

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

WRIT PETITION NO. 4940 OF 2020

1. Induabai W/o. Madhukar Misal, **...PETITIONERS**
Age-54 years, Occu-Household,
Tq. Phulambri, Dist. Aurangabad
2. Dwarkabai W/o. Santosh Jadhav,
Age-35 years, Occu-Household,
R/o. Opposite Sant Sawata Mali College,
Phulambri, Dist. Aurangabad
3. Yogesh S/o. Madhukar Misal,
Age-35 years, Occu-Business,
R/o. Saleem Colony Phulambri,
Tq. Phulambri, Dist. Aurangabad
4. Santosh S/o. Dattatraya Jadhav,
Age-42 years, Occu-Business,
R/o. Opp. Sant Sawata Mali College,
Phulambri, Dist. Aurangabad
5. Dhananjay S/o. Baburao Simant,
Age-59 years, Occu- Business,
R/o. Teli Galli, Phulambri,
Tq. Phulambri, Dist. Aurangabad
6. Nikhil S/o. Kamalakar Kamblaskar,
Age-26 years, Occu-Business,
R/o. Opp. Renuka General Stores,
Phulambri, Dist. Aurangabad
7. Sk. Fayyaz S/o. Abdul Rahim Patel,
Age-50 years, Occu-Business,
R/o. Opp. Jama Masjid,
Phulambri, Dist. Aurangabad

8. Sayed Hamidoddin Sayed Abduloddin Chisti, Age 56 years, Occu-Business, R/o. Chisti Wada Phulambri, Dist. Phulambri, Dist. Aurangabad

VERSUS

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| <ol style="list-style-type: none"> 1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai 2. Sayed Julfekar S/o. Sayed Abdul Gaffar,
Age-43 years, Occu-Business,
R/o. Kazi Wada Phulambri,
Tq. Phulambri, Dist. Aurangabad 3. Chief Officer, Nagar Panchayat,
Phulambri, Dist. Aurangabad 4. The Collector,
Collector Office, Aurangabad | <p>...RESPONDENTS</p> |
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Mr. S. S. Thombre, Advocate h/f Mr. K. F. Shingare, Advocate for the petitioners
 Mr. G. O. Wattamwear, AGP for the respondents/State
 Mr. R. V. Gore, Advocate for the respondent No.2
 Mr. A. K. Tiwari, Advocate for the respondent No. 3

CORAM : N. J. JAMADAR, J.

RESERVED ON : 30-04-2021

PRONOUNCED ON : 07-05-2021

JUDGMENT :

. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties heard finally at the stage of

admission.

2. This petition takes exception to the judgment and order dated 06-03-2020 passed by the Minister (Urban Development) in the Appeal No. एमसयुएन २०२०/प्र. क.६/नवि.१५ whereby the appeal preferred by the petitioner Nos. 1 and 2 came to be dismissed by affirming the judgment and order dated 31-12-2019 passed by the Collector, Aurangabad in dispute No.CR/05 of 2019 whereunder the petitioner Nos. 1 and 2 were held to have incurred the disqualification under Section 44(1)(e) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965.

3. The petition arises in the backdrop of following facts.

A] The petitioner Nos. 1 and 2 were elected as Councilors of Phulambri Nagar Parishad, in the elections held in the year 2017. The petitioner No.1-Indubai was elected as the Vice President of the Nagar Parishad. Mr. Sayyad Julfekar-respondent No.2, a resident of Phulambri lodged a dispute with the Collector alleging that the petitioner Nos.1 and 2 have incurred the disqualification as their dependants namely Yogesh Misal petitioner No.3-the son of petitioner No.1-Indubai, and Santosh Dattatraya Jadhav the petitioner No. 4-husband of petitioner No.2-Dwarkabai have erected illegal and unauthorized construction over the land admeasuring 20-Guntha out of Survey No. 353, which is a Wakf property (The Wakf Land). The said illegal and unauthorized construction was

alleged to have been carried on at the behest of the petitioner Nos.3 to 8 herein. The respondent No. 2 further alleged that the petitioner Nos.1 and 2, by abusing their office, have instigated their dependants to carryout unauthorized construction. Hence, the conduct of the petitioner Nos. 1 and 2 falls within the tentacles of Section 44 (1)(e) of the Act, 1965 and entails disqualification.

