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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1679 OF 2020

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| 1. | Shilpa w/o Datta Kattewar (Mekale)
Age – Major, Occ – Sarpanch,
Grampanchayat, Pangari,
R/o Pangari, Taluka & District – Nanded | PETITIONERS |
| 2. | Dropadabai w/o Ganpati Kattewar
Age – Major, Occ – Grampanchayat Member
Pangari, R/o Pangari,
Taluka and District – Nanded | |
| 3. | Kapil s/o Ganpati Kattewar
Age – Major, Occ – Grampanchayat Member
Pangari
R/o Pangari, Taluka and District – Nanded | |

VERSUS

- | | | |
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| 1. | The State of Maharashtra
Through its Secretary,
Rural Development
Mantralaya, Mumbai | RESPONDENTS |
| 2. | The Additional Commissioner,
Commissioner Office,
Aurangabad | |
| 3. | The Collector,
Collector Office,
Nanded, Taluka and District – Nanded | |
| 4. | The Block Development Officer,
Panchayat Samiti Nanded
Taluka & District – Nanded | |
| 5. | The Gramsevek,
Grampanchayat Office, Panghari
Taluka and District – Nanded | <u>DELETED</u> |
| 6. | Shivaji s/o Govind Panghare | |

Age – Major, Occ – Grampanchayat Member
Grampanchayat Office, Pangari
R/o Pangari, Taluka and District – Nanded

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Mr. G. R. Ingole, Advocate for the petitioners
Mrs. V. S. Chaudhari, AGP for respondent - State
Mrs. Yogita M. Kshirsagar, Advocate for respondent No.4
Mr. M. M. Parghane, Advocate for respondent No.6

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[CORAM : NITIN B. SURYAWANSHI, J.]
DATE : 18th NOVEMBER, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. The petitioners, by this petition, challenge order dated 3rd July, 2019 passed by Collector, Nanded in Dispute No. 379 of 2018, thereby disqualifying the petitioners from the posts of Sarpanch and Gram Panchayat Members respectively of village Pangari, Taluka and District – Nanded and order dated 9th December, 2019 passed by the Commissioner, Aurangabad in Appeal No. 158 of 2019 thereby confirming the order of disqualification passed by the Collector, Nanded.
3. The petitioners are joint family members and residing at Gram Panchayat property No. 4 situated at Village Pangari, Taluka and District – Nanded. Petitioner No. 1 is the Sarpanch

and petitioner Nos. 2 and 3 are the members of Gram Panchayat, Pangari.

4. Dispute No. 379 of 2018 came to be filed by respondent No. 6 before the Collector, Nanded, contending that the petitioners have encroached on the public property and the encroached portion is in possession of the petitioners and, therefore, they have incurred disqualification under sections 14 (J-3) and 16 of the Maharashtra Village Panchayat Act, 1958 (for short "the said Act").

5. The Collector thereupon, directed an inquiry through the Block Development Officer, Panchayat Samiti, Nanded, who after visiting the spot, submitted his report. The Collector, after hearing the parties and considering the inquiry report and documents on record, by the impugned order, disqualified the petitioners as Sarpanch and Members of the Gram Panchayat. The petitioners unsuccessfully challenged the order passed by the Collector, before the Commissioner, by filing Appeal No. 158 of 2019, hence the present writ petition.

6. Heard learned advocate for the petitioners, learned AGP for the State and learned advocates for respondents No. 4 and 6.

7. Learned advocate for the petitioners vehemently submitted that as per the spot Panchanama and the inquiry report submitted by the Block Development Officer, the petitioners are not residing in Gram Panchayat Property No. 4 and the petitioners are residing elsewhere and, therefore, the impugned order of disqualification of the petitioners is unsustainable. According to learned advocate for the petitioners, the Commissioner has failed to consider this aspect in the proper perspective and has erroneously rejected the appeal filed by the petitioners. He, therefore, urged that, since the petitioners are not residing in the encroached property, the disqualification order passed against the petitioners is liable to be quashed and set aside.

