

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

WRIT PETITION NO. 248 OF 2020

Sunil Dinkar Jagdale
Age 39 years, Occu-Agri
R/o Takli Lonar, Tq. Shrigonda
Dist.Ahmednagar

..PETITIONER

VERSUS

1] State of Maharashtra
Through Secretary for
Department of Rural Development
Mantralaya, Mumbai

2] State Election Commissioner (Maharashtra)
First Floor, New Administrator Building,
Hutatma Rajguru Chowk, Madam Cama Road,
Mumbai -400 032.

3] The Gram Panchayat Takli Lonar
Through its Village Officer
R/o Takli Lonar, Tq. Shrigonda
Dist.Ahmednagar.

4] Navnath Kerba Shinde
Age : 32 Years, Occu : Agri
R/o Takli Lonar, Tq. Shrigonda
Dist.Ahmednagar.

..RESPONDENTS

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Mr. M.K.Bhosale, Advocate for the petitioner.
Mr. S.N.Morampalle, A.G.P. for Respondent No.1.
Mr.A.B.Kadethankar, Advocate for Respondent No.2
Mr.A.A.Kokad, Advocate for Respondent No.3
Mr.PN.Khedkar for Respondent No.4-Absent.

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CORAM : MANGESH S. PATIL, J.
RESERVED ON :04/12/2020
PRONOUNCED ON : 08.12.2020

JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned A.G.P and the learned advocate for the respondent nos.2 and 3 waive service. With the consent of both the sides the matter is heard finally at the stage of admission.

2] By way of this Writ Petition under Articles 226 and 227 of the Constitution of India the petitioner is impugning the judgment and order passed by the Collector dated 5/8/2019, on a complaint filed by the Respondent no.4 thereby disqualifying him under the provisions of Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958 (hereinafter referred to as the Act) for making encroachment over a portion of the Government land from Gat No.41 of village Takli Lonar, Tq. Shrigonda, Dist. Ahmednagar.

3] The petitioner challenged his disqualification by preferring an Appeal under Section 16 of the Act with the Additional Divisional Commissioner, Nashik Region, Nashik. By the impugned judgment and order dated 16/12/2019 the Appeal has been dismissed. Hence the challenge.

4] The learned advocate for the petitioner submitted that the petitioner was a directly elected Sarpanch of the village in the election of the year 2017. Without there being any encroachment made by him and without insisting for

evidence to this effect, based on conjectures and surmises the authorities below have jumped to the conclusion about he having made the encroachment. He would submit that the construction said to be the encroachment is in fact a tenement allotted to his father under a Government scheme 'Indira Awas Yojana'. Consequently there was no encroachment on the Government land but a legal allotment of a tenement to his father. He would also point out as to how the Gram Panchayat had passed a Resolution to this effect in its meeting dated 31/5/1995 by Resolution No.4 wherein name of petitioner's father appears as a beneficiary under that scheme recommended by the Gram Panchayat.

5] The other limb of the argument of the learned advocate Mr.Bhosale for the petitioner is to the effect that in order to prove the alleged encroachment the authorities have relied upon a communication stated to have been addressed by some villagers to the Gram Panchayat which was later on forwarded to the Tahsildar concerned praying for regularization of the encroachment made by them over their respective portions from the land Gat No.41 which is a *Gairan* vesting in the Government. Name of the petitioner does appear in the Resolution passed by the Gram Panchayat dated 21/10/2017 to this effect pursuant to which the communication was addressed to the Tahsildar. However, the learned advocate would point out that signature of the father as well as the petitioner is conspicuously missing on this representation made by the villagers (page 23). Signature of only person appears to be put for and on behalf of 4 to 5 persons. He would further point out that afterwards even this Resolution was cancelled by passing a subsequent Resolution on 26/1/2020. He would therefore submit that both the authorities below have not applied their mind and have readily

jumped to the conclusion about the petitioner having encroached over the property based on the written representation of the villagers seeking regularization of the encroachment. He also pointed out that several villagers have affirmed about their names having been falsely included in the list of villagers stated to have applied to the Gram Panchayat for regularization of the encroachment (page nos.59 to 72).

6] The learned advocate would also point out that not only this but even names of dead persons (page 72) Yadav Laxman Gangawane and Parshuram Sonba Shinde find place in that list. Thus the learned advocate would submit that without adverting to all such material both the authorities below have drawn the conclusions without substance and material.

7] The learned advocate for the petitioner would submit relying upon the decision of this Court in the case of **Sau.Anita Laxman Junghare V/s Additional Commissioner, Amravati Division and others; 2018(4) All M.R. 302** that even if it is assumed that possession of the petitioner's father amounts to encroachment, there was no material before the two authorities below to objectively demonstrate that even the petitioner was occupying the same tenement. He would point out that in fact the petitioner has been residing separately elsewhere in a house property bearing Gram Panchayat No.255 standing on the land Gat No.196. Even his ration card and that of his father are separate. Even in the revenue record of the village submitted to the concerned Tahsildar it has been specifically noted that there was no encroachment anywhere in the village Takli Lonar for the years 2015-16, 2016-17 and 2017-18 (page 57).