B] The Collector conducted an enquiry as envisaged by the provisions contained in Section 44 (3) of the Act, 1965. The petitioner Nos. 1 and 2 contested the claim of the disputant. It was stoutly denied that the petitioner Nos. 3 to 8 committed any encroachment over the Wakf land or carried out any illegal construction. The petitioner Nos. 1 and 2 asserted that the petitioner Nos. 3 to 8 and others were in lawfull possession of plots admeasuring 450 sq. fts. each out of Wakf land under a lease agreement executed by the Chief Executive Officer of Wakf Board on 19-07-2014. The lease has been renewed periodically. It was contended that respondent No.2 lodged the dispute with a view to wreck vengeance out of political rivalry.

C] The Collector, after evaluation of material on record, entered a finding that the petitioner Nos. 3 to 8 including Yogesh- petitioner No.3 and Santosh- petitioner No.4 (son and husband of the petitioner Nos. 1 and 2, respectively) carried out unauthorized construction in breach of an injunction order passed by the Wakf Tribunal on 30-04-2019 and the notice dated 16-05-2019 issued by

the Tahasildar, Phulambri on the basis of said order of injunction. The Collector placed reliance on the panchanama dated 29-04-2019 carried out by the officials of the District Wakf Office, Aurangabad, wherein the fact that 20 RCC columns were erected on 20-Guntha Wakf land was recorded. The petitioner Nos. 1 and 2 were thus declared to have incurred the disqualification under Section 44 (1) (e) of the Act, 1965 by the judgment and order dated 31-12-2019.

D] Being aggrieved by and dissatisfied with the aforesaid order of disqualification the petitioner Nos. 1 and 2 preferred appeal to the State Government under Section 44(4) of the Act, 1965. The Minister (Urban Development) by the impugned judgment and order dated 06-03-2020 was persuaded to dismiss the appeal. The appellate authority was the view that the fact that the petitioner Nos. 3 to 8 had committed encroachment over the Wakf land and erected unauthorized structure was fully established. Since, the unauthorized construction was carried out, despite the order of injunction passed by Wakf Tribunal and the order passed by the Tahasildar, in pursuance of the order of the Wakf Tribunal, it was held that the conduct of the petitioner Nos. 1 and 2 fell within the mischief of Clause (e) of the Sub-Section (1) of Section 44.

E] Being aggrieved the petitioners have preferred this petition. Though the petitioner Nos. 3 to 8 have joined as co-petitioners, yet, the petition is mainly prosecuted by the petitioner Nos. 1 and 2, who are declared to have incurred the

disqualification.

4. I have heard Mr. S. S. Thombre, learned counsel for the petitioners, Mr. G. O. Wattamwar, learned AGP for the State/respondent Nos. 1 and 4, Mr. R. V. Gore, learned counsel for the respondent No. 2 and Mr. A. K. Tiwari, learned counsel for the respondent No. 3. With the assistance of the learned counsels for the parties, I have perused the material on record including the copies of the proceedings which were filed before the Wakf Tribunal, and tendered across the bar.

5. Mr. Thombre, the learned counsel for the petitioners urged with a degree of vehemence that duly elected peoples representatives have been disqualified on basis of vague and unsubstantiated allegations. The authorities below have not realized the solemnity of the quasi judicial function they were called upon to discharge, urged Mr. Thombre. The finding that the petitioner Nos. 3 to 8 had committed encroachment over 20-Guntha land out of Survey No. 353 is singularly perverse as it is against the weight of the material on record. It was strenuously urged that the fact that the petitioner Nos. 3 to 8 and other lessees have been in lawful possession of the 20-Guntha land is recorded in the order passed by the Wakf Tribunal, in Wakf Suit No. 104 of 2014. In the face of a clear stand by the Wakf Board that the petitioner Nos. 3 to 8 and the other lessees are in lawful possession of the portions of the Wakf land, in the capacity of lessees thereof, and that there is no

encroachment whatsoever, the authorities below committed a grave error in holding that the dependants of the petitioner Nos. 1 and 2 have committed encroachment. The allegations of having erected unauthorized construction was also stated to be far from established.

