

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2244 OF 2019

Tukaram Waman Jadhav ... Petitioner
Vs.
The Additional Commissioner, Pune Division, Pune
and others ... Respondents

Mr. Dilip Bodake for Petitioner.
Mr. A. B. Kadam, AGP for Respondent Nos.1 and 2.
Mr. Sachin Kankal for Respondent No.4.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 08, 2019

P.C. :

Heard Mr. Bodake, learned counsel for the petitioner, Mr. Kadam, learned AGP for respondent Nos.1 and 2-State and Mr. Kankal, learned counsel for respondent No.4.

2. By filing this Petition under Article 227 of the Constitution of India, petitioner seeks quashing of order dated 18.11.2017 passed by the Additional Commissioner, Pune Division, Pune in Grampanchayat Appeal No.18 of 2016.

3. Matter relates to disqualification of respondent No.4 as member of Grampanchayat - Nere under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958 on the ground of encroachment of government property.

4. Election of members to Nere Grampanchayat was held on 04.08.2015 for a period of 5 years i.e. from August, 2015 to July, 2019. Results were declared on 06.08.2015. Respondent No.4 was declared elected as member from Ward No.1.

5. With the allegations that respondent No.4 had illegally encroached upon government land at survey No.123/1 admeasuring 1000 sq.ft. and made illegal construction thereon, petitioner filed dispute application No.66 of 2015 before the Additional Collector, Pune under Section 14(1)(j-3) read with Section 16 of the Maharashtra Village Panchayats Act, 1958 (the Act hereinafter).

6. Respondent No.4 contested the said dispute.

7. Both the parties were heard whereafter Additional Collector, Pune passed order dated 18.02.2016 allowing the dispute application filed by the petitioner by declaring that respondent No.4 had rendered himself disqualified from being a member of Grampanchayat - Nere in view of the provisions of Section 14(1)(j-3) of the Act.

8. A categorical finding was recorded by the Additional Collector that father of respondent No.4 namely, Arjun Bhima Jadhav had encroached upon government property and at the relevant point of time, respondent No.4 was also enjoying the encroached property.

9. Assailing the aforesaid order dated 18.02.2016, respondent No.4 preferred appeal before the Additional Commissioner, Pune Division, Pune under Section 16(2) of the Act which was registered as Grampanchayat Appeal No.18 of 2016. An application for stay of order dated 18.02.2016 was also filed.

10. Appellate authority was pleased to pass an interim stay order staying the effect and operation of the order dated 18.02.2016.

11. Appeal was contested by both the sides whereafter Additional Commissioner, Pune Division, Pune passed order dated 18.11.2017 allowing the appeal filed by respondent No.4 by setting aside the order dated 18.02.2016 passed by the Additional Collector. While observing

that it was the father of respondent No.4 who had encroached upon government property and there being no material on record to prove that respondent No.4 made encroachment on government property, it was held that respondent No.4 could not be held liable for the action of his father and, therefore, there was no violation of Section 14(1)(j-3) of the Act.

12. It is against this order that the present writ petition has been filed.

13. Notice in this case was issued on 13.03.2019.

14. Submissions made by learned counsel for the parties have been considered.

15. Section 14(1)(j-3) of the Act, which is the relevant provision, reads as follows:

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

xxx	xxx	xxx
xxx	xxx	xxx

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

16. There is no dispute to the finding recorded by the lower authorities that father of respondent No.4 had encroached upon government property. Question is whether respondent No.4 can be disqualified from being a member of the Grampanchayat for encroachment upon government property by the father.

17. In ***Sagar Pandurang Dhundare Vs. Keshav Aaba Patil***, Civil Appeal Nos.2306-2307 of 2017 decided on 13.11.2017, the question which fell for consideration before a two-judge Bench of the Supreme Court was whether a family member of the original encroacher can be disqualified under the Act.

17.1. Interpreting the expression ‘person’ appearing in Section 14 of the Act, Supreme Court held that as the law stands, for the purpose of disqualification the encroachment must be actually made by the member. In other words, for disqualification of a member under Section 14(1)(j-3), it is the member concerned who has to encroach upon government property.

18. This issue again came up for consideration before a three-judge Bench of the Supreme Court in ***Janabai Vs. Additional Commissioner, Civil Appeal No.6832 of 2018*** decided on **19.09.2018**. The question which fell for consideration in ***Janabai*** (*supra*) was whether the appellant could have been disqualified from continuing as member of the *Grampanchayat* on the ground of encroachment upon government land by her father-in-law and husband though she was using the said land.

19. Supreme Court after elaborate consideration held 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. Supreme Court applied purposive interpretation and expanded the meaning of the word ‘person’ whereafter it held that when a person shares an encroached property by residing there and there is continuance, he /she has to be treated as disqualified. Supreme Court further held that the decision in ***Sagar Pandurang Dhundare*** (*supra*) did not lay down the correct position of law and it was accordingly overruled. Supreme Court held 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.”

20. In view of the clear enunciation of law, the view taken by the appellate authority cannot be sustained on the face of the finding that father of respondent No.4 had encroached upon government property which was also enjoyed by respondent No.4.

21. Consequently, order dated 18.11.2017 passed by the Additional Commissioner, Pune Division, Pune in Grampanchayat Appeal No.18 of 2016 is set aside.

22. Writ Petition is allowed but without any order as to costs.

(UJJAL BHUYAN, J.)

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