

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3088 OF 2020

PETITIONER: Shri Rahul Raju Kulsange,
Aged about 27 years old; Occupation – Member
Resident of Gram Panchayat Isasani
Tahasil : Hingna, District : Nagpur.

(ORIGINAL RESPONDENT NUMBER 2)

...VERSUS...

RESPONDENTS: 1. Additional Collector,
Office at Collector's Office, Civil Lines,
Nagpur.

2. The Gram Panchayat Isasani
Through its Secretary
Office at Village : Isasni Tahsil : Hingna,
District : Nagpur.

(ORIGINAL RESPONDENT NO.9)

3. The Tahsildar, Hingna,
Office at Tahsil : Hingna, District Nagpur.

(ORIGINAL RESPONDENT NO.10)

4. Smt. Shashikala Dhyaneshwar Thakare
Aged : Major, Occupation : Household
Resident of Gram Panchayat Isasani,
Tahasil : Hingna District :Nagpur.

(ORIGINAL APPLICANT)

5. Shri Nilesh Devaji Uike,
Aged : Major, Occupation : Sarpanch
Resident of Gram Panchayat Isasani

Tahasil : Hingna District : Nagpur.

(ORIGINAL RESPONDENT NO.1)

6. Smt. Vaishali Prashant Adhao
Aged : Major; Occupation :- Member
Resident of Gram Panchayat Isasani
Tahasil : Hingna, District : Nagpur.

(ORIGINAL RESPONDENT NO.3)

7. Smt. Swati Manoj Madankar,
Aged : Major; Occupation :- Member
Resident of Gram Panchayat Isasani
Tahasil : Hingna, District : Nagpur.

(ORIGINAL RESPONDENT NO.4)

8. Smt. Josna Sanjay Rahangadale,
Aged : Major, Occupation :- Member
Resident of Gram Panchayat Isasani
Tahasil : Hingna, District : Nagpur.

(ORIGINAL RESPONDENT NO.5)

9. Shri Rambhau Bapurao Nakhale
Aged : Major; Occupation :- Member
Resident of Gram Panchayat Isasani
Tahasil : Hingna, District : Nagpur.

(ORIGINAL RESPONDENT NO.6)

10. Smt. Meena Mangesh Meshram,
Aged : Major, Occupation :- Upa-Sarpanch
Resident of Gram Panchayat Isasani
Tahasil : Hingna, District Nagpur.

(ORIGINAL RESPONDENT NO.7)

11. Smt. Sarita Rajkumar Ganvir,
Aged : Major, Occupation :- Member
Resident of Gram Panchayat Isasani
Tahasil : Hingna, District : Nagpur.

(ORIGINAL RESPONDENT NO.8)

Shri Karan Singh Ramesh Gour, Advocate for petitioner
Shri K.L. Dharmadhikari, AGP for respondent nos.1 to 3
Shri Virendra G. Dhage, Advocate for respondent no.4

CORAM : AVINASH G. GHAROTE, J.

Judgment reserved on : 08/09/2021
Judgment pronounced on : 14/10/2021.

1. Heard Shri Gour, learned Counsel for the petitioner, Shri Virendra Dhage, learned Counsel for the respondent no. 4 and Shri K.L. Dharmadhikari, learned Assistant Government Pleader for the respondent Nos.1 to 3. None appears for the other respondents, though served.

2. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.

3. According to Shri Gour, learned Counsel for the petitioner, the present petition raises a challenge to the order dated 28/8/2020, passed by the learned Additional Collector/ Respondent

No.1 in Case No. 53/M.V.P. 14(1)(J-3)/2018-19, (*Smt. Shashikala Dhyaneshwar Thakare Vs. Shri Nilesh Devaji Uike and others*), whereby the application filed by the present petitioner for return of the appeal on the ground that there is mis-joinder of causes of action due to the joint allegations against the original respondent nos.1 to 8 that they were encroachers on Government land, thereby incurring disqualification, which is claimed to be required to be independently decided, has been rejected by the order dated 28/8/2020.

4. The petition also seeks a remand of the matter to the respondent no.1 for fresh adjudication of the application dated 31/7/2020 for conducting further enquiry in the matter of the original respondent no.2 and grant of permission to cross-examine Shri S.N. Tiwari, Talathi, Wanadongri, as according to the petitioner, the report of encroachment submitted by the Talathi was palpably incorrect, the alleged measurement was conducted behind the back of the petitioner and the truth was required to be brought out by cross-examining the Talathi, which also was rejected by the impugned order dated 28/8/2020, holding that since on the basis of

the report of the Talathi, the Tahsildar had given his report, there was no need of any cross-examination.

5. Shri Gour, learned Counsel for the petitioner submits that the proceedings before the Collector suffer from a mis-joinder of parties and causes of action in as much as there were as many as eight persons against whom the allegations of encroachment were made and a separate cause of action arose against each one of them, which was required to be heard and decided independently, and entertaining a joint complaint against all of them, was not permissible, as each would have a separate defence and right to be heard and therefore the matters were required to be separately registered and heard independently of each other and failure of the Collector to do so, vitiates the proceedings.

