

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

WRIT PETITION NO. 12990 OF 2021

Vilas s/o Rajaram Patil,
Age 36 years, Occ. Agril. &
Member of Grampanchayat
Nagardevala, Tq. Pachora,
Dist. Jalgaon.

... **Petitioner.**

VERSUS.

- 1) The State of Maharashtra,
Through Additional Commissioner
Nashik Division, Nashik.
- 2) The Collector, Jalgaon.
- 3) The Tahsildar, Pacnora,
Tq. Pachora, Dist. Jalgaon.
- 4) The Gramsevak,
Grampanchayat Nagardevala,
Tq. Pachora, Dist. Jalgaon.
- 5) Dipak Vijaysing Pardeshi,
Age Major, Occ. Agriculture,
R/o. Nagardevala, Tq. Pachora,
Dist. Jalgaon.

... **Respondents.**

...

Advocate for the Petitioner : Mr. Tripathi h/f Mr. Deshmukh Mahesh S.
A.G.P. for the Respondents /State : Mr. Y. G. Gujrathi.
Advocate for the Respondent No. 5 : Mr. Girish Wani.

CORAM : MANGESH S. PATIL, J.

DATE : 30.11.2021.

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. At the request of the parties the matter is heard finally at the stage of admission.

2. The petitioner was elected as a Member of the Grampanchayat, Nagardevala on 18.01.2021 and was later on elected as a Upsarpanch. The respondent No. 5 filed a complaint with the Collector alleging that he has made encroachment over Gavthan land and erected house bearing Grampanchayat No. 3861 and has incurred disqualification under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1958 (hereinafter 'the Act'). The petitioner filed his reply and denied the allegations. The respondent No.2-Collector called a report from the Chief Executive Officer of Zilla Parishad and then by the order dated 22.07.2021 has allowed the complaint and held about he having incurred the disqualification. He challenged that judgment by preferring an appeal under Section 16(2) of the Act before the Divisional Commissioner, Nashik who has dismissed the appeal by the order under challenge in this Writ Petition.

3. The learned advocate for the petitioner vehemently submits that without concrete finding of facts about there being encroachment on the government property the authorities below have jumped to a conclusion. It was his specific stand that the plot on which the construction was raised by his father was allotted to his father and the construction was carried out with the requisite permission of the Grampanchayat. He had produced a record to demonstrate that he was residing separate from his father and was not residing in the property stated to be encroachment bearing Grampanchayat House No. 3861. He would further submit that it was a specific stand of the petitioner before the Collector that the plot was allotted to his father in a scheme for extension of Gavthan area and the matter was pending regularization. Even before any such decision could be taken, no conclusion could have been drawn. He would, therefore, submit that though it was incumbent for the authorities to seek concrete evidence to unseat the petitioner, it was not insisted for and the orders are passed by resorting to conjectures and surmises.

4. Learned advocate for the petitioner would further submit that the

Grampanchayat record has been manipulated and forged to some how see to it that the petitioner suffers disqualification. Without there being any resolution of the Grampanchayat his name has been abruptly incorporated in a different ink in the assessment record of his father's property.

5. The learned A.G.P and the learned advocate for the respondent No. 5 submit that the petitioner who seeks to hold a publicly elected post is not fair enough to take a concrete stand. He has been taking inconsistent stands. By referring to his say filed before the Collector they would point out that in paragraph No. 5 he flatly denies that the land Gat No. 135/1/A continues to be a government property since it was already allotted to homeless persons for residential use. However, in the subsequent contentions he contends that his father has carried out construction of the Grampanchayat House No. 3861 in the year 2017 by obtaining necessary building permission and has even received a completion certificate.

6. They would further submit that if really a proposal for regularization is pending as is being submitted on behalf of the petitioner, it pre supposes that there is an illegality and encroachment. In view of such material, the Collector and the Divisional Commissioner have taken a reasonably plausible view based on the facts and circumstances mentioned herein above. There is no illegality. They would further submit that as held in the case of **Janabai Vs. Additional Commissioner and others ; AIR 2018 SC 5068**, the petitioner is also liable to incur such disqualification when his father is stated to have committed the encroachment as one cannot but hold that though not lately but he must have been residing with his father in the same house in respect of which there is assessment record in the name of father since the year 2002 when the petitioner must have been a minor.

7. I have carefully considered the rival submissions, perused the orders of both the Authorities and the papers. It is true that as laid down in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others;**

(2012) 4 Supreme Court Cases 407 there has to be sufficient evidence to unseat a publicly elected person.

8. But then, it is apparent that the petitioner has not been able to adopt a specific stand. Ignoring his name appearing in the assessment record below the name of his father in respect of Grampanchayat property No. 3861, still, it is a matter of record that the property has been standing in the assessment record in the name of his father since the year 2001-2002. The petitioner's age is 36 years on the date of filing of this petition in the year 2021. It is not his case that he has been residing separate from his father since his childhood. Though he has produced certain affidavits and agreements of lease, those are of recent past that is of the year 2020. No such record is available to be seen for a period prior to 2020. In view of such state of affairs, it is quite apparent that he must have been residing with his father in the same house No. 3861 till recent past that is up to year 2019. Following the ratio laid down in the case of **Janabai (supra)**, therefore, it can safely be concluded that he has been residing in the house with his father which house is stated to be erected on a Gavthan land by making encroachment.

9. As far as the aspect of encroachment is concerned, it is quite apparent that the petitioner is blowing hot and cold at the same time and has been taking inconsistent stands. In one breath he states that the plot was allotted to his father in a scheme in which similar allotments were made to number of persons. Conspicuously, no such record demonstrating such allotment in the name of his father has been produced on the record.

10. Though on 22.07.2021 the Circle Officer has addressed a letter to Tahsildar Pachora stating that though different plots from Gavthan Survey Nos. 134/A to 135/1/A and 135/1/B were allotted to number of persons, the entries may not be taken in the revenue record. Even according to the petitioner it is because of the uncertainty of the allotment and the actual

construction carried out by different persons that such communication was addressed to the Tahsildar. The fact remains that there cannot be a dispute about the fact that these lands mentioned herein above are Gavthan lands.

11. Having reached such a conclusion, the petitioner ought to have produced on record some allotment order to demonstrate that a specific piece of land on which his father erected the house was allotted to him and such allotment has the effect of creating a title in the name of his father and obliterating the title of the Government. No such record having been produced, I find no sufficient basis to take exception to the concurrent findings of facts recorded by the two authorities below holding that the property that is standing in the name of petitioner's father is an encroachment over the Gavthan land and since he was residing with the father at least till 2019 for number of years, he has incurred the disqualification under Section 14(1)(j-3) of the Act.

12. In view of above, there is no merit in the Writ Petition. It is dismissed.

13. The Rule is discharged.

(MANGESH S. PATIL, J.)

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