

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

WRIT PETITION NO.420 OF 2020

(Sanjay s/o Babanrao Gawande Vs. Pradip s/o Dhanraj Gawande and others)

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

Court's or Judge's orders.

Shri D.T. Shinde, Advocate for Petitioner.
Shri S.S. Sitani, Advocate for Respondent No.1.
Shri A.A. Madiwale, AGP for Respondent Nos.3 to 5.

CORAM: RAVINDRA V. GHUGE, J.

DATE: 22nd JANUARY, 2020.

1] The petitioner, original complainant, is aggrieved by the concurrent findings of the Additional Collector dated 25.05.2017 and the Additional Commissioner, Nagpur dated 31.12.2019, by which his prayer to disqualify respondent no.1, as the elected member of the Village Gram Panchayat, Pandhurnakhedi and as it's Sarpanch, has been negative.

2] The contention of the petitioner is that the father of respondent no.1, Dhanraj is the agricultural land owner in land survey no.111 appearing in the village Pandhurnakhedi map. A portion of land admeasuring 0.07 hectares, which is identified as khasra no.112, is bordering 111. The petitioner contends that respondent no.1 and his father have encroached upon the said land and as such 112 being government land, exposes respondent no.1 to the disqualification prescribed under section 14(1)(j-3) of the

Maharashtra Village Panchayat Act. It is submitted that the judgment of the Hon'ble Apex Court in the matter of *Janabai v. Additional Commissioner and others* reported in 2018 (5) *Mh.L.J.* 921, would also apply as the elected representative has inherited the encroachment and is party to the encroachment.

3] The learned Advocate for the petitioner points out the report of the Tahsildar dated 06.12.2016, which indicates that the owner of land survey no.111 is Shri Dhanraj, who is cultivating 0.07 hectares land identified as 112. He then turns to the mauka chowkashi (spot inspection) dated 08.11.2016 carried out by the Gram Officer wherein respondent no.1 was present at the spot with his father. It is contended that respondent no.1 Pradip and his father Dhanraj agreed to remove the encroachment. This indicates that respondent no.1 has inherited the encroachment.

4] Reliance is placed upon the judgment delivered by this Court in the matter of *Sandip Ganpatrao Bhadade v. The Additional Commissioner, Amravati Division & Ors.* reported in 2017(1) *ALL MR* 277. My attention is drawn to paragraph nos.16, 17 and 18 which read as under:

16. In view of the aforesaid meaning of the terminologies - "to encroach", "encroachment", "encroacher" and "encroached", whoever resides in the property or any portion thereof, which is an encroachment upon the Government land or public property, can be said to have "encroached" upon it and becomes an "encroacher". Whether such an encroachment

is jointly with others and/or individually, either at one time or at different times remains hardly of any significance' as he becomes liable to be removed and prosecuted under Section 53 of the said Act. Whether a person has become liable to be removed and/or prosecuted under Section 53 of the said Act from the Government land or public property, becomes a real test of attracting disqualification under Section 14(1)(j-3) of the said Act. If the answer is in the affirmative, the disqualification is incurred.

17. *In view of the aforesaid position, the provision of Section 14(1)(j-3) of the said Act is attracted even in a case where a member of a Panchayat resides in the property or any portion thereof, which is an encroachment upon the Government land or public property. The question as to whether any other person or a member of a family has already made an encroachment, loses its significance and as soon as a member or proposed member joins such act, he cannot escape from the clutches of disqualification under Section 14(1)(j-3) of the said Act. The question framed, is answered accordingly.*

18. *If an intention of the Legislature is to prevent an encroachment upon the Government land or public property by a person, who is deemed to be a "public servant" under Section 184 entitled to enjoy all privileges attached to it under Section 180 of the said Act, can it be said that such an intention of the Legislature be defeated by adopting circuitous way of occupying the property, which is an encroachment on the Government land or public property. The answer would obviously be in the negative, for two main reasons - (i) the act,*

which is prohibited directly, cannot be promoted or encouraged indirectly to defeat the object and purpose of such prohibition, and (ii) it would amount to promoting or encouraging the conflicting interest, necessarily resulting in the disqualification under Section 14(1)(j-3) of the said Act.

5] The learned AGP appearing on behalf of respondent nos.3, 4 and 5 submits that both the impugned orders are justified and do not call for any interference. There was no evidence before the authorities to indicate that respondent no.1 had inherited the encroachment. In the absence of sufficient evidence, both the authorities have rightly rejected the application filed by the petitioner.

6] The learned Advocate for respondent no.1 elected representative submits that he is not the cultivator and he was present at the spot only because his father was involved and he had accompanied him. There is no record to indicate that he has inherited the agricultural land of his father and is enjoying the encroachment.

7] I find from the record that the report of the Tahsildar implicates Dhanraj as being an encroacher. He is the father of respondent no.1 Pradip. The spot inspection indicates that Dhanraj is the owner and cultivator of the land. Pradip was accompanying him to the spot when the inspection was scheduled. A son accompanying the father would not make him liable for an encroachment which has been done by the father in so far as an agricultural land is concerned, in contradistinction to a son enjoying a

residential accommodation built by the father when the father has encroached upon government land. I do not find any revenue record to indicate that Pradip is cultivating the land. In the 7/12 extract, it is admitted that the name of Dhanraj is shown to be the owner and cultivator. The name of Pradip does not appear in the 7/12 extract as per the submissions of the parties. The copy of the 7/12 extract has not been placed before this Court.

8] In Sandip Bhadade case (*supra*), the issue was with regard to a plot admeasuring 37.50 square meters and a construction was erected over the said plot by one Tukaram Karanji Bhade. Sandip was said to be occupying the said constructed area and was enjoying the property along with Tukaram. Tukaram is not the father of Sandip Bhadade. Sandip was a member of the family and was occupying the property and enjoying the construction over government land by way of an encroachment. It was in this background that this Court considered that Sandip was a member of a family and he was enjoying the constructed portion over the government land.

9] In the instant case, Pradip is not found to be cultivating land. There is no constructed hut or house in the agricultural field, which can be said to be occupied by Pradip. His father Dhanraj appears to have admitted in the spot inspection that he had encroached upon government land and was willing to immediately remove the said encroachment. However, there is no involvement of Pradip and the records do not indicate that he has been enjoying

the encroached portion or has inherited the encroached portion. In this backdrop, the view taken by the Hon'ble Apex Court in Janabai (*supra*) would not apply to this case.

10] I do not find that the impugned orders rejecting the complaint of the petitioner could be branded as being perverse or erroneous.

11] This petition, being devoid of merit is, therefore, dismissed.

(Ravindra V. Ghuge, J.)