5.1. Shri Gour, learned Counsel for the petitioner further submits that the right to cross-examine the person who had prepared the report showing that there was an encroachment, was a right vested in the petitioner, in view of the fact that the said report was being relied upon to unseat the petitioner, and therefore the

application to cross-examine the Talathi, who had prepared the same, could not have been rejected. Shri Gour, the learned Counsel for the petitioner in support of his contention relies upon *Vivek s/o Vishwanath Mane (Dr.) Vs. Akhtarkha Ganikha Pathan and others, 2014 (7) Bom.C.R. 347; Lalita Dilip Khandalkar Vs. Additional Commissioner, Amravati and others, 2019 (6) ALL MR 261; Ganesh Shankar Landge Vs. Additional Commissioner and others, 2011 (5) ALL MR 666; Hanumant Sahebrao Patil Vs. Additional Commissioner, Nashik and others, 2017 (3) ALL MR 209 ; Mandabai Vs. The Additional Divisional Commissioner, 2020 (6) ALL MR 555;*

5.2. Shri Gour, learned Counsel for the petitioner therefore submits that for an enquiry of disqualification on the ground of encroachment, as is required to be conducted, under Section 14 r/w Section 16 of the Maharashtra Village Panchayats Act, 1959 (“the M.V.P. Act” for short hereinafter), it is permissible to lead evidence, which would then also indicate the permissibility of cross-examination, as without being tested on its anvil, the evidence led, would not be worthy of reliance.

6. Shri Virendra Dhage, learned Counsel for the respondent no.4 submits that the enquiry under Section 16 of the M.V.P. Act, for a disqualification incurred under Section 14 of the M.V.P. Act, is a summary enquiry and cannot be converted into an enquiry of an adversarial nature, requiring evidence to be led by parties and cross-examined. He submits that, that is not the scope and purport of such an enquiry. By inviting my attention to Section 16 (2) of the M.V.P. Act, he submits that such an enquiry has to be made and decided as far as possible within a period of 60 days from the date of receipt of the application complaining incurring of a disqualification under Section 14 of the M.V.P. Act. Further relying upon the proviso to Section 16 (2), he submits, that the only requirement, is of giving the concerned person, who is alleged to have incurred with the disqualification, a reasonable opportunity of being heard, for which he relies upon *Ravikiran s/o Abasaheb Deshmukh Vs. Additional Commissioner and others, 2010 (3) Mh.L.J. 184.*

7. Shri Dharmadhikari, learned Assistant Government Pleader for the respondent nos.1 to 3 supports the contention of

Shri Dhage, learned Counsel for the respondent no.4. By relying upon Section 153 (2) of the M.V.P. Act, he submits, that where the legislature had found it necessary, for there to be an enquiry of an adversarial nature, it has specifically provided so, by empowering such officer, to administer oath and take evidence. Further reliance is placed upon the First proviso, to Section 39 (1) of the M.V.P. Act, which directs the holding of an enquiry, after giving due notice to the Panchayat and the person concerned and a reasonable opportunity of being heard to the person concerned, only considering that the enquiry was to be completed within a period of one month from the date of receipt of the complaint. He therefore submits that when the Statute itself mandates that the enquiry, has to be of a summary nature, restricted to the following of the principles of natural justice, it cannot be permitted to be converted into one of an adversarial nature, by adopting a mode of leading oral evidence and permitting cross-examination.

8. In so far as the contention regarding the plea that there is a mis-joinder of parties and causes of action, is concerned, a perusal of the prayer clause in the petition would reveal that though

the order dated 28/8/2020 is being challenged, the petition does not contain any grounds of challenge, in so far as the rejection of the application dated 25/10/2019, whereby this ground was raised. In fact all grounds relate to the rejection of the application dated 31/7/2020, which seeks permission to cross-examine the concerned Talathi. The first para of the petition also pertains to the application dated 31/7/2020. The prayer Clause (vi) also seeks remand of the matter and fresh adjudication of the application dated 31/7/2020. There is no prayer regarding the application dated 25/10/2019, and therefore in absence of any grounds and prayer in this regard, I, am treating this as a petition restricted to the rejection of the application dated 31/7/2020, in view of which, there is no need for me to consider and decide the plea as to mis-joinder of parties and causes of action.

9. As regards the question of a right of cross-examination being available, as contended by Shri Gour, learned Counsel for the petitioner, the same has to be examined in light of the nature of enquiry, as contemplated by the provisions of Section 16 of the M.V.P. Act, which is reproduced hereunder for the sake of ready reference :-

“Section 16. Disability from continuing as member .-

(1) If any member of a Panchayat

(a) who is elected or appointed as such, was subject to any of the disqualification mentioned in Section 14 at the time of his election or appointment, or

(b) during the term for which he has been elected or appointed incurs any of the disqualifications mentioned in Section 14, he shall be disabled from continuing to be a member, and his office shall become vacant.

