

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4469 OF 2018

Subhash Natha Kamthe	...Petitioner
Versus	
The State of Maharashtra and Ors.	...Respondents

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Mr. Prashant Darandale for the Petitioner.
Mr. S.H. Kankal, AGP for the Respondent-State.
Mr. Sandeep S. Salunkhe for the Respondent No.4.
Mr. S.B. Shetye for the Respondent No.5.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 25th JANUARY, 2019.

P.C.:-

With consent, heard finally at the stage of admission.

2. The Petitioner herein has challenged the order dated 25th May, 2017 passed by the learned Additional Commissioner, Pune and the order dated 10th March, 2016 passed by the Additional Collector, Pune in respect of Dispute Application No.48 of 2015.

3. Heard the learned counsel for the respective parties. I have perused the records.

4. The Petitioner as well as the Respondent No.4 had

contested the election of Gram Panchayat of Savinde. The Petitioner herein had raised objection for nomination submitted by the Respondent No.4 on the ground that the Respondent No.4 had encroached upon public land. On receipt of the said objections the Respondent No.5-returning officer of the State Election Commission, had called for a report from the Gram Vikas Adhikari. The Gram Vikas Adhikari submitted the report stating that the Respondent No.4 was not an encroacher. The report states that the Respondent No.4 has constructed the structure on his own land without obtaining prior permission.

5. The elections were held on 4.8.2015 and in the results, which were declared on 6.8.2015, the Respondent No.4 was elected as a member of Gram Panchayat. The Petitioner herein raised the dispute by filing Dispute Application No.48 of 2015 that the Respondent No.4 had encroached on the public land and sought disqualification in terms of provisions under Section 14(1) (j) of the Maharashtra Village Panchayat Act, 1958. The Dispute Application was dismissed by the Additional Collector by order dated 10th March, 2016 and appeal preferred against the said order was dismissed by the Additional Commissioner, Pune by order dated 25th May, 2017. Being aggrieved

by the impugned orders the Petitioner has filed the present writ Petition.

6. In the instant case the Petitioner had sought the disqualification of the Respondent No.4 on the ground that he had encroached upon the Government land or public property and was therefore liable to be disqualified in terms of provisions of Section 14(1) (j-3) of the Act. The records reveal that upon receipt of the objections from the Petitioner, the Respondent No.5- Returning Officer had called for a report from Talathi/Gram Vikas Adhikari. The report clearly indicates that the construction though unauthorised is not in the Government land or on public property.

7. The learned counsel for the Petitioner contends that the encroachment register maintained by the Gram Panchayat itself shows the name of the Respondent No.4 as an encroacher. It is to be noted that the register 1-D, which is maintained by the Panchayat clearly states that the land wherein the said construction is carried out is a private land. The name of the Respondent No.4 is recorded in the said register since he had constructed the said structure without obtaining licence from the appropriate authority.

8. The learned counsel for the Petitioner does not dispute that the said construction is in the property under survey Nos.254 and 266 and that the said property is recorded in the name of the Respondent No.4. It is also not in dispute that no proceeding have been initiated against the Respondent No.4 by any Authority for having encroached in the property under Survey Nos.254 and 266. There was no other material to show that the Respondent No.4 had encroached in Government land or public property so as to attract disqualification under Section 14(1) (j-3) of the Maharashtra Village Panchayat Act 1958.

9. Considering the above facts and circumstances, in my considered view both the authorities below were perfectly justified in rejecting the Dispute Application No.48 of 2015. The impugned orders do not suffer from any illegality. The Petition has no merits and is liable to be dismissed and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)