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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1566 OF 2022

Sanjay Dattarao Hanwate

PETITIONER

VERSUS

The State of Maharashtra and Others

RESPONDENTS

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Mr. Avinash N. Patil Barhate, Advocate for the petitioner

Mr. P. N. Kutti, AGP for respondent No.1 - State

Mr. S. V. Suryawanshi, Advocate for respondent No.3

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 5th APRIL, 2022

ORDER :

1. By this petition, the petitioner challenges his disqualification order passed by the Collector, Hingoli under section 14 (1) (J-3) of the Maharashtra Village Panchayat Act, 1958, (hereinafter for short "the said Act") which is confirmed by the Commissioner, Aurangabad.

2. The petitioner is the elected member of village panchayat, Jawala (Bk), Taluka – Sengaon, District – Hingoli.

3. Respondent No.3 filed an application under section 14 (1) (J-3) of the said Act before the Collector alleging that the petitioner's grand father has encroached on the government land

and constructed a house, the petitioner is staying along with his grand father in the encroached property and, therefore, the petitioner has incurred disqualification.

4. Pursuant to the directions of the Collector, Block Development Officer conducted a *Panchanama*, wherein it was found that house No. 829 is built on the land owned by the government and the same is occupied by the grand father of the petitioner. House No. 830 is also built on the land owned by the government and father of the petitioner is occupying the same. In house No. 830, the petitioner, his father and other family members are staying jointly. An inquiry report, to that effect was submitted by the Block Development Officer, which was forwarded by the Deputy Chief Executive Officer, Zilla Parishad, Nanded to the Collector.

5. On the basis of the inquiry report and after hearing the concerned parties, the Collector has held that though the petitioner himself has not encroached on the government property, however, his family members have encroached on the government land and, therefore, disqualified the petitioner under section 14 (1) (J-3) of the said Act. The said decision is confirmed by the Commissioner. The petitioner is aggrieved by both these decisions.

6. Heard learned advocate for the petitioner, learned Assistant Government Pleader for respondent No.1 and learned advocate for respondent No.3.

7. Learned advocate for the petitioner has strenuously urged that there is no date of encroachment mentioned in the entire proceedings before the Collector. Admittedly, the petitioner has not encroached on the government land. By relying on the ration card, he submits that the petitioner is staying separately from his father or grand father. Further submission is that, no notice under section 53 of the said Act is given either to his father or grand father for removal of encroachment. In that view of the matter, the impugned orders passed by the Collector and Commissioner, are unsustainable and the same are liable to be quashed and set aside.

8. On the other hand, learned advocate for respondent No.3 relied on the *Panchanama* conducted by the Block Development Officer and the report submitted in that behalf, wherein it is specifically mentioned that the petitioner is residing jointly at house No. 830 which is an encroachment on the government property. He, therefore, submits that in the light of the decision in the case of "***Janabai V/s Additional Commissioner and Others***" (2018) 18 SCC 196, the Collector was justified in passing the

impugned order and the Commissioner has rightly rejected the appeal filed by the petitioner.

9. Learned Assistant Government Pleader supports the impugned orders and submits that there is no substance in the petition and the petition is liable to be dismissed.

10. Admittedly, house No. 829 is built by the grand father of the petitioner by encroaching on the land of the government. Similarly, house No. 830, which is constructed by the father of the petitioner is also an encroachment on the government land. In the *Panchanama*, it is specifically mentioned that father of the petitioner, the petitioner and other family members are jointly residing in house No. 830. In that view of the matter, the Collector was justified in passing the impugned order as the petitioner has failed to bring anything on record to show that the said houses No. 829 and 830 are not by way of encroachment on the government property.

11. It is not possible to accept the contention of the petitioner that because ration card is produced on record, the petitioner is staying separately from his father or grand father. The ration card is not the proof of the fact that the petitioner is staying separately from his father or grand father.

12. It is also not possible to accept the contention of the petitioner that because no notice under section 53 of the said Act is given for removal of encroachment, the Collector ought not to have passed the impugned order, because as per the record placed before the Collector, encroachment on the part of the father and grand father of the petitioner is proved on record.

13. In "*Janabai*" (*supra*), it is held that when a person shares an encroached property by residing there and there is continuance, he is to be treated as disqualified. Such an interpretation subserves real warrant of the provision. Therefore, the impugned order passed by the Collector is justified in the light of ratio in Janabai's case. No case is made out by the petitioner to warrant exercise of extraordinary writ jurisdiction. The writ petition being devoid of any substance is dismissed. No costs.

14. At this stage, learned advocate for the petitioner prays for stay to this order in order to enable the petitioner to approach the Supreme Court. In the light of the reasons given in the order, the prayer for stay is rejected.

[NITIN B. SURYAWANSHI]
JUDGE