(2) If any question whether a vacancy has occurred under this Section is raised by the Collector suo motu or on an application made to him by any person in that behalf, the Collector shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under-section (1) from continuing to be a member. Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the Commissioner and the orders passed by the Commissioner in such appeal shall be final;

Provided that no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard.”

(emphasis supplied)

9.1. A bare reading of the proviso to Section 16(2) of the M.V.P Act, would indicate that while conducting an enquiry regarding a plea of disqualification, the same is required to be done by giving a reasonable opportunity of being heard to the person, against whom, the plea of being disqualified has been raised. This is the only nature and scope of any right, which can be claimed by the person facing the enquiry, which is clearly limited in nature. The enquiry, therefore is clearly summary in nature, and the right of the person facing the same is restricted of being given an opportunity of being heard and nothing else.

9.2. The word “summary” in ***Mohan Lal Vs. Kartar Singh (1995) Supp. 4 SCC 684***, has been held to mean a short and quick procedure, in the following words :-

“13. It was next contended that we should not construe Section 43 liberally and include within its scope other questions which may also arise for determination, before it can be decided by the Collector as to whether possession of the person against whom an application is made is unlawful or unauthorised. It was submitted that the enquiry which is contemplated by Section 43 is only a summary enquiry and, therefore, complicated questions of status or title and right to possess, where

an elaborate enquiry would be necessary, should not be regarded as falling within the jurisdiction of the Collector. We do not find any force in this contention. Though the enquiry is summary it is judicial in nature. As pointed out by this Court in the case of Ardaman Singh [AIR 1969 SC 13 : (1969) 1 SCR 283], though “the trial is summary, the Collector is bound to exercise the jurisdiction vested in him not on a subjective satisfaction... but on a judicial determination of facts which invest him with jurisdiction to pass an order in ejectment”. The word ‘summary’ implies a short and quick procedure instead of or, as an alternative to, the more elaborate procedure ordinarily adopted or prescribed for deciding a case. The proceedings before a court, tribunal or an authority are called summary proceedings if it is not required to follow the regular formal procedure but is authorised to follow a short and quick procedure for expeditious disposal. Therefore, merely because the Collector acting under Section 43 has to make a summary enquiry it cannot be said that he can decide only simple questions as regards the nature of possession and not those questions which are complicated but have a bearing on the nature of possession. The contention raised if accepted would result in unduly restricting the scope of enquiry and thereby frustrating the very purpose of enacting Section 43.”

(emphasis supplied)

9.3. As far back as in 1920, the basic purpose of a summary enquiry was summarized in ***Mst. Bibi Fatma Vs. Bakarshah and another, 1920 SCC OnLine Sindh JC 25: AIR 1921 Sindh 45***, in the following words:-

“I have been asked in this case to take a good deal of evidence by both sides, especially by the side represented by Mr. Rupchand. It has, however, always been my practice to deal with summary proceedings in a summary way and not to take any evidence, if I think it unnecessary. In this practice I am fortified by the view of the Bombay High Court as set forth at page 44 of the Bombay High Court Civil Circulars :-

“Attention has been called to a case in which an enquiry under Act VII of 1889 was protracted for a period of nearly two years. It is obvious how very disastrous such delay may be in the interest of the family concerned. Section 7 of the Act provides that upon the day fixed for hearing or as soon thereafter as may be practicable the Court shall proceed to decide in a summary manner the right to the certificate. There seems to be some uncertainty as to the meaning of summary procedure. The intention is that the Judge shall make such enquiry only as he thinks necessary to satisfy his mind. In making such enquiry the number of witnesses, whom he may think proper to examine on one side or the other, and the length of cross-examination which he may think right to permit, are matters entirely within his discretion which should be used in such a way as to prevent the object of the Legislature being defeated. Were it otherwise, any party desirous of delaying the order could easily do so by calling a large number of unnecessary witnesses or

cross-examining at unreasonable length. There may be cases where the use of affidavits in place of oral evidence would be desirable. Where the evidence is taken on affidavit, the Court must be more careful to check any prolixity and to visit any fault in this direction by deprivation on imposition of costs. These remarks apply to all Acts which direct a summary enquiry in civil matters."

(emphasis supplied)

9.4. In ***Busching Schmitz Private Limited Vs. P.T. Menghani and another, (1977) 2 SCC 835***, while considering the nature of a summary proceedings, it has been held as under :-

"12. The short but insistent submission made by the counsel for the appellant was that the Controller could not shut him out from being heard, as he did, if only a triable issue emerged from the affidavit-in-opposition filed under Section 25B (4). Such an issue (in fact, more than one) was obviously present here, urged counsel. But we make it plain even at this stage that it is fallacious to approximate (as was sought to be done) Section 25B (5) with Order 37, Rule 3 of the Code of Civil Procedure. The social setting demanding summary proceeding, the nature of the subject-matter and, above all, the legislative diction which has been deliberately designed, differ in the two provisions. The legal ambit and judicial discretion are wider in the latter while, in the former with which we are concerned,

the scope for opening the door to defence is narrowed down by the strict words used. The Controller's power to give leave to contest is cribbed by the condition that the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14A. Disclosure of facts which disentitle recovery of possession is a sine qua non for grant of leave. Are there facts disentitling the invocation of Section 14A?"