6. Mr. Thombre, the learned counsel further urged that it is well recognized that an elected representative cannot be unseated on the basis of vague and uncertain allegations. In the absence of clear proof of misdemeanor an elected representative cannot be disqualified lest democratic principles would be undermined. In support of the aforesaid submissions, Mr. Thombre placed strong reliance on the judgments in the following cases:

1] Ravi Yashwant Bhoir Vs District Collector Raigad and others (2012) 4 SCC 407

2] Dattatraya Adinath Bandgar Vs State of Maharashtra and others 2009 (5) Bom. C.R. 795

3] Javed Sheikh Mustaque Patel Vs State of Maharashtra through Pirnciple Secretary and Others 2009 (3) Bom. C.R. 719

4] Jagdishchandra Narayanrao Karemore Vs The District Collector and others 2009 (2) Mh. L. J. 553

5] Baburao Vishwanath Mathpati Vs State of Maharashtra and others 1996 (1) Mh.L.J. 366

7. As against this, Mr. Wattamwar, the learned AGP stoutly supported the impugned orders. It was urged that the authorities below have arrived at a justifiable conclusion that the petitioner Nos. 1 and 2 have incurred the disqualification on the basis of material which indicates that the dependants of the petitioner Nos. 1 and 2 carried out unauthorized construction brazenly and in uttered disregard to the order of injunction passed by Wakf Tribunal. Mr. Wattamwar, learned AGP placed reliance on a three Judges Bench judgment of the Supreme Court in the case of **Janabai Vs Additional Commissioner and others 2018 (5) Mh.L.J. (SC) 921.**

8. It would be suffice to note that the import of the word 'person' used in Section 14 (1)(j-3) of the Maharashtra Village Panchayats Act, 1958 fell for consideration in the said case. The controversy at hand arises in a totally distinct factual background governed by altogether different provisions.

9. Mr. Gore, learned counsel for the respondent No. 2 submitted that there is no dispute about the fact that initially lease was granted by the Chief Executive Officer of Wakf Board in the year 2014. However, the lease was not renewed after its term expired. Though the factum of the possession of the petitioner Nos. 3 to 8 over the Wakf land is not disputed, yet that would not entitle the petitioner Nos. 3 to 8 erect unauthorized permanent structure over the said Wakf land. Taking the court through the copies of the

proceedings before the Wakf Tribunal in Wakf Suit No. 89 of 2019, application No. 57 of 2014 and the Walkf suit No. 104 of 2014, Mr. Gore, learned counsel would urge that there is no merit in the submission that the property over which the unauthorized construction was carried out was not identified. Mr. Gore, canvassed a submission that in the light of a categorical finding of fact that the unauthorized construction was erected at the behest of the dependants of the petitioner Nos. 1 and 2, this court may not be justified in interfering with the findings of fact, in exercise of the writ jurisdiction. To lend support to this submission Mr. Gore banked upon the judgment in the case of **Javed Sheikh** (supra).

10. To begin with, it is imperative to steer clear of nature misdemeanor attributed to the petitioner Nos. 1 and 2 and their dependants i.e. the petitioner Nos. 3 and 4 respectively. From the perusal of the impugned judgment and order one gets an impression that the authorities below were of the view that the petitioner Nos. 3 to 8, the petitioner Nos. 3 and 4 in particular, committed encroachment over the Wakf land. The fact that, the lease was not renewed during the period intervening 2015 and 2019 was factored in to draw support and sustenance to said conclusion.

11. At the threshold, it is necessary to note that the indictment against the petitioner Nos. 1 and 2 was of erection of illegal and unauthorized construction, which attracts disqualification

under Section 44 (1)(e). There is an element of distinction between charge of encroachment and erection of unauthorized construction. To attract the disqualification under Section 41(1)(e) of the Act, 1965 it is not necessary that the land over which unauthorized construction is erected should be occupied unlawfully. Erection of unauthorized construction over a piece of land which lawfully vests in a councilor or his dependant would squarely fall under the tentacles of clause (e) as the emphasis is on erection of construction without prior permission of the planning authorities and in violation of the governing building regulations.

12. With the said clarity, reverting to the aspect of the identity of the land over which the unauthorized construction was allegedly erected, it would be necessary to note that from the persual of the description of the property in Wakf Suit No. 109 of 2014, which was instituted by the petitioners and others, in the capacity of lessees, and Wakf Suit No. 89 of 2019, which was instituted against the petitioners, the identity of property is fairly established, in as much as the boundaries of the 20 Guntha land out of Gut No. 353 are identical in both the suits.

13. The letter dated 19-07-2014 under which lease of an area admeasuring 450 sq. fts. land out of said 20 Gunthas Wakf land, came to be granted indicates that the lease was granted to the petitioner Nos. 3 and 4 alongwith 24 other persons for a term of 11 months at the rate of Rs.1.50 per sq. fts per month. The lease

came to be renewed by letter dated 10-07-2019. It is true that there is no material to indicate that in the intervening period the lease was renewed. However, non-renewal of the lease during the intervening period does not make the petitioner Nos. 3 and 4 and other lessees encroachers over said land. The lessees were holding over the demised premises after the expiry of the term of lease.

