

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

WRIT PETITION NO. 6408 OF 2021

Prashant s/o Eknath Ghule,
Age 40 years, Occ. Service & Agril.
R/o. Kumbhari, Tq. Kopargaon,
Dist. Ahmednagar.

... **Petitioner.**

VERSUS.

- 1) The Additional Commissioner
Nashik Division, Nashik.
- 2) The Collector, Ahmednagar,
Dist. Ahmednagar.
- 3) Dattu Gajanan Kadam,
Age Major, Occ. Agriculture.
- 4) Sanjay Chandrakant Ghule,
Age Major, Occ. Agriculture,
Respondent Nos. 3 & 4
R/o. Kumbhari, Tq. Kopargaon,
Dist. Ahmednagar.
- 5) Grampanchayat Kumbhari,
Tq. Kopargaon, Dist. Ahmednagar,
Through Gramsevak.

... **Respondents.**

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Advocate for the Petitioner : Mr. Salgar h/f Mr. Niteen V. Gaware.

A.G.P. for the Respondent Nos. 1 & 2 : Mr. P. N. Kutti.

Advocate for the Respondent Nos. 3 & 4 : Mr. A.D. Sonkawade.

CORAM : MANGESH S. PATIL, J.

RESERVED ON : 06.12.2021.

PRONOUNCED ON : 05.01.2022.

PER COURT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. By way of this Writ Petition the petitioner is taking exception to the concurrent findings and orders passed by the Collector and Additional Commissioner in a proceeding under Section 16 read with Section 14(1) (j-3) of the Maharashtra Village Panchayat Act, 1956 (hereinafter 'the Act') on a complaint filed by the respondent Nos. 3 and 4, holding him to have incurred a disqualification on the ground of encroachment over a government land.

3. The sum and substance of the allegations are to the effect that the paternal grand mother of the petitioner was the owner of the land Gat No. 412 but she encroached over 3-Are portion of the forest land from Gat no. 433 and the petitioner was the beneficiary.

4. Learned advocate Mr. Salgar h/f Mr. Gaware for the petitioner would submit that since long he has been residing separately from his grand mother, in a different house. The land Gat No. 412 was exclusively owned by her. She had bequeathed it to his brother Shivaji by a will dated 11.11.2009. Since the will was not traceable even his name was mutated in the revenue record of the land even though he was not having any right or title therein. He would further submit that pursuant to such will, subsequently the record has been corrected and the name of his brother Shivaji alone has been now mutated to that land.

5. The learned advocate would then submit that there is no concrete evidence in respect of the alleged encroachment. Even there is variance in respect of the extent of such encroachment. At the time of measurement the alleged encroached portion is said to be barren. If that is so the petitioner could not have been attributed with its possession and could not have been disqualified.

6. Learned advocate would submit that both the authorities below have not properly appreciated the aforementioned facts and circumstances and have readily accepted the allegations based on conjectures and surmises.

The orders are illegal and may be quashed and set aside.

7. The learned A.G.P and learned advocate for the contesting respondents vehemently submitted that no dispute has been raised as regards the fact of encroachment even though there is variance in respect of the extent of encroachment. They would submit that the petitioner is blowing hot and cold at the same time. Though he allowed his name to be mutated to the revenue record, only by way of an after thought, an attempt is now being made to demonstrate that the land was actually bequeathed to his brother exclusively by putting forth a will of the year 2009. They would submit that this process of disqualification had began in the year 2018 and it is thereafter that steps were taken to propound a will and to get the revenue record corrected during pendency of this enquiry. Both the authorities below have considered all these aspects and have rightly refuted his defence. There is no perversity or arbitrariness. The conclusions are based on the scientific data in the form of measurements carried out not once but twice.

8. I have carefully considered the rival submissions and the papers. Needless to state that in view of the concurrent findings of the two authorities below touching the facts, there is very little scope for this Court to cause any interference by invoking the powers under Article 226 and Article 227 of the Constitution of India. The present enquiry can only be to ascertain as to if the observations and the conclusions drawn by the authorities below are borne out from the facts and circumstances or are perverse and arbitrary. It is only in the latter case that this Court can interfere.

9. Bearing in mind the aforementioned principles, if one examines the matter in hand, it is quite apparent that the conclusions have been drawn by the authorities below relying upon the reports of the measurements carried out by the Surveyors. True it is that the reports are at variance in as much

as in one such report the encroachment is stated to be 04 Are whereas in the other it is stated to be 06 Are. Bearing in mind the fact that this is not a suit for possession, such extent of encroachment, to my mind, is inconsequential. The fact remains that there was sufficient evidence before the authorities below regarding there being an encroachment by the holder of the land Gat No. 412 over the forest land bearing Gat No. 433.

10. Admittedly, the land Gat No. 412 was originally owned by the paternal grand mother of the petitioner. Though he is now coming with a case of she having bequeathed it to his brother Shivaji by a will of the year 2009, no plausible explanation is coming forth as to why and how, till the present enquiry was initiated, no attempt was made by him or his brother Shivaji to propound such will and assert exclusive right and title of Shivaji. It is only after initiation of this proceeding that, perhaps by way of an after thought, steps were taken to propound the will and get the revenue record mutated. It is indeed a circumstance which creates a reasonable suspicion.

11. In this respect it is also important to note that admittedly, after demise of the grand mother, the name of the petitioner and his brother Shivaji were mutated to the revenue record of the land Gat No. 412. It continued to be so till the initiation of the present enquiry. This certainly creates a doubt about the authenticity and genuineness of the claim of the petitioner about having no interest in that land.

12. Again, some capital has been tried to be made out of the fact that the Surveyor though has reported about encroachment, the encroached portion is stated to be a barren land, to demonstrate that the petitioner cannot be attributed with the fact of possession over the encroached portion. However, to my mind, the situation of the encroached portion on the date of measurement is inconsequential. Merely because a care or precaution is taken not to leave any evidence about possession by keeping the encroached portion barren one, the fact of there being encroachment does not get

diluted.

13. Both the authorities below have taken into consideration all the aforementioned facts and circumstances and have drawn a reasonably plausible conclusion about the petitioner being the beneficiary of the encroached portion has incurred the disqualification. The observations and the conclusions, by no stretch of imagination, can be said to be either perverse, arbitrary or capricious so that any interference can be caused in such concurrent findings.

14. The Writ Petition is dismissed.

15. Rule is discharged.

(MANGESH S. PATIL, J.)

mkd/-