

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4540 OF 2021

Mohan Vitthal Limbole

... Petitioner

V/s.

Mohini Sandip Jadhav & Ors.

... Respondents

Mr. Satyajeet P. Dighe for the petitioner.

Mr. C.D. Mali, AGP for the State.

Mr. P.S. Dani, Senior Advocate i/b. Mr. Sachin Gite for respondent no. 1.

CORAM : G.S.KULKARNI, J.

DATE : 12 October, 2021

P.C.:

1. Heard Mr. Dighe, learned counsel for the petitioner and Mr. Dani, learned senior counsel for respondent no. 1.

2. The petitioner is a complainant who complained that respondent no. 1 is disqualified to continue as a member of Eaklahare Grampanchayat, District Nashik as also its Sarpanch. Respondent no. 1, contested elections of the Grampanchayat Eaklahare in September, 2017 and was also elected as Sarpanch.

3. After almost three years of the election, the petitioner filed a complaint before the District Collector, Nashik against respondent No.1 for disqualification under the provisions of Section 14(1)(j-3)

of the Maharashtra Village Panchayats Act, 1958 alleging that respondent no. 1 being a member of the Panchayat had encroached upon the Government land or public property and has continued to encroach on the said public land. The said provisions reads thus:

14. Disqualification

(1) No person shall be a member of a panchyat, or continue as such, who -

.....

(j-3) has encroached upon the Government land or public property."

4. The case of the petitioner as made in the application filed before the Collector was of respondent no. 1 being the beneficiary of respondent no.1's father-in-law Mr. Dilip Ananda Jadhav having encroached upon the Government land at Samangaon bearing Gat No. 512/1 and Gat No. 379 and upon the Grampanchayat land being Gat No. 116 by constructing House No.819. In support of his contention, the petitioner relied on the list of purported land encroachers dated 2 February, 1993 in which according to the petitioner, the name of father-in-law of the petitioner appeared in Sr. No. 142. There is another document which according to the petitioner showed the encroachment in respect of House no. 251.

5. Respondent no. 1 contested the application asserting that

none of the documents produced on behalf of the petitioner would go to show that there was any encroachment by respondent no.1, on the Government land or panchayat land as alleged by her. Respondent no. 1's case was that her father-in-law under a Partition Deed dated 21 December 2016 had divided the family property. Such partition was acted upon, in pursuance of which, respondent no. 1 had no concern whatsoever with any alleged encroached land. Respondent no. 1 contended that on 1 August, 2017, the father-in-law had also obtained an independent family certificate from the Gram Sevak. She also contended that her husband and father-in-law were not part of the joint family. She contended that she was staying independently with effect from 27 January, 2017 in the premises let out and owned by Rajaram Dhondiram Dhanwate under a Leave and Licence Agreement dated 3 August, 2017 with her family in Eaklahara village. She contended that she did not have any house on any encroached property. She produced documents in support of her case before the District Collector.

6. The District Collector considering the rival contentions, passed an order dated 18 January, 2020 accepting the petitioner's contention and disqualified respondent no. 1 as Sarpanch of Grampanchayat of Eaklahare village. The findings as recorded by

the Collector are quite peculiar, the relevant being in paragraphs 10 and 11 of his order, which reads thus:

(Official translation of which reads thus)

"10. Considering all the above circumstances and on perusing the documents filed by the Opponents, it is prima facie seen that all the said documents are pertaining to the period after election. However, she has not made any comment as to where the Opponent was residing before election and whether she was divorced at that time. From this, the fact becomes clear that, prior to the election, she was living with her husband in the property itself encroached upon by her father-in-law Shri Dilip Ananda Jadhav.

11. In the judgment dated 19/9/2018 in Civil Appeal No. 6832/2018 filed by the applicant before the Hon'ble Supreme Court, it has been clearly mentioned that when any person is enjoying the encroached upon premises, then in that case, the said person become ineligible to reside there as a member. The said judgment is applicable to the present case precisely."

6. The Collector referring to the decision of the Supreme Court in Janabai vs. Additional Commissioner & Ors., (2018) INSC 786 thought it appropriate to hold that the encroachment as made by the father-in-law was sufficiently proved and hence, respondent no. 1 was disqualified as Sarpanch.

7. Being aggrieved by the order passed by the Collector, respondent no. 1 approached the Additional Commissioner, Nashik in an Appeal, being Grampanchayat Appeal No. 2 of 2021. In her Appeal, respondent no. 1 also relied on certain documents in regard to the matrimonial proceedings between her and her

husband instituted before the Court of Civil Judge Senior Division, Nashik, namely of Hindu Marriage Petition No. 305 of 2018. The Civil Court by an order dated 3rd October, 2018, had allowed the said petition and a decree of divorce by mutual consent was granted. It was respondent no. 1's contention that at the relevant time, when the said matrimonial proceedings were instituted, the petitioner's complaint against respondent no. 1 of any disqualification was yet to be born and hence certainly it could not be the case of the petitioner that such proceedings were initiated to avoid any disqualification.

8. The appellate authority/ Commissioner by an order dated 30 July, 2021 allowed the appeal filed by respondent no. 1 by setting aside the order of disqualification dated 18 January, 2021 passed by the Addl. Collector. The appellate authority has taken into consideration the materials to record a finding of fact that respondent no. 1 in no manner was not connected with the encroachment made by her father-in-law. It was recorded that respondent no. 1 was not residing in the premises and in fact was residing in different premises as described in paragraph 7 of the the impugned order passed by the appellate authority. It has been pointed out on behalf of respondent no. 1 that the documents in relation to the observation as made in paragraph 7 were part of

the record before the appellate authority. Perusal of the observations as made by the Commissioner in paragraph 7, show that respondent no. 1 at the relevant time was in fact was not staying at all with her father-in-law at any point of time. She was also divorced from her husband and therefore, in any manner called to be connected with an encroachment of the father-in-law.

9. This case of the petitioner was silent even in the original proceedings as filed before the trial authority/Collector to show that respondent no. 1 herself was at all a beneficiary of such encroachment or in any manner connected to receive the benefit of such encroachment so as to fall under the provisions of Section 14(1)(j-3) of the Act. These are the findings of fact which have been recorded by the learned Appellate Authority.

10. Learned counsel for the petitioner has very limited submissions as noted above. There is no averment in the writ petition that the finding of fact by the appellate authority is in any manner perverse, nor a ground has been urged in the petition to point any perversity in the findings of fact recorded by the appellate authority. It is a settled principle of law that this Court in writ proceedings would not re-appreciate the evidence.

11. The decision in Janabai (supra) would not support the contentions of the petitioner, as the basic case in regard to any

connection of respondent no. 1 to the alleged encroached property has not been proved before both the authorities.

12. The petitioner has failed to make out any case for interference of this Court in the present proceedings. The petition is accordingly dismissed. No costs.

(G.S.KULKARNI, J.)

VIDYA
SURESH
AMIN

Digitally
signed by
VIDYA
SURESH
AMIN
Date:
2021.11.01
16:13:59
+0530