8] The learned A.G.P and the learned advocate for respondent nos. 2 and 3 supported both the judgments and orders. They submitted that there was a concrete record in the form of representation of the villagers seeking regularization of encroachment over the land Gat No.41 before the lower authorities. Besides no record was produced to show that the construction of the tenement purportedly erected under the Indira Awas Yojana was carried out after obtaining necessary permission and nothing was produced to demonstrate that. It being a conclusive material no fault can be found with the authorities below in coming to the conclusion that the petitioner was residing with his father in an encroached portion from Gat No.41 and had incurred disqualification. They would also point out that the Gram Sevak of the village in his report dated 20/3/2019 specifically pointed out that the petitioner was indeed residing with his father in that tenement. Similarly even the Divisional Commissioner reached the same conclusion based on the Resolution passed by the Gram Sabha dated 2/10/2017, since it contained name of the petitioner and also refers to the dimensions of the property stated to be the encroachment over the land Gat No.41. This being a conclusive piece of evidence it was sufficient to arrive at a conclusion that the petitioner had incurred the disqualification having made encroachment.

9] I have carefully gone through the judgments and orders of the authorities below as well as the record produced by the petitioner.

10] Needless to state that the conclusion of incurring disqualification being drastic and penal and even stigmatizes a person who has been duly elected, it

is imperative that the authorities to whom the powers are vested under Section 16 of the Act, should insist for strict proof of the circumstances which result in disqualification. The degree of proof though may not strictly be beyond reasonable doubt, but atleast which would travel beyond mere preponderance of probabilities. There has to be material which is sufficient to draw an inference about such circumstances. One can gainfully refer to and rely upon the decision of the Supreme Court in case of **Ravi Yashwant Boir V/s District Collector, Raigad and other; (2012) 4 S.C.C. 407.**

11] In my considered view, both the authorities below do not seem to have borne in mind the penal consequences of the orders being passed by them. It is not that the petitioner was not coming with any evidence and has produced all of it in the present Writ Petition. As can be seen he had specifically contended that he was residing elsewhere in his own property constructed on Gat No.196 and was also having a separate ration card to demonstrate that he was not residing with his father. However, in neither of the impugned orders, the authorities have adverted to his such contention and simply reproduced his contention to this effect without making any attempt to dislodge it. Conspicuously they have not even stated that either he had failed to produce the record sufficient to draw this inference or that the record that was produced by him was insufficient to reach such a conclusion.

12] The authorities have also reproduced his contention that he had never applied for regularization of any encroachment as stated in the Resolution of the Gram Panchayat dated 2/10/2017. Still they have not taken pains to verify the fact and have simply relied upon a copy of such Resolution and have drawn the conclusion stating it to be the conclusive piece of evidence. They do

not seem to have insisted for the application stated to have been submitted by the villagers for regularization of their encroachment over land Gat No.41 and a copy of the Resolution passed pursuant thereto to ascertain if really the petitioner was one of the applicants and was a signatory to it. In my considered view it was highly imperative for the authorities below to have ascertained these facts before reaching any conclusion on either side.

13] *Prima facie* it does appear that there is some substance in the contention of the petitioner that though several persons' name appeared on this representation for regularization and even the Resolution passed by the Gram Panchayat on 2/10/2017, they all were not the signatories. There are affidavits sworn by some of the villagers whose names appear at both the places to this effect. Besides atleast two persons Yadav Laxman Gangawane and Parshuram Sonba Shinde are concerned, there are death certificates showing that they died in the year 2011 and 2009 respectively still their names appear in this list.

14] It is in these circumstances, the conclusions drawn by the two authorities below based on the application for regularization of encroachment and this Village Panchayat Resolution certainly appears to be based on conjectures and surmises.

15] Again, even both the authorities below have not even touched the contention of the petitioner that he was residing separately when there is a revenue record showing that he occupies the house property situated on land Gat No.196 and also possesses a separate ration card.

16] The upshot of the above discussion is that the authorities below have not at all conducted the inquiries as contemplated in the Act and have passed the impugned orders which are clearly perverse, arbitrary and capricious and deserve to be quashed and set aside.

17] However, one cannot lightly brush aside the allegations about the encroachment on a Government land and the consequences that should legally ensue. To my mind it would be better to relegate the parties to the original stage i.e. before the Collector concerned who can be directed to hold the inquiry afresh in the light of the discussion made hereinabove.

18] The Writ Petition is partly allowed. The impugned judgments and orders, one passed by the Collector dated 5/8/2019 and that of the Divisional Commissioner dated 16/12/2019 in Appeal, are quashed and set aside. The Gram Panchayat Dispute Application No.11/2019 is remitted back to the Collector, Ahmednagar for fresh adjudication by extending opportunity to both the sides to lead additional material/evidence.

19] The Rule is accordingly made absolute in above terms.

[MANGESH S. PATIL, J.]

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