

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 44 of 2021

1. Smt. Neera Manhar Aged About 45 Years W/o Shri Sukhiram Manhar Sarpanch, Gram Panchayat Thuthi Janpad Panchayat Jaijaipur District Janjgir Champa Chhattisgarh, R/o Village Thuthi, Tahsil Jaijaipur, District Janjgir Champa Chhattisgarh.
2. Smt. Durga Manhar Aged About 28 Years W/o Shri Gautam Manhar Panch , Ward No. 12 Of Gram Panchayat Thuthi Janpad Panchayat Jaijaipur District Janjgir Champa Chhattisgarh, R/o Village Thuthi, Tahsil Jaijaipur, District Janjgir Champa Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh, Through The Secretary, Department Panchayat And Rural Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, Post Office And Police Station Rakhi, District Raipur Chhattisgarh.
2. Collector Janjgir Champa District Janjgir Champa Chhattisgarh.
3. Sub Divisional Officer (Revenue) Jaijaipur , District Janjgir Champa Chhattisgarh.
4. Shivkumar Chandra S/o Laxman Prasad Chandra Village Thuthi, Thasil Jaijaipur District Janjgir Champa Chhattisgarh.

---Respondents

For petitioners – Shri Ishan Verma, Advocate.
 For State/respondents No.1, 2 & 3 - Ms. Sunita Jain, G.A.
 For respondent No.4- Shri Prateek Sharma, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

13/01/2021

Heard.

1. Instant petition is filed against the order dated 7/12/2020 passed by the Collector, Janjgir-Champa on an application filed on behalf of respondent No.4 Shiv Kumar Chandra. The petitioners who were elected Panch and Sarpanch have been disqualified to hold the post in exercise of power under Section 36 of the C.G. Panchayat Raj Adhiniyam, 1993.
2. Undisputed facts in this case are that the petitioner No.1 was

elected as Sarpanch and the petitioner No.2 was elected as a Panch of village Thuthi, Janpad Panchayat, Jaijaipur.

3. Learned counsel for the petitioners would submit that challenge to the election was made by the respondent No.4 on the ground that the petitioners reside over an encroached part of the government land. He would submit that under Section 36 of the C.G. Panchayat Raj Adhiniyam, 1993 statute starts with the word "disqualification for being office bearer of Panchayat". It is contended it would show that the said disqualification which is at clause (q) of Section 36 would only apply in respect of persons who are to be elected as Panch and Sarpanch for the ensuing election. However, once the election of the Sarpanch has been done, then in such a case to invoke a disqualification sub clause 3 of Section 36 can only be used by the Collector only when the said disqualification has occurred pursuant to sub section 2 of Section 36 i.e. after the person is elected. Therefore the order of the Collector is without jurisdiction and cannot be given effect to.

4. Per contra, learned counsel for respondent No.4 relies on the judgement passed in the case of **Janabai Vs. Additional Commissioner & ors.** reported in **AIR 2018 SC 5068** and would submit that the father-in-law of the petitioner was held to be an encroacher and at present after his death both the petitioners are residing in the house on the land which is said to have been encroached. Therefore they would also fall in the clause of disqualification as enumerated at clause (q) of Section 36 and therefore the order of the Collector is well merited which does not call for any interference.

5. Learned State counsel also supports the same argument.

6. Section 36 (1) speaks about disqualification for being office bearer of Panchayat. Plain reading of section leads to interpretation of section and puts a bar that no person shall be eligible to be an office bearer of the

Panchayat under given condition in Section 36(1). The different form of disqualification is also laid down. Disqualification for encroachment is enumerated at clause (q) which reads as under:-

“q. Has encroached upon any Land and Buildings of Panchayat or Government.”

7. Reading of Section 36 of the C.G. Panchayat Raj Adhiniyam, 1993 would show that disqualification for being office bearer of Panchayat plain and simple meaning would show that no person shall be eligible to hold an office bearer of Panchayat if the disqualification is attached. This cannot be interpreted to hold that before participation in election alone the disqualification would be attracted and once the person even if by any suppression is able to contest the election the disqualification would loose it's efficacy. This interpretation would lead to shelve the very object of the statute itself.

8. The order passed by the Collector dated 7/12/2020 and the report of the SDO purports that father-in-law of the petitioner Garamlal S/o Shivcharan was held to be an encroacher in Revenue Case No.60/A-68/2004-2005 and he was directed to be removed after imposing fine on 29/08/2005. After death of Garamlal the wife of Garamlal Gashnin Bai, son Sukhiram and his wife Neera Manhar who is petitioner No.1 herein are residing there for 15 years and daughter-in-law of Sukhiram Durga Manhar after marriage who is petitioner No.2 also resides in the same house for 15 years. Therefore finding is arrived at that in the government land the petitioners are residing as encroachers.

9. Reading of Section 36 (1), plain and simple interpretation would show that the person would be disqualified, if the disqualification is attached. The submission of the petitioner that before election alone the disqualification is attached would defeat the purpose and object of Section

36 itself.

10. The Supreme Court in the case of **Janabai Vs. Additional Commissioner & ors.** (supra) while interpreting such word persons in a context in the Maharashtra Village Panchayat Act has observed that when a person shares a encroached property by residing there and there is a continuance he or she has to be treated as disqualified and such interpretation would subserve the real warrant of the provision.

11. Para 28 and 29 of the said judgement are relevant which are reproduced herein below:-

“28. Section 184 of the Act provides that every Member of the Panchayat and every officer and servant maintained by or being employed under the Panchayat shall be deemed to be a public servant for the purpose of [Section 21](#) of the Indian Penal Code. Analysing the various provisions, the learned Single Judge in Sandip Ganpatrao Bhadade (supra) has opined:-

“11. It is in the background of the aforesaid provisions of law, that the provisions of qualifications and disqualifications to vote, contest the election and being continued as a member of Panchayat, are required to be considered. [Section 13](#) of the said Act deals with the persons qualified to vote and be elected. The persons incurring any disqualification under the provisions of the said Act are neither qualified to vote nor to be elected as a member of a Panchayat. [Section 14](#) deals with different kinds of disqualifications, as stipulated in clauses (a) to (k) under sub-section (1), which operate against two kinds of persons – (i) who proposes to become a member of a Panchayat, and (ii) who has become a member of a Panchayat. If a person has incurred any one or more disqualifications, then he is prohibited from becoming a member of a Panchayat, and if becomes a member of a Panchayat, then his is not entitled to continue as such. The disqualification under [Section 14](#) is in respect of the acts, events, deeds, misdeeds, transactions, etc, which have not been done, happened or occurred before entering into the office as a member of a Panchayat as well as those which take place during continuance as a member of a Panchayat.

And again:-

'13. The very object of introducing the provision of

disqualification under [Section 14](#) (1) (j-3) of the said Act is to avoid the conflict of interest by prohibiting the persons, who are the encroachers upon the Government land or public property to get elected or continued as a member of the Panchayat, which is democratically elected body of the villagers. It is beyond comprehension to assume that a person under statutory obligation or a duty to protect the Government land or public property from encroachment, commits an act of such encroachment. To permit person, who proposes to become a member or becomes a member of the Panchayat to be the encroacher upon the Government land to public property, would be anathematic, acting in breach of statutory duty, exposing himself to prosecution under sub-sections (1) and (4) of [Section 53](#), resulting ultimately in losing the protection under [Section 180](#) read with [Section 184](#) of the said Act. It is in this context that the text of disqualification under [Section 14\(1\)\(j-3\)](#) of the said Act is required to be analyzed and interpreted.

In the case of Devidas Surwade (supra), it has been clearly stated, as noticed earlier, that the term 'person' has to include the legal heirs, if any, of the encroacher who continue to occupy the government land. Emphasis has been laid on encroachment and continued encroachment. After the said Division Bench judgment, number of learned Single Judges have adopted a different approach without noticing the judgment which is against judicial discipline.

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 be 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."

12. Though the petitioners tried to raise for the first time before this court that the petitioners have been conferred with the bhoomi swami right this was not an issue before the court below and particular of the subject land the encroachment is said to be over land of 0.16 acres. Even that

factual aspect for the first time before this court cannot be appreciated when it was not raised before the court below. In view of the discussion made herein above, the order passed by the Collector appears to be well merited which do not call for any interference. The petition sans merit and it is dismissed accordingly.

Sd/-

(Goutam Bhaduri)

JUDGE