

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3169 OF 2021

PETITIONER :- Satish Janrao Wankhade, Aged about 35 years, Occupation : Agriculturist, R/o. Takli (Bu), Tah. Karanja, District-Washim.

...VERSUS...

RESPONDENTS :-

1. The Divisional Commissioner, Amravati Division, Amravati.
2. The Collector, Washim, Tah. & District-Washim,
3. The Secretary, Grampanchayat, Takli (Bu), Tah. Karanja, District-Washim.
4. Babarao S/o Ramkrushna Dongre, Aged about 43 years, Occupation: Agriculturist, R/o Takli (Bu), Tah.Karanja, District-Washim.

Mr.Arvind K. Waghmare, counsel for the petitioner.
Ms M.A.Barabde, AGP for respondent Nos.1 and 2.
None for respondent Nos.3 and 4.

CORAM : N.B.SURYAWANSHI, J.

RESERVED ON : 13.10.2021

PRONOUNCED ON : 27.10.2021

J U D G M E N T

Heard

2. **Rule.** Rule made returnable forthwith. Though respondent Nos.3 and 4 are duly served, none appears on their behalf. The petition is heard finally with the consent of the learned counsel for the parties.

3. This petition impugns the order of disqualification of petitioner as sarpanch of Gram Panchayat Takli (Kh.) passed on 09/02/2021, by respondent No.2-Collector, Washim and confirmed by respondent No.1-Divisional Commissioner, Amravati Division, Amravati in an appeal vide order dated 02/08/2021.

4. The election of Gram Panchayat Takli (Kh.) was declared vide Notification dated 07/09/2017. According to the petitioner, before two to three months of the issuance of Notification, the petitioner vacated the encroached portion of Government land and removed the entire encroachment. Vide

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application dated 06/09/2017, the petitioner requested respondent No.3-Gram panchayat to take back encroached portion of land and remove his name from the record of land property No.286. The petitioner filed his nomination form for the post of sarpanch online on 22/09/2017. After the elections, the petitioner was elected as sarpanch on 09/10/2017.

5. Respondent No.4 filed an application before respondent No.2-Collector contending that when the petitioner was elected as member of the gram panchayat, he was in possession of the Government land (property No.286). The petitioner has mentioned that property No.286 is occupied by him, in the affidavit filed by him along with the nomination form. The entry of the encroachment on the Government land (property No.286) is recorded at Sr.No.324 of the gram panchayat record maintained under Form-8, wherein it is stated that property No.286 is owned by the Government and the petitioner is occupier of the same. The petitioner therefore has encroached on the Government land and has incurred disqualification under section 14(1)(j-3) of the Maharashtra Village Panchayats Act.

6. The Collector after hearing the parties, allowed the application of respondent No.4 and disqualified the petitioner from the post of sarpanch of the Gram Panchayat Takali (Kh.). The appeal filed by the petitioner against the said order is also dismissed by the Commissioner. Hence, the present petition.

7. Heard the learned Advocate for the petitioner and the learned AGP for the State. None appears for respondent Nos.3 and 4 though they were duly served.

8. The learned Advocate for the petitioner vehemently submitted that since the petitioner has removed the encroachment prior to filing of his nomination form, which is clear from the subsequent spot inspection report dated 16/08/2019 (Annexure-P-15), the disqualification order passed against the petitioner is unwarranted and uncalled for.

9. By placing reliance on the decision in the case of **Anita Dhammapal Bodade v. The Hon'ble Minister for Rural Development**, reported in **2019 (3) ALL MR 111**, he submits that

this Court has held that the provisions of section 124 of the Maharashtra Village Panchayats Act and rule 18 of the Maharashtra Village Panchayats Taxes and Fees Rules, 1960 do not lay down anywhere that the tax is leviable and recoverable from an encroacher, who has raised illegal structure on the encroached government land. He, therefore, submits that since the petitioner had paid the tax and was an occupier of the property, he cannot be termed as encroacher. On this ground also the impugned order is unsustainable.

10. Further reliance is placed by the learned counsel for the petitioner on the application (Annexure P-13), dated 06/09/2017 submitted by the petitioner to the gram panchayat wherein the petitioner has stated that he had requested the gram panchayat for allotment of the land to keep the cattle. Accordingly, the gram panchayat had given property No.286 to the petitioner and the name of the petitioner was entered in Form-8, maintained by the gram panchayat. However, since the petitioner does not possess any cattle, he does not need the said property and therefore he has vacated the same. The petitioner has already paid the taxes of the said property and he is not in arrears of

taxes. The petitioner, therefore, requested for removing his name recorded in Form-8 and the gram panchayat should take the said property in its possession and hand it over to the government. The learned counsel therefore, contends that since the petitioner has already vacated the property No.286 and removed the encroachment from the said property and since requested the gram panchayat to hand it over to the government, he cannot be termed as encroacher.

By pointing out the orders passed in Writ Petition No.3040 of 2018 whereby the orders of disqualification passed against the petitioner therein by the Collector, Washim on 27/12/2017 and by the Divisional Commissioner dated 28/05/2018, disqualifying the petitioner were quashed and set aside and the matter was remanded back to the Additional Collector for decision afresh, learned Advocate for the petitioner seeks remand of the matter for decision afresh. By taking into consideration the application dated 19/12/2017 filed by the petitioner for spot inspection, the spot inspection was conducted and the report dated 16/08/2019 is on record (Annexure-P-15). In the spot inspection, it was found that there is no encroachment on

the spot and the encroached portion is open. At the time of spot inspection, the Police Patil told that the election of the gram panchayat was held in October, 2017 and the encroached portion is vacant since 2 to 3 months prior to that. By relying on the said spot inspection report, the learned Advocate for the petitioner strenuously submitted that since the encroachment is removed even prior to the filing of nomination form, the petitioner cannot be termed as encroacher and cannot be disqualified on that ground. He, therefore, submitted that both the Authorities below have recorded perverse findings and have erroneously disqualified the petitioner from the post of sarpanch and member of the gram panchayat without appreciating the matter on record. The impugned orders are therefore unsustainable and the petition deserves to be allowed.

11. On the other hand, the learned AGP appearing on behalf of the respondent-State supported the orders of disqualification contending that there is sufficient material on record to show that the petitioner had encroached on a government property. Hence, the disqualification of the petitioner is justified in the facts of the present case.

12. Perusal of the record reveals that the petitioner has filed online nomination for the post of sarpanch and member of gram panchayat on 22/09/2017. Along with the nomination form, the petitioner has filed affidavit disclosing the properties owned by him. In the said affidavit, the petitioner has mentioned that property No.286, admeasuring 400 sq.ft. is in possession of the petitioner. Copy of Form-8 of property No.286 filed along with nomination form shows that the petitioner is occupier of the said property. It is thus obvious that the petitioner has encroached on the government property by erecting the construction and has also paid taxes for the said encroachment. It is therefore clear from the record that the petitioner had encroached on the government land and has enjoyed the encroachment since the year 2005. Even at the time of filing of the nomination form, the petitioner was in possession of property No.286, which is clear from the affidavit filed by the petitioner along with the nomination form. In this view of the matter, the order of disqualification of the petitioner as sarpanch passed by respondent No.2-Collector cannot be faulted with. Respondent No.1-Divisional Commissioner has properly appreciated the record and has rightly come to the conclusion that

the order passed by respondent No.2-Collector thereby disqualifying the petitioner is just and reasonable.

13. The submission of the petitioner that since he had vacated the encroached property and removed the encroachment prior to filing of nomination form and therefore, he has not incurred disqualification, is unacceptable in view of the fact that the affidavit filed by the petitioner along with nomination form mentioning that he is in possession of property No.286. The spot inspection report at Exhibit-P-15, therefore, would not be of any help to the petitioner.

14. This Court would like to refer to the decision of this Court in respect of disqualification rendered in similar facts in Writ Petition Nos.3543 and 4522 of 2019, specifically para-14 reads as follows:

“14. In the facts of the present case, if the contentions of the petitioners are to be accepted that since they do not continue to reside in the encroached property, they have not incurred disqualification, then the very object with which the provision of disqualification is made by the legislature would be defeated. The encroachers would encroach on the

Government property, enjoy the said property and so as to avoid the disqualification, create a record to show that they have abandoned that property and/or transferred that property and some other relative is residing there and they are no more in occupation of the same. If this is permitted, the very object of making the provision of Section 14(1) (j-3) of the Act of 1958 would be defeated. In the instant case, it emerges from the record that the husband is an encroacher on the Government property i.e. pandhan road, merely because the wife and husband are not staying in the encroached property, that would not absolve them from incurring disqualification. I do not agree with the submission of the petitioners that since the petitioners are not in occupation of an encroached property, they are not liable to be disqualified.”

The above observations are applicable to the facts of the present case and in the light of the above observations, there is no merit in the challenge raised by the petitioner in the present petition.

15. The decision in **Anita Dhammapal Bodade v. The Hon’ble Minister for Rural Development** (cited supra) is rendered in different facts. In that case, the sarpanch was disqualified on the ground of misconduct as the sarpanch levied tax on encroachers by showing them as occupiers in panchayat record,

thereby conferring upon them some legal status which was not in good faith. In the facts of that case this Court held that the disqualification of the sarpanch was proper, as she was guilty of misconduct as she did not act in *bona fide* manner in imposing tax on the encroachers by showing them as occupiers. By considering the provisions of section 124(2) of the Maharashtra Village Panchayats Act and rule 18 of the Maharashtra Village Panchayats Taxes and Fees Rules, 1960, this Court has held that “these provisions of law do not lay down anywhere that tax is leviable and recoverable from an encroacher who has made an illegal structure on the encroached land”. By relying on this observation, which was made in the facts of that case, the petitioner is contending that since the petitioner has paid tax against property No.286 and as the tax is not leviable and recoverable from an encroacher, he cannot be said to be an encroacher. The argument is misconceived and is not acceptable.

16. This Court called upon the learned Advocate for the petitioner to point out any document by which property No.286 was allotted to the petitioner by the gram panchayat. He candidly accepted that the petitioner does not possess any document to

show that property No.286 was allotted to him by gram panchayat.

17. Respondent No.2-Collector and respondent No.1 Divisional Commissioner have properly considered the record and have rightly come to the conclusion that the petitioner has incurred disqualification under section 14(1)(j-3) of the Maharashtra Village Panchayats Act. The concurrent finding of facts and law are recorded by respondent Nos.2 and 1 as also proper reasons are assigned while passing the impugned orders. There is no illegality or perversity in the orders passed by respondent Nos.1 and 2. The petitioner has failed to make out any case to warrant exercise of extraordinary writ jurisdiction. The writ petition is devoid of any substance and the same is therefore dismissed.

18. Rule stands discharged. No costs.

(N. B. SURYAWANSHI, J.)