(emphasis supplied)

9.5. It is thus apparent that the scope and ambit of a summary enquiry is intentionally narrowed down so as to ensure a speedy decision. It is however not a case that in all summary proceedings, evidence is not permitted to be led. Proceedings for eviction under Section 16 of the Maharashtra Rent Control Act, 1999, are to be conducted before the Small Causes Courts, under the Provincial Small Cause Courts Act, 1887, which prescribes a summary procedure; proceedings under Section 125 of the Code of Criminal Procedure. for maintenance (see ***Dwarka Prasad Satpathy Vs. Bidyut Prava Dixit (1999) 7 SCC 675***) are only two examples,

there being several others too, wherein evidence is permitted to be led and parties/witnesses cross-examined, in summary proceedings.

9.6. In *Joginder Pal Vs. India Red Cross Society and others*, (2000) 8 SCC 143, it has been held as under :-

“17. In view of the specific provisions of law it is not possible to accept Mr Sohal’s submissions. Section 387 specifically permits the 2nd (sic 1st) respondent to file a subsequent suit. Merely because issues were raised and/or evidence was led, does not mean that the findings given thereunder are final and operate as res judicata. Even in summary proceedings issues can be raised and/or evidence can be led. The proceedings remain summary even though the court may, in its discretion, permit leading of evidence and raising of issues. So in a subsequent suit the crucial issues must be decided afresh untrammelled or uninfluenced by any finding made in the proceedings for grant of succession certificate.”

(emphasis supplied)

9.7. As against the above position, proceedings for eviction of a licensee under the Maharashtra Rent Control Act, 1999, go before the Competent Authority, in which the summary procedure does not permit leading of any oral evidence at all. Similar is the

position in respect of proceedings before the Competent Authority under the Maintenance and Welfare of Parents and Senior Citizens, Act, 2007 to cite a couple of examples (*see also Satnam Ahuja Vs. State Maharashtra and others 1998 (3) Mh.L.J. 245*) of the restrictive scope of a summary enquiry.

9.8. In *Sagar Anandrao Chalake and another Vs. Ilahi Adam Kalavant and others, 2011 SCC Online Bom 101: 2011 (3) Mh. L.J. 552*, while considering the scope of an enquiry under the provisions of Section 44 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, which provides for disqualification of a Councillor during his term of office, the proviso to Section 44 (4) of which also contemplates that the enquiry has to be conducted by the Collector by giving the Councillor reasonable opportunity of being heard, [as is contemplated by the proviso to Section 16 (2) of the M.V.P. Act], it has been held as under :-

“10. Perusal of the aforesaid section clearly reveals that by virtue of the provisions of sub-section (3), the Collector is authorized to decide whether vacancy has arisen as per the provisions laid down under section 44(a) to (e). Sub-section (4) of section 44 also clearly lays down that any person

aggrieved by any decision of the Collector is entitled to file an appeal to the State Government and the orders passed by the State Government shall be final. On plain reading of the aforesaid provision, it can be seen that the power which is exercised by the Collector under the said provision is of quasi-judicial nature and in the case of either on receipt of the report of the Chief Officer, or on his own motion or on an application made to him by a voter, he can decide whether the Councillor has incurred disqualification as laid down in section 44(a) to (e). The submission made by the learned Counsel for the petitioners that power exercised by the Collector is judicial power and, therefore, it partakes the character of Tribunal, in my view, cannot be accepted. The ratio of the judgment in Kihota Hollohon (supra) on which reliance is placed by the learned Counsel for the petitioners will not apply to the facts of the present case. The inquiry which is contemplated under section 44 to decide the disqualification of a Councillor in terms of clauses (a) to (e) of section 44 is a summary inquiry and there cannot be any strait-jacket formula regarding the manner in which the said inquiry is to be held by the Collector. It would not be possible to read into provisions of section 44 of the said Act; the provisions which are analogous to the Code of Civil Procedure. The submission made by the learned Counsel for the petitioners that the Collector should first decide the preliminary objections regarding maintainability of the application and also regarding jurisdictional fact of maintainability initially and, thereafter, proceed to decide the case on merits, cannot be accepted. It has to be remembered

that provisions of section 44 have been incorporated in order to ensure that the person who is elected as a Councillor cannot be permitted to continue as a Councillor if he has incurred disqualification and, at the same time, another important aspect is that the person who is duly elected as a Councillor on the support of majority of the-voters in that particularly Constituency cannot be dragged into dispute regarding his disqualification which may be converted into trial by a disgruntled person. Either way, therefore, it is necessary that the said power which is exercised by the Collector is exercised in a judicial manner in summary proceedings.”

9.9. Thus, the word “summary”, is only what it denotes, a fast and expeditious procedure for decision of the dispute brought before an Authority/Court.