14. Moreover, in Wakf Suit No. 104 of 2014, instituted by the petitioner Nos. 3 and 4 and other lessees, against the persons who threatened to cause obstruction to their possession over the said land, Wakf Tribunal was persuaded to grant temporary injunction restraining the defendants therein from causing obstruction to the possession of 25 plaintiffs therein over their respective plots. Wakf Tribunal in terms observed that the plaintiffs therein were still in possession of the plots and their possession cannot be termed as illegal. A challenge to the said order was negated by this court in the Civil Revision Application No. 36 of 2016 by judgment and order dated 04-10-2017.

15. In the backdrop of the aforesaid material on record and the orders passed by the Wakf Tribunal and this court, the authorities below clearly erred in recording a finding that the petitioner Nos. 3 to 8, especially the petitioner Nos. 3 and 4, had committed encroachment over the Wakf land. No support thus can be drawn to the impugned order on the premise that the petitioner Nos. 3 to 8 had committed encroachment over the Wakf land.

16. This leads me to the core issue of complicity of the petitioner Nos. 1 and 2 in erection of unauthorized construction over the Wakf land. As indicated above, the fact that the Wakf land was not encroached upon does not dilute the potency of the charge, that the construction was unauthorizedly carried out, relatable to the disqualification under Section 44(1)(e) of the Act, 1965.

17. From the perusal of the record, it appears that, the Members of the Muslim community at Phulambri, were demanding that the said 20 Gunthas land be utilized to construct a marriage hall for the benefit of Muslim community. The allotment of said land on lease, to the petitioner Nos. 3 and 4 and other lessees, was thus resisted. When the unauthorized construction allegedly commenced, Mr. Nafees Abdulla Patel and others (who later on instituted Wakf Suit No. 89 of 2019) lodged the grievances with Tahasildar, Phulambri that the construction was being unauthorizedly erected over the said land. They threatened to sit on a fast. In the said grievance, the petitioner No. 3 Yogesh Misal was named alongwith others as the person who was carrying out unauthorized construction.

18. Thereupon, the Tahasildar, Phulambri addressed a communication to the Wakf Board on 26-04-2019 calling upon it to take requisite action, at its end, as the Wakf Board had the authority deal with the said matter. An apprehension was also

expressed that if action was not taken an issue of law and order might arise. Pursuant to the said report, officials of the Wakf Board had a site inspection on 29-04-2019. It was noticed that 20 RCC columns were erected on the said land. Panchas apprised that the said construction was being carried on by the petitioner No.3 Yogesh, petitioner No. 4-Santosh and others and those persons had not obtained the permission of Wakf Board and Nagar Panchayat, Phulambri. The aforesaid panchanama dated 29-04-2019 constitutes the substratum of case that the petitioner Nos. 3 and 4 had carried out the unauthorized construction.

19. Mr. Thombre, learned counsel for the petitioners would urge that the panchanama dated 29-04-2019 is unworthy of reliance as the respondent No. 2, the disputant, had signed the panchanama as one of the public witnesses. The veracity of the contents of the panchanama is, thus, in serious doubt, submitted Mr. Thombre.

20. In contrast, Mr. Gore, learned counsel joined the issue by canvassing a submission that the said ground was not raised before the authorities below and now it is not open for the petitioners to question the veracity of the contents of the panchanama before the writ court. To lend support to this submission Mr.Gore placed reliance on the judgment of this court in the case of **Javed Sheikh** (Supra).

21. In the aforesaid case a ground was raised for the first time before the writ court that the Officer who had heard the matter had not passed the final order and it was passed by the successor officer. In that context, this court held that the record revealed that no such ground was taken in the memo of appeal and advanced in the course of arguments in appeal before the State Government. Had such a ground been taken and pressed into service, the Appellate Authority would have thought of remitting the matter to the Collector for fresh hearing. In the writ jurisdiction that cannot be done at that stage.

