

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7320 OF 2021

YASHWANT JIVLYA GAVIT AND OTHERS
VERSUS
BAKARAM FATESING GAVIT AND OTHERS

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Advocate for Petitioners : Mr. B.R. Waramaa
AGP for Respondents-State: Mrs. G.L. Deshpande
Advocate for Respondent No. 1: Mr. D.S. Bagul
Advocate for Respondent No. 2: Mr. P.D. Bachate
Advocate for Respondent No. 3 & 4: Mr. A.B. Girase
Advocate for Respondent No. 6: Mr. Yogesh Bolkar

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th JULY, 2022

ORDER :

1. The petitioners are aggrieved by the decision of the Collector, Nandurbar dated 24.01.2020, thereby rejecting the dispute filed by the petitioners seeking disqualification of respondents No. 1, 2, and 4 under Section 14(j)(3) for allegedly encroaching on the Government property. Said decision is confirmed in appeal by the Additional Commissioner, Nashik division, Nashik.

2. In the elections held in November-2017, respondents No. 1 to 4 were elected as members of Visarwadi gram

panchayat, Taluka- Nawapur, District- Nandurbar. The petitioner No. 1 is directly elected as sarpanch. The petitioner filed village panchayat dispute bearing No. 2/2019 seeking disqualification of respondents No. 1,2 & 4 on the ground that the respondents have encroached on the Government property. The mother of respondent No. 1 was residing jointly and respondent No. 2 who is son of respondent No. 1 was taking education. Mother of respondent No. 1 expired 1½ years before. During her lifetime, mother of respondent No. 1 had encroached on 3,000 sq.feet Government property and respondent No. 3 has encroached on 3200 sq. feet Government property. Names of mother of respondent No. 1 and respondent No. 3 appear in the encroachment register. Since the mother was jointly residing with respondent No. 1 at the time of her death, after her death encroachment made by her should be treated as encroachment by the respondents.

3. Respondents appeared in the said dispute and resisted contentions of the petitioner by filing detail say. Pursuant to the dispute, the Collector directed inquiry to be conducted by the Village Development Officer. The Collector after hearing the parties and after considering the record, rejected the

dispute filed by the petitioners holding that the encroachment on the part of respondent No. 3 cannot be attributed to respondent No. 1 and it is clear that respondents No. 1 and 3 are residing separately. Encroachment by mother of respondent No. 1 has not come to respondent No. 1 by inheritance, on the contrary encroached portion is taken into possession by the gram panchayat.

4. The petitioners challenged the said order by filing Village Panchayat Appeal No. 10/2020 before the Additional Commissioner, who has confirmed the order passed by the Collector. Hence, the present petition.

5. Heard the learned advocate for the petitioners, learned advocate for the respondents and learned Assistant Government Pleader for State.

6. The learned advocate for the petitioners strenuously submits that the ration card placed on record by the petitioners shows that respondent No. 3 was his family member and was residing jointly with respondents No. 1 and 2. As per the declaration given by respondents No. 1 at the time of filing nomination date of birth of respondent No. 3 was given as

06.04.1997 and hence when encroachment was made by respondent No. 3 in the year 2010 he was only 13 years old and at that age he could not have encroached, thus, infact encroachment is on the part of respondent No. 1, though name of respondent No. 3 is shown on record. He further submits that encroached portion was in the possession of respondent No. 1 till 2019, as respondent No. 3 has submitted an application seeking removal of his name from the encroachment register in that year. By relying on the assessment report of damage to the encroached property of respondent No. 3, he further submits that, said assessment report is signed by respondent No. 1 which confirms that it was the respondent No. 1 who had committed encroachment and not respondent No. 3. He further submits that there is no record to show that the respondent No. 3 was residing separately from respondents No. 1 and 2. He assailed the decision of the Collector contending that the Collector has failed to consider the documents placed on record and contentions raised, in the proper perspective and has erred in rejecting the application for disqualification filed by the petitioners. The Additional Commissioner has also erred in confirming the decision of the Collector. By relying on the decision in **Janabai Vs. Additional Commissioner and Others** [Civil

Appeal No. 6832 of 2018], he submits that since Dipesh was minor in the year 2010 the encroachment needs to be attributed to respondent No. 1 and hence he ought to have been disqualified by the Collector. According to him, both the authorities have recorded perverse findings and hence, impugned order is liable to be quashed and set aside.

7. The learned advocate for respondent No. 1 on the other hand supports the impugned order. He submits that it is clear from the record that encroached property No. 153 was standing in the name of mother and encroached property No. 152 was standing in the name of Respondent No. 3. There is sufficient material on record to show that respondents No. 1 and 2 were residing in the house owned by them i.e. property No. 744/1, 744/2 and 574. He further submits that report submitted by the Village Development Officer supports the contentions of respondents. By placing reliance on partition deed which was executed before elections he submits that when the partition took place respondent No. 3 was major and his age was more than 21 years. As per the partition deed encroached properties were belonging to respondent No. 3 and were allotted to his share. According to him, this partition deed is not denied by the

petitioners at any point of time. He explains that the signature of respondent No. 1 on the assessment report is in the capacity of panch and therefore, no reliance can be placed on the same. By relying on the observations of the Apex Court in *Janabai* (supra) he submits that continued possession and sharing of property is essential for incurring disqualification, he states that it is absent in the present case and therefore, since both the authorities below have recorded concurrent finding of fact, this Court may not interfere in the same in the extra ordinary writ jurisdiction.

8. The learned advocates for respondents No. 2, 3 and 4 adopