the petitioner and the Grampanchayat also issued notice to the father of the petitioner of such alleged illegal construction and therefore the disqualification of the petitioner U/s 14(1)(J-3) of the Act, is illegal. Therefore, relying upon the pleadings and grounds taken in the petition and annexures thereto, learned counsel appearing for the petitioner submits that, the petition deserves to be allowed.

6. On the other hand, the learned counsel appearing for

respondent No. 1 and 2 and learned AGP appearing for respondent No. 3, 4, 5 & 7 and learned counsel appearing for Respondent No. 6 and 8 jointly submits that, there are concurrent findings recorded by both authorities below, that the petitioner is residing with his father, as it is evident from the perusal of extract of ration card. From the perusal of the ration card it shows that, the petitioner and his father has made encroachment on Government land i.e. Survey No. 385 and therefore, the petitioner has not made out a case to cause interferece in the said concurrent findings recorded by the authorities below. Therefore, the learned counsel appearing for the respondents submit that the petition deserves to be rejected.

7. Heard, the learned counsel for the parties at length. Perused the pleadings and the grounds taken in the petition and annexures thereto, impugned judgment and orders passed by authorities below as also the reply filed by the respective respondents. From the perusal of concurrent findings recorded by the respondent No. 3 and 4, it clearly emerge on record that the map was prepared by T.I.L.R. in respect of Survey No. 384 and Survey No. 385. Apart from the said map the said Taluka Inspector of Land Records, Karad has also submitted a report on 13th March 2017 to the Additional Collector, Satara wherein it is mentioned that the owner of Survey No. 384 has made encroachment on Survey No. 385 i.e. a Government land to the extent of 0.18. It is further mentioned that Survey No. 384 belongs to father of the petitioner and there are other three names mentioned in the record of said survey. It is also concurrently held by the authorities below, on the basis of material placed on record that the petitioner did not produce any record to show that he is residing separately

from his father. From the material placed on record it is held that the Petitioner shared and enjoyed the encroached property along with his father.

8. Upon perusal of the copies of documents placed on record and after appreciating the rival contentions, it is clearly emerged on record that the Survey No. 384 is owned by the father of the petitioner and also other three names are included in the revenue record of said survey. The owner of survey no. 384 has made encroachment to the extent of 0.18R on Survey No. 385 which is owned by the Government and therefore, in view of the mandate of provision of Section 14 (1) (j-3) of the Village Panchayat Act, 1958, the person who has encroached upon the Government Land or Public property, shall not be continued as a member of Panchayat. The relevant portion of Section 14 (1) (j-3) reads as under :-

*“14. **Disqualification-** (1) No person shall be a member of Panchayat continue as such, who-- +*

(a) to (j-2) XXX XXX XXX

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

9 In the said context, a useful reference could be made to the judgment of the Apex Court in the matter of Janabai v/s. Additional Commissioner and others reported in 2018(5) Mh.LJ 921. In the said case

`the question before the Apex Court for consideration was, 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. In the said context the Apex Court has observed in paragraphs 26, 27 and 29 as under :-

26. We may hasten to add here that we do not intend to take the said route. We think it appropriate to analyse the provision, understand the purpose and the contextual relevance and also appreciate the nature of the provision in the backdrop of the democratic set-up at the grass root level. Having said that, we shall now analyse the statutory scheme. 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.

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. 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.

10 In the light of the discussion in the foregoing paragraphs, concurrent findings recorded by the authorities below and so also keeping in view the exposition of law by the Hon'ble Supreme Court in the case of Janabai (supra), an inevitable conclusion is that, the Petitioner has incurred disqualification under section 14(1)(J-3) of the said Act, and cannot be continued as a member of

panchayat. Hence the Writ Petition stands rejected. Rule stands discharged.

11 At this stage, learned counsel appearing for the petitioner prays for continuation of the ad-interim relief which was in operation during the pendency, for six weeks from today. However, the said prayer is vehemently opposed by the learned counsel appearing for the respondent nos. 1 and 2.

12 However, in the interest of justice, ad-interim relief granted earlier to continue for a period of three weeks from the date of uploading the final judgment on High Court website.

[S.S. SHINDE, J.]