22. It is true that the impugned order do not reveal that the petitioners questioned the reliability of the inspection proceeding evidenced by the panchanama dated 29-04-2019 on the ground that the disputant was one of the public witnesses thereto. Even if the petitioners are allowed to agitate the said ground before this court, yet, it does not appear that it would advance the cause of the petitioners. The reasons are not far to seek. The genesis of the enquiry cannot be lost sight of. Evidently, the members of the Muslim community made repetitive grievances with the authorities, including the Tahasildar, Phulambri, and the Chief Officer, Nagar Panchayat, Phulambri that the said land, over which the members of the committee were laying claim for construction of a marriage hall, was encroached upon and the petitioners and others were carrying out unauthorized construction thereon. The officials of Wakf Board had not conducted the panchanama on their own. Said

action was taken pursuant to communication dated 26-04-2019 addressed by the Tahasildar as he apprehended a law and order situation. Secondly, the grievances were made not by the petitioner No.2 herein but by Nafees Patel and others, who later on instituted the Wakf Suit No. 89 of 2019. In the circumstances, the fact that the respondent No.2 acted as one of the public witnesses to the said panchanama does not detract materially from its veracity and reliability.

23. The communication dated 02-05-2019 addressed by the District Wakf Officer, Aurangabad to the Chief Executive Officer, Wakf Board lends further support to the proceedings of site inspection. It records that pursuant to intimation by Tahasildar, Phulambri, vide letter dated 26-04-2019, site inspection was carried out and it was noticed that 20 RCC columns are erected over the Wakf land. The said work was being carried out at the behest of the petitioner Nos. 3-Yogesh and petitioner No.4-Santosh. The concerned persons were directed to stop the work and panchanama was drawn.

24. It would be contextually relevant to note that Mr. Nafees Patel and others instituted Wakf Suit No. 89 of 2019 against the petitioner Nos. 3 and 4 and rest of the lessees. A categorical averment was made in the plaint that the petitioner Nos. 3 to 8 herein – defendant Nos. 1 to 6 therein, were instrumental in starting illegal construction over the Wakf land. The construction

activity was carried out, on 17th, 18th and 20th April and it was going on in full-swing on the date of institution of the suit. They have not obtained permission from the Wakf Board. Nor from the Nagar Panchayat, Phulambri. The plaintiff therein, thus, sought to restrain the defendant Nos. 1 to 6 therein- the petitioner Nos. 3 to 8 herein, from carrying out the construction over the said Wakf land. The Wakf Tribunal passed ex-parte temporary injunction order restraining the defendant Nos. 1 to 6 therein from carrying out the construction over the said Wakf land, on 30-04-2019. It appears that despite the said injunction order, the petitioner Nos. 3 to 6 did not desist from carrying out the construction. Thus, notice was issued by the Tahasildar, Phulambri on 16-05-2019 to the petitioner Nos. 3 to 8 calling upon them to immediately stop work, specifically recording that despite the order passed by the Wakf Tribunal, the construction was being carried out, on 16-05-2019 as well.

25. The aforesaid documents, if read in juxtaposition with each other, establish that construction was being erected on the said Wakf land despite the orders passed by the Wakf Tribunal. And Wakf authorities as well as the revenue authorities took cognizance of the matter and called upon the petitioner Nos. 3 to 8 to immediately stop the said work.

26. Mr. Thombre, attempted to salvage the position by advancing a submission that there is no reference to the previous suit instituted by the petitioner Nos. 3 to 8 and other lessees (Wakf

suit No. 104 of 2014), in the suit instituted by Nafees Patel and others (Wakf Suit No. 89 of 2019). Since the possession of the petitioner Nos. 3 to 8 and others was held to be lawful in Wakf suit No. 104 of 2014 and defendants therein were restrained from causing obstruction to the possession of the petitioner Nos. 3 to 6 and other lessees and the said order was also upheld by the High Court, the petitioner Nos. 3 to 8 could not have been restrained by an injunction order obtained behind the back of the petitioner Nos. 3 to 6 and others lessees in Wakf Suit No. 89 of 2019. I am afraid to accede to this submission. It loses sight of the fact that action by the authorities was not for the occupation of the said Wakf land but erection of unauthorized construction thereon.

27. From the perusal of the material on record, I am persuaded to hold that the finding of fact recorded by the authorities below that the petitioner Nos. 3 to 8 were instrumental in erecting the construction in the nature of RCC columns over the said Wakf land is based on reliable material. There is no justifiable reason to interfere with this finding of fact, in exercise of writ jurisdiction.

28. It is imperative to note that in the lease agreement under which plots of 450 sq. fts. were allotted to the petitioner Nos. 3 to 6 and others lessees, there was a condition that the lessee shall not carry out any construction or change in the demised premises without prior permission of the lessor. This is evident from

the lease agreement dated 11-07-2019 whereunder the lease was renewed in favour of the petitioner Nos. 3 and 4. It is not the case of the petitioners that the petitioners had obtained the prior permission of the Wakf Board. Nor the petitioners claimed to have obtained the permission of Nagar Panchayat, Phulambri to carry out the construction. The bold defense of the petitioners before the authorities below that no construction was erected, in the face of record adverted to above, is wholly unsustainable. The nature of the construction also assumes significance. RCC columns were erected after laying foundation. The animus to erect permanent structure over the said Wakf land is, thus, manifest.