8. Learned AGP, on the other hand, supported the impugned orders and submitted that well reasoned orders are passed by the Collector as well as by the Commissioner and no case is made out by the petitioners to cause interference in the same.

9. Learned advocates for respondents No.4 and 6 also supported the impugned orders contending that no fault can be found with the orders impugned in the petition.

10. Perusal of the record reveals that the petitioners, at the

time of filing their nomination forms, have shown their residential address as gram panchayat property No. 4. They have also mentioned that they are using toilet at said gram panchayat property No.4. In the voters list address of the petitioners is shown as gram panchayat property No. 4.

11. In the spot Panchanama, conducted by the Block Development Officer, the encroachment in the gram panchayat property No. 4 is confirmed. It is mentioned that encroachment is made during the period of deceased Sambhaji Datta Kattewar in the year 2001. Gram panchayat property No. 4 stands in the name of deceased Sambhaji Datta Kattewar. Petitioner No. 1, at the time of spot Panchanama, has stated that she resides in the house property No. 883, owned by Ganpati Datta Kattewar.

12. It is obvious that at the time of spot Panchanama, the petitioners could succeed in convincing the Block Development Officer that they are not residing in gram panchayat property No. 4 and, therefore, the same was accordingly mentioned, in the spot Panchanama as well as in the inquiry report submitted by the Block Development Officer.

13. Admittedly, the petitioners, at the time of filing their nomination forms for the gram panchayat elections, have given

their residential address as gram panchayat property No. 4. It is also not disputed that there is encroachment on public property by constructing a platform and a gallery on east and west sides of said property No. 4. In the inquiry report, the Block Development Officer has recommended that action under section 53 of the said Act be initiated in respect of the encroachment. It is, thus, clear that there is an encroachment on public property by construction of platform on the gutter and gallery on eastern and western sides of gram panchayat property No. 4, wherein the petitioners were and are residing. The residence of the petitioners in the said property No. 4 is admitted by the petitioners themselves by giving their residential address as gram panchayat property No. 4, at the time of filing nomination forms for the gram panchayat elections and certificates were also enclosed that the petitioners are using toilet constructed in gram panchayat property No. 4.

14. Thus, the record indicates that there is an encroachment in gram panchayat property No. 4 and the petitioners are residing in the said property. Merely because in the spot Panchanama and inquiry report it is recorded that the petitioners are not residing in the said property, would not change the factum of encroachment made on public property and would not absolve

the petitioners from incurring the disqualification. Therefore, the contentions of the petitioners that they are not residing in said gram panchayat property No. 4 cannot be accepted. There is no substance in the said argument of the petitioners that they are not residing in gram panchayat property No.4, presently and, therefore, they are not liable to be disqualified.

15. It is apt to rely on the observations of the Hon'ble Supreme Court in the judgment in the case of "**Janabai V/s Additional Commissioner and others**", 2018 (5) Mh.L.J.921, wherein, in paragraph No. 29, it is observed thus-

"..... 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."

16. It is, thus, clear from above observations that not only the first encroacher, but also the person who shares the encroached property with him by residing there suffers disqualification. In view of clear position on record that there is an encroachment on

the public property and the petitioners are residing in gram panchayat property No. 4, in view of the address given by them in the nomination forms as well as certificates of usage of toilet and their residential address mentioned in the voters' list of gram panchayat, it is clear that the petitioners are sharing the encroached property by residing there and there is continuance of residence on the part of the petitioners and, therefore, the petitioners have incurred disqualification.

17. The Collector, Nanded has rightly disqualified the petitioners on the basis of record, which indicates that the petitioners are residing in the encroached property. The Commissioner, after taking into consideration the documents placed on record, has rightly dismissed the appeal filed by the petitioners.

18. For the aforestated reasons, there is no merit in the challenge raised by the petitioners to their disqualification. The writ petition, being devoid of any substance, is dismissed. Rule stands discharged with no order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE

