

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2979/2018

(SANDESH TUKARAM MORE & ANOTHER **VERSUS** DIVISIONAL COMMISSIONER, AMRAVATI
 DIVISION, AMRAVATI & OTHERS)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri S.D. Chopde, counsel for petitioners.
 Shri A.V. Palshikar, A.G.P. For R-1 to 4.
 Shri A.S. Thotange, counsel for R-5.
 Shri U.J. Deshpande, counsel for R-6.

CORAM : A.S. CHANDURKAR, J.

DATE : AUGUST 02, 2019.

The challenge raised in the present writ petition is to the order dated 09.05.2018 passed by the Divisional Commissioner in appeal preferred by the petitioners herein that was filed under Section 16(2) of the Maharashtra Village Panchayats Act, 1959 (for short, 'the said Act') challenging the order of disqualification as passed by the Collector.

The respondent no.6 initiated proceedings under the provisions of Section 14(j-3) of the said Act seeking disqualification of the petitioners on the ground that despite being elected as members of the Gram Panchayat, they were responsible for the encroachment that was committed on the land owned by the Gram Panchayat. The Collector after considering the report submitted by the Secretary of the Gram Panchayat held that the petitioners had incurred disqualification for having committed the encroachment. The petitioners filed an appeal and the Divisional Commissioner affirmed the findings recorded by the Collector. Being aggrieved, the petitioners have filed the present writ petition.

Shri S.D. Chopde, learned counsel for the petitioners submitted that the encroachment as committed was not by the petitioners themselves but by their forefathers. For the act of family members, the petitioners who are elected after the encroachment was committed could not have been disqualified.

Shri U.J. Deshpande, learned counsel for the respondent no.6, Shri A.S. Thotange, learned counsel for the respondent no.5 alongwith Shri A.V. Palshikar, learned Assistant Government Pleader for the respondent nos.1 to 4 referred to the decision in *Janabai Versus Additional Commissioner & Others* [2018(5) Mh.L.J. 921] to urge that an elected member residing in an encroached property is liable to be disqualified irrespective of the fact that such encroachment was committed prior to being elected as a Member. It was submitted that since the family members of the petitioners were guilty of having committed encroachment, the petitioners were rightly disqualified.

In the light of the decision in *Janabai* (supra), the legal position is now clear that even if a family member has committed encroachment, the elected Member of the Gram Panchayat who is also a member of the same family and is occupying the encroached portion of the land is liable to be disqualified. When the impugned orders are examined in the light of this legal position, it is found that both the Authorities have rightly held the petitioners to be so disqualified. In that view of the matter, there is no reason to interfere in the present writ petition.

The Writ Petition is therefore dismissed. No costs.

JUDGE