

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

921. WRIT PETITION No. 69 /2020

Prashant S/o Eknath Ghule
age 38 years occupation agriculture
R/o Kumbhari Taluka Kopargaon Dist. Ahmednagar
...Petitioner

VERSUS

1. The Additional Commissioner,
Nashik Division, Nashik.
2. The Collector,
Ahmednagar Dist. Ahmednagar
3. The Deputy Conservator of Forest Division,
Ahmednagar Taluka and Dist. Ahmednagar.
4. Dattu S/o Gajanan Kadam,
age major occup. agriculture
5. Sanjay S/o Chandrakant Ghule,
age major occup. agriculture

Nos. 4 & 5 R/o Kumbhari Taluka Kopargaon
Dist. Ahmednagar

6. Grampanchayat, Kumbhari
Taluka Kopargaon Dist. Ahmednagar
through its Gramsevak.

Respondents

Mr. N..V. Gaware, Advocate for petitioner.

Mr. S.W. Munde, Asstt. Govt. Pleader for Respts. No.1 to 3/State

Mr. R.R. Chandak, Advocate for respondents No. 4 & 5

CORAM : ROHIT B. DEO, J.

DATE : 15th January, 2020

J U D G M E N T :

1. Rule. Rule is made returnable forthwith. Heard finally by consent.
2. The petitioner was elected as *Sarpanch* of Village Panchayat, Kumbhari, in the election held on 27th December 2017.
3. Respondents No.4 & 5 preferred an application under the provisions of Section 14(J-3) of the Maharashtra Village *Panchayats* Act (hereinafter referred to as "The Act") seeking disqualification of the petitioner on the premise that his grandmother Smt. Parvatibai Madhav Ghule encroached over portion admeasuring 0H.04R from Gat No. 433, which is forest land, and that the petitioner is the beneficiary of the encroachment.
4. The Collector, Ahmednagar, held that the petitioner stood disqualified. Perusal of the order dated 1st October 2019 rendered by the Collector would reveal that the order is predicated, substantially, if not entirely, on a *panchnama*, purportedly recorded by the Forest Officials on 6th September 2002.
5. The *Sarpanch* challenged the order of the Collector in appeal under Section 16 of the Act, which is rejected by the Additional Commissioner, Nashik Division, Nashik, by order dated 2nd

December 2019, which is impugned herein.

6. The learned Counsel for the petitioner has twin submissions to canvass.

7. The first submission is that the factum of encroachment by Smt. Parvatibai is not proved. The submission is that important right of the petitioner is in peril and, indeed, the expression of will of the electorate shall stand frustrated, if disqualification is ordered without cogent and irrefutable proof of the encroachment. The extension of the submission is that the *panchnama* dated 6th September 2002, which is heavily relied upon by the Collector and then the Appellate Authority, was not recorded in presence of Parvatibai. Indeed, there is no material on record to suggest that Parvatibai was noticed or that joint measurement of Gat No. 412 owned by Parvatibai and Gat No. 433, which is the forest land, was carried out. The learned Counsel for the petitioner would emphasis that post the complaint, no enquiry whatsoever is conducted by the Collector to ascertain the veracity of the claim of the complainant that Parvatibai encroached over 0H.04R land from Gat No. 433 belonging to the Forest Department.

The other submission, which is made without prejudice to the contention that the encroachment is not proved, is that the

petitioner is not a beneficiary of the alleged encroachment and, therefore, the articulation of the law of the Apex Court in ***Janabai Vs. Additional Commissioner and others [2018(5) Mh.L.J. 921]*** would not be apposite. The learned Counsel for the petitioner would invite my attention to the will-deed dated 11th November 2009 executed by the grand-mother of the petitioner – Parvatibai, by and under which agricultural field Gat No. 412 is bequeathed to one Shivaji Madhavrao Ghule, who is the paternal uncle of the petitioner. The learned Counsel for the petitioner assures the Court that the petitioner respects and is bound by the last testament of Parvatibai and shall not lay any claim to agricultural field aside Gat No. 412, which assurance is given after obtaining necessary instructions from the petitioner, who is present in the Court.

8. In rebuttal, the learned Counsel for the complainant-respondents No.4 & 5 herein would invite my attention to affidavit sworn by the petitioner, which purports to state that the petitioner is one of the legal heirs of Parvatibai and that the name of the petitioner may be mutated alongwith other legal heirs, in the revenue record as owner of Gat No. 412. The learned Counsel for respondents N.4 & 5 would submit that the said affidavit would conclusively demolish the defence of the petitioner that he is not a beneficiary of the alleged encroachment. The learned Counsel for

respondents No.4 & 5 would further submit that the *panchnama* recorded on 6th September 2002 was not challenged by the petitioner at any point in time and, therefore, it does not lie in the mouth of the petitioner to subject the *panchnama* to a critical scrutiny on the premise that the manner in which the *panchnama* was conducted, was flawed.

9. The learned Asstt. Govt. Pleader would support the findings recorded by the Authorities below.

10. It would be apt to consider the second submission of the petitioner before I deal with the first submission that the factum of encroachment is not proved. I find from the reply to the dispute that the petitioner did not contend that he is not the beneficiary of the alleged encroachment. Such a contention is further conspicuously absent in the memo of appeal. However, during the course of argument, such a contention appears to have been raised and was substantiated by producing on record a photocopy of the will-deed executed by Parvatibai. The contention is brushed aside by the Appellate Authority reasoning that the petitioner applied for mutating his name as owner of Gat No. 412. While it is true that a specific contention is not raised in the pleadings, considering that at stake was the right of the petitioner to hold the office of *Sarpanch*,

the contention, albeit, raised during the course of argument, deserves more serious and intensive consideration.

11. Adverting to the first submission of the learned Counsel for the petitioner that the factum of encroachment is not strictly proved, I am persuaded to accept the said submission. The only material, which weighed with the authorities, was the *panchnama*, purportedly recorded on 6th Sept. 2002 by the Forest Officials. Perusal of the said *panchnama* would suggest that it was only Gat No. 433, which was measured and there is no material on record to show that a joint measurement of Gat Nos. 412 & 433 was carried out. More importantly, there is no material on record to suggest that Parvatibai was noticed or that she was otherwise a privy to the proceedings. I have already noted *supra*, that in the proceedings, which were initiated pursuant to the complaint lodged by respondents N.4 & 5, there was no enquiry conducted to ascertain the factum of encroachment. The findings recorded are on the bedrock of the *panchnama* dated 6th Sept. 2002, which in my view, is not sufficient to record a finding of encroachment as would subvert the democratic will of the electorate.

12. In the light of discussions *supra*, I would allow the petition and set aside the order impugned.

13. The matter is remitted to the Collector, Ahmednagar, for conducting afresh enquiry, in accordance with law and in the light of the observations made herein.

14. The Collector, Ahmednagar, is expected to conclude the enquiry within six months.

15. Rule is made absolute in the aforstated terms.

**(ROHIT B. DEO)
JUDGE**

Madkar