29. In the aforesaid backdrop, the question which arises for consideration is whether the petitioner Nos. 1 and 2 can be fastened with liability for the said unauthorized construction. Mr. Thombre, the learned counsel for the petitioners would urge that drastic action of disqualification of an elected representative must be based on proved misconduct and not surmises and conjectures. A strong reliance placed on the judgment of the Supreme Court in the case of **Ravi Yashwant Bhoir** (supra) wherein the Supreme Court enunciated the necessity of proof of misconduct and strict adherence to statutory provisions and principles of natural justice, where elected representative was sought to be removed from office. The observations of the Supreme Court in the para 34 to 37 are material and hence extracted below.

“34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

35. The elected official is accountable to its electorate because he is being elected by the large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provision provided by the legislature for his removal (vide *Jyoti Basu V/s Debi Ghosal*, *Mohan Lal Tripathi Vs District Magistrate, Rae Bareil* and *Ram Beti V. District Panchayat Raj Adhikari*)

36. In view of the above, the law on the issue stands crystalised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/electoral college is also deprived of representation by the person of their choice.

37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like “no confidence motion”, etc. The elected official is accountable to its electorate as he has been elected by a large

number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period.”

30. In the light of aforesaid exposition of law, it has to be seen whether conduct of the petitioner no 1 and 2 falls within the mischief of clause (e). It would be imperative to note that the relationship between the petitioner Nos. 1 and 3, on the one hand, and petitioner Nos. 2 and 4, on the other hand, is not disputed. The petitioner No.3 is the son of the petitioner No.1 and the petitioner No.4 is the spouse of the petitioner No. 2. The petitioner Nos. 1 and 2 do not disown the relationship.

31. The avowed object of clause (e) of Sub-Section 1 of Section 44 is to ensure that the Councilors do not abuse their office and patronize illegal and unauthorized construction, which, of late, has proved to be the bane of holistic Urban Planning and Development. The legislature sought to address the mischief caused by the unholy nexus between the elected representatives and their near relatives, who carried out unauthorized development. Thus, such conduct was made to entail disqualification.

32. In this context, the reliance placed by Mr. Gore, learned counsel for the respondent No. 2 in the case of **Sayali Sanjay Malvankar Vs the Chief Officer, Vengurla Municipal Council and others 2004 (4) Bom. C.R. 777** appears to be well founded. In the said case unauthorized construction was carried out by the

husband of the petitioner for the purpose of conducting a marriage hall. Said person had not obtained prior permission. Nor, such permission was placed before the court. In that context, this court observed that;

“ This is a case where the petitioners spouse has carried out the construction of an illegal and unauthorized structure in violation of the provisions of MRTP Act, 1966. The construction was carried out in brazen defiance of law without the permission of the Municipal Council. The disqualification is, therefore, clearly attracted”.

33. The situation in the case at hand is exacerbated by the fact that the petitioner Nos. 3 and 4 carried out the unauthorized construction in breach of an express condition of lease. No permission was obtained from the Wakf Board. The grievances were lodged with Nagar Panchayat, Phulambri, of which the petitioner Nos. 1 was the Vice President and the petitioner No.2- a Councilor. The Chief Officer, Nagar Panchayat, Phulambri even addressed communication to the Tahasildar, Phulambri to take requisite steps as the persons who lodged the grievances threatened to sit on fast. In this situation, a bald defence on the part of the petitioner Nos. 1 and 2 that unauthorized construction was not carried out was simply unworthy of acceptance. The authorities below were within their rights in entering a finding that the petitioner Nos. 1 and 2 were accountable for erection of said unauthorized structure and their conduct entailed the disqualification under clause (e) Sub-Section (1) of Section (44).

34. For the forgoing reasons, this court does not find any justifiable reason to interfere with the impugned order in exercise of extra ordinary writ jurisdiction. It does not appear that the authorities below have committed any error in law in passing the impugned order. Thus, the petition deserves to be dismissed. Hence, the following order:

ORDER

- i. The petition stands dismissed.
- ii. Rule discharged.
- iii. No costs.

[N. J. JAMADAR, J.]