9.10. It cannot be said that the legislature, while framing Section 16 of the M.V.P. Act was oblivious of the nature of enquiry to be conducted, for Section 153 (2) of the M.V.P. Act, indicates, that where the legislature felt the need of a detailed enquiry of an adversarial nature, it has specifically said so and has also empowered the person conducting the enquiry to administer oath and record evidence, as against which, where such need of an adversarial

enquiry was not felt, the same has been consciously omitted and a mere following of the principles of natural justice, has been set as the norm, as is indicated from Sections 16 (2) proviso, 39 (1) second proviso, as well as Section 39 A (2) of the M.V.P. Act.

10. Further considering that such an enquiry has to be completed all post-haste as far as possible, within a period of 60 days from the date of receipt of the application as mandated by Section 16 (2) of the M.V.P. Act and the nature of such enquiry, having been specified by the proviso to Section 16 (2) of the M.V.P. Act, in my considered opinion, it is not permissible for the Courts to enlarge the scope of the summary enquiry, as contemplated by the proviso to Section 16 (2) of the M.V.P. Act, by inserting or reading into the provision, elements of an enquiry of an adversarial nature, by permitting leading of evidence and cross-examination.

11. It is also pertinent to note that no rules have been framed in this regard, in absence of which what has to be considered is only the proviso to Section 16(2) of the M.V. PAct, alone.

12. The nature of an enquiry, under the provisions of Section 16 of the M.V.P. Act had come up for consideration in ***Suvarna Prakash Patil Vs. Anil Hindurao Powar and others, 2003 SCC OnLine Bom 924 : (2004) 1 Mah LJ 1062***, in which a learned Single Judge of this Court held as under :-

“12. Before I proceed to do so, it will be necessary to first dissipate the argument canvassed before this Court on behalf of the respondents. According to Mr. Patwardhan, the application as filed by the petitioner ought to have been thrown out at the threshold, for it did not make out cause of action for initiating proceedings within the meaning of section 14(h) of the Act. This argument is founded on the four decisions relied upon by the respondents as referred to above.

13. In my opinion, however, this argument clearly overlooks that the present proceedings are not for questioning the election of the respondents as member of the Gram Panchayat as such. Whereas, the same is under section 14(h) read with 16 of the Act, where the issue of disqualification has arisen and is required to be considered by the Collector. The proceedings obviously relates to the subsequent disqualification incurred by the respondents. In such a case, the analogy of the principles ascribable to the trial of Election Petition cannot be applied at all. Whereas, if at all any parallel is to be drawn, the same is referable to the action under Article 102 read with 103 against the

Member of Parliament or under Article 191 read with 192 against the Member of Legislative Assembly. That action or enquiry is surely not an adversarial proceedings but, sui generis, and more in the nature of summary and inquisitorial proceedings. It is appropriate to draw parallel to the above referred actions not only because of the purport of section 16 of the Act but more importantly because the Gram Panchayats have since been given special status after the insertion of the (Seventy-fourth Amendment) Act, 1992, whereby, Part IX of the Constitution of India has been substantially altered. The Panchayats have now been given the special status and are creature of the Constitution. The members of the Gram Panchayat are obviously holding public office. The Gram Panchayat is now creature of Article 243B of the Constitution. Article 243F postulates disqualifications for membership of Panchayat. The present section 14(h) of the Act is the law ascribable to Clause (b) of Article 243F(1) of the Constitution. Article 243F(2) of the Constitution provides that if any question arises, as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in Clause (i), the question shall be referred to the decision of such authority and in such manner as the Legislature of a State may, by law, provide. Section 16 of the Act is therefore ascribable to Article 243F(2) of the Constitution. Section 16(2) provides that if any question as to whether a vacancy has occurred under this section is raised by the Collector suo motu or on an application made to him by any person in that behalf,

the Collector shall decide the question as far as possible within 60 days from the date of receipt of such application. Proviso to sub-section (2) of section 16 provides for the manner in which the decision has to be reached by the Collector in deciding the issue of disqualification. It provides that no order shall be passed under this sub-section by the Collector against any member, without giving him a reasonable opportunity of being heard. It is common ground that no rules have been framed for governing the procedure with regard to disqualification proceedings. At least, no such provision has been brought to my notice. Therefore, the Collector while adjudicating the issue of disqualification is required only to observe principles of natural justice and fair play, as the section requires that no order be passed unless reasonable opportunity of being heard is offered to the incumbent. As mentioned earlier, the proceedings for deciding the issue of subsequent disqualification are markedly different than the trial of an Election Petition, which relates to pre-election disqualification; whereas, proceedings with regard to subsequent disqualification is concerned, even in regard to the members of Parliament and the Members of Legislative Assembly, the Constitution makes almost similar provision to empower the President and Governor, as the case may be, to decide the said issue. Therefore, it will be legitimate to draw parallel from the requirements of those proceedings. The Constitution Bench of the Apex Court while considering the nature of enquiry and the obligation of the specified Authority to decide the disqualification

*proceedings has observed in **Brundaban Nayak v. Election Commission of India** as reported in AIR 1965 SC 1892 in paragraph 12, as follows:—*

“12. What the said clause requires is that a question should arise; how it arises, by whom it is raised in what circumstances it is raised, are not relevant for the purpose of the application of this clause. All that is relevant is that a question of the type mentioned by the clause should arise; and so, the limitation which Mr. Setalvad seeks to introduce in the construction of the first part of Art. 192(1) is plainly inconsistent with the words used in the said clause.”

(emphasis supplied)

Suvarna Prakash Patil (supra) was relied upon in *Dnyaneshwar M. Satav Vs. Jalindhar Dgondiba Kharabi and Others*, 2014 (1) ALL MR 631.

13. In *Ravikiran s/o Abasaheb Deshmukh and another Vs. Additional Commissioner and others*, 2010 (3) Mh.L.J. 184, while considering the same proposition, as to the nature of enquiry under Section 16 of the M.V.P. Act, a learned Single Judge of this Court held as under :-

*“4. Before I proceed to consider the rival submissions, it may be stated that the enquiry contemplated under provisions of section 14 read with section 16 of the BVP Act is not likewise that of adversarial trial. It is only a summary enquiry. The enquiry contemplated under the relevant provisions is of inquisitorial nature. The Collector is required to observe the principles of natural justice. However, the enquiry cannot be likewise that of a trial of civil suit or criminal case. The nature of such enquiry is clarified in *Suvarna Prakash Patil v. Anil Hindurao Powar*, 2004 (1) Mh.L.J. 1062. A Single Bench of this Court held:*

“The action or enquiry contemplated in the proceedings under section 14(h) read with section 16 is surely not an adversarial proceedings but, sui generis, and more in the nature of summary and inquisitorial proceedings.....”

5. It will be explicit, therefore, that the nature of disqualification incurred is the only fact to be stated in the complaint application and the complainant is not required to give details or adduce evidence in September, 2002. It appears that the entries were verified by the competent public authority. Therefore, the public record was available to show that the third issue was born after the crucial date. It is important to notice that similar entry was shown in the municipal record in support of the averments. Even so, the petitioner No. 2 had submitted copies of the record maintained by Anganwadi

Sevika in the survey register carried out under a scheme called (Integrated Child Development Service Scheme). It is pertinent to notice that the local survey is contemplated under the Scheme. Necessary entries are required to be taken by the public authorities in the Survey Register. Thus, it is necessarily a public document. The entries are recorded after due preliminary enquiry. The entries in the survey register for the years 2005–2006 and 2006–2007 would show that birth date of Vaishnavi, who is the third child of the respondent No. 3 Bhagwan is shown as 25th September, 2002. It appears that the entries were verified by the competent public authority. Therefore, the public record was available to show that the third issue was born after the crucial date. It is important to notice that similar entry was shown in the municipal record.”

14. The question regarding the nature of the enquiry in respect of a proceeding under Section 16 of the M.V.P. Act, also fell for consideration before a learned Division Bench of this Court in ***Vishwas Laxman Bhagat Vs. Devendra Gana Bhagat and others, 2016 (4) Mh.L.J. 178***. The question raised is reflected in para 7, which for the sake of ready reference is quoted as under :-

“7. Further, it is submitted that the Collector was expected and duty bound to make enquiry by following principles

of natural justice, which contemplate recording of evidence and giving an opportunity to the Appellant to rebut the material adduced against him. In the instant case, it is urged that no such enquiry was initiated by the Collector himself. No opportunity of adducing evidence or rebutting the material produced by Respondent Nos.1 to 4 against the Appellant, was given to the Appellant and on this count also, the impugned order needs to be quashed. In support of this submission that adherence and compliance with the principles of natural justice is a must in any enquiry, reliance is placed on the authority of Narsingrao Gurunath Patil & Ors. Vs. Arun Gujarathi, Speaker & Ors., 2003 (1) Bom.C.R. 363.”

Answering the same it has been held as under :-

20. *Thus, even the bare perusal of Section 16(2) of the Act makes it clear that, this enquiry is in the nature of summary and inquisitorial proceedings, though it casts a duty on the Collector to make enquiry into such Dispute Application, it does not lay down any procedure, much less, the manner in which the enquiry is to be conducted. No rules are also framed for laying down the procedure to conduct such enquiry. The only mandate laid down in Proviso to sub-section (2) of Section 16 of the Act is that, no such order disqualifying a person shall be passed by the Collector against any Member, without giving him a reasonable opportunity of being heard. Except for this mandate, the provisions of Section 16 of the Act or any*

other provision under the Act does not lay down a specific procedure to be followed for the purpose of enquiry. It is left entirely to the discretion of the Collector as to the particular mode of enquiry, which he may deem fit, to adopt in facts and situation of that case. The Collector is, thus, while adjudicating the issue of disqualification, required only to follow the principles of natural justice and fair play.

24. Even in the authority relied upon by learned counsel for the Appellant that of Narsingrao Gurunath Patil (Supra) referred above, it was held that, whether the principles of natural justice were followed or not would necessarily depend upon the facts and circumstances of each case, including the nature of the action, the grounds on which the action is taken, the material on which the allegations are based, the attitude of the parties, the nature of the plea raised in the reply, the request for further opportunity, the admission by conduct or otherwise of the parties, all these materials in order to know whether the principles of natural justice are followed or not. Their applicability, thus, depends upon the context of facts and circumstances of each case.

27. In the case of K.L. Tripathi Vs. State Bank of India & Ors., MANU/SC/0334/1983, the Supreme Court has further elaborated, by observing that, the concept of fair play in action must depend upon particular lis between the parties..... There is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there is no dispute,

no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so, when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version of the credibility of the statement.

28. According to Supreme Court, the principles of natural justice are such means of achieving ends of justice. They cannot be perverted to achieve the very opposite end that would be a counter protective exercise.

30. Thus, point to be stressed is that the principles of natural justice cannot be reduced to hard and fast formula. These principles cannot be put in straight jacket. Hence, unless some prejudice is shown to have been caused by non-observance of such principles of natural justice, the decision arrived at by the authorities cannot be vitiated or quashed and set aside.

The question referred to the learned Division Bench in **Vishwas Laxman Bhagat** (supra), as would be evident from para 7 above, was specific as to whether the principles of natural justice would contemplate and include recording of evidence and giving an opportunity to rebut the evidence, while conducting an enquiry under Section 16 of the M.V.P. Act. The same clearly appears to have

been negated by holding, that the Collector is, while adjudicating the issue of disqualification, required only to follow the principles of natural justice and fair play.

14.1. In this context, it would also be material to take into consideration what the Hon'ble Apex Court has said about the reading of a statutory provision, in ***Re : Expeditious Trial of Cases Under Section 138 of the N.I. Act, 2021 SCC OnLine 325***, which is as under :-

“20. Section 143 of the Act mandates that the provisions of summary trial of the code shall apply “as far as may be” to trials of complaints under Section 138. Section 258 of the Code empowers the Magistrate to stop the proceedings at any stage for reasons to be recorded in writing and pronounce a judgment of acquittal in any summons case instituted otherwise than upon complaint,. Section 258 of the Code is not applicable to a summons case instituted on a complaint. Therefore, Section 258 cannot come into play in respect of the complaints filed under Section 138 of the Act. The judgment of this Court in Meters and Instruments (supra) in so far as it conferred power on the Trial Court to discharge an accused is not good law. Support taken from the words “as far as may be” in Section 143 of the Act is inappropriate. The words “as far as may be” in Section 143 are used only in respect of applicability of Sections 262 to 265 of the Code and

the summary procedure to be followed for trials under Chapter XVII. Conferring power on the court by reading certain words into provisions is impermissible. A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. The Judge's duty is to interpret and apply the law, not to change it to meet the Judge's idea of what justice requires. The court cannot add words to a statute or read words into it which are not there."

(emphasis supplied)

Holding that the Collector, while conducting an enquiry into the disqualification of the Councillor under Section 16 of the M.V.P. Act, while following the principles of natural justice, would be required to record evidence and permit cross-examination, would amount to re-writing the proviso to Section 16 (2) of the M.V.P. Act, as is held in ***Re : Expeditious Trial of Cases Under Section 138 of the N.I. Act*** (supra) and would thus be impermissible in law.

15. It is, thus, apparent, a plain reading of the language of Section 16(2) and the proviso thereto, of the M.V.P. Act, would

indicate that the enquiry under Section 16 (2) of the M.V.P. Act, has to be summary in nature restricted to the observations of the principles of natural justice and cannot be converted into an enquiry of an adversarial nature, requiring evidence to be led by permitting parties and witnesses to be examined and cross-examined, by reading into it such a requirement. Such a concept, would be totally alien to the nature of enquiry, as contemplated under Section 16 of the M.V.P. Act as an enquiry of an adversarial nature was not intentionally provided by the legislature while enacting Section 16 of the M.V.P. Act, though it was aware, that the disqualification would result, in denial of a right vested in the elected member, due to his election.

16. Shri Gour, learned Counsel for the petitioner, has relied upon the meaning of the word ‘inquisitorial’, which according to him means a system of proof taking, used in civil law, whereby the Judge conducts the trial, determines what questions to ask, and defines the scope and the extent of the enquiry and submits that this system is not prevalent in India and thus such type of an enquiry is not permissible to be conducted. The use of the word, ‘inquisitorial’, in

the judgment of this Court [see ***Suvarna Prakash Patil*** (supra) and ***Ravikiran*** (supra)] is only indicative of the summary nature of the enquiry to be conducted under Section 16 of the M.V.P. Act and does not mean, that the inquisitorial system was being adopted or followed in the country.

17. Judgments on which reliance is placed by Shri Gour, learned Counsel for the petitioner :-

A) In ***Vivek s/o Vishwanath Mane (Dr.)*** relied upon by Shri Gour, learned Counsel for the petitioner, what was under consideration, would be evident from the follows :

“5. In fact, the scope of this writ petition is restricted to the challenge to the order dated 6-4-2013 passed by the Additional Collector allowing the applications for making further enquiry into the matter in respect of the encroachment alleged in the applications and permitting to cross-examine the Village Development Officer, who submitted his report on 19-3-2013. It is the only relief claimed in the petition in prayer clause (i). There is no other relief claimed in the petition. As stated earlier, the order is purely interlocutory in nature and it is a step in the enquiry, as contemplated by Section 16(2) of the said Act to find out whether any encroachment is made so as to incur a disqualification alleged. It is open for the Collector, upon receipt of the material before him, to find out as to whether such material is relevant for the purposes of deciding the question

under Section 16(2) of the said Act. Obviously, the petitioner shall have an opportunity to contest, if the report is against him. The order impugned, though not supported by any reason, does not call for any interference.”

The Court only refused to interfere with the impugned order which had granted the applications thereby permitting to cross-examine the Village Development Officer, on the ground that it was an interlocutory one and therefore is of no assistance to the arguments advanced.

(B) In ***Lalita Dilip Khandalkar*** (supra) it has been stated as under :-

“14. In view of the above, this Court finds that the writ petition deserves to be partly allowed. Accordingly the impugned orders passed by respondent nos. 1 and 2 are quashed and set aside and the matter is remanded to the respondent no.2 -Additional Collector for further enquiry. It is directed that a fresh spot inspection and measurement of the property be undertaken under the orders of respondent no.2- Additional Collector. The petitioner and respondent no.3 shall be given notices about carrying out of such an exercise. It is after such an exercise is carried out and the parties are given opportunity to lead evidence in the context of such exercise of spot inspection and measurement that the

respondent no.2- Additional Collector shall proceed to decide the application filed by the respondent no.3 under Section 14 (1)(j-3) of the aforesaid Act.”

(C) In ***Hanumant Sahebrao Patil Vs. Additional Commis-sioner, Nashik and others*** (supra) it has been stated as under :

“4. In view of the aforesaid position of law, it was necessary for respondent member to lead evidence in rebuttal to rebut the presumptions available in view of the aforesaid circumstances and particularly the birth certificate dated 7.10.2015. This circumstance was sufficient to presume that on 7.10.2015 one male child was born to respondent member. This circumstance was not rebutted at all. It was only contended that no such child was born. Only denial cannot rebut the presumption, when there is certified copy of public record.”

(D) In ***Mandabai*** (supra) it has been stated as under :-

“11. Since the provision contained in Section 14 of the Act results in penal consequences it is expected that there is strict compliance and proof regarding availability of necessary concomitants, sufficient to attract a disqualification. When Section 14 (1)(h) requires the aforementioned three conditions to be fulfilled it was expected that the respondent No.4 ought to have demonstrated by leading tangible evidence that there were arrears of tax, there was service of a bill demanding it and that failure of the petitioner to pay the dues within three months of such

demand. He has miserably failed to prove compliance with this requirement of law.”

It would however be material to state that in none of these cases the Court was called upon to decide the nature, scope, ambit and parameters of the enquiry under Section 16 of the M.V.P. Act, nor was the judgment in the case of ***Vishwas Laxman Bhagat*** (supra) brought to its notice. All these judgments proceed upon the general presumptions in law, which are extant in an enquiry of an adversarial nature.

(E) Reliance placed on ***Ganesh Shankar Landge Vs. Additional Commissioner and others, 2011 (5) ALL MR 666***, for the proposition that the report regarding the encroachment by the Talathi, could not be unilateral and without notice to the petitioner, cannot be said to be unjustified for even the principles of natural justice would require that the measurement regarding an encroachment be taken upon due notice to the person, against whom the disqualification on that count was alleged.

18. In my considered opinion, the issue as regards the nature of enquiry under Section 16 of the M.V.P. Act, has been considered and decided in ***Vishwas Laxman Bhagat*** (supra), which holds that it is summary in nature and the argument that the Collector while following the principles of natural justice would be bound to record evidence and give an opportunity to the other side to rebut the same, has been rejected, which is a judgment of the learned Division Bench of this Court, which has not been brought to the notice of the Courts, which have rendered the judgment in ***Lalita; Hanumant Sahebrao Patil; Mandabai*** (supra). The Courts rendering these judgments were also not called to dilate upon the nature of enquiry to be conducted under Section 16 (2) of the M.V.P. Act and therefore could be said to be *per incuriam* to ***Vishwas Laxman Bhagat*** (supra). In so far as ***Vivek*** (supra) is concerned, which is earlier in point of time, the view taken in ***Vivek*** (supra) being that of a learned Division Bench of this Court, shall prevail. The leading of evidence, as indicated in these judgments, thus has to be construed as filing of documents, substantiating the plea raised for disqualification, and the defence taken thereto, and not otherwise.

19. In that view of the matter, I do not see any merit in the petition and the same is dismissed. Rule stands discharged. There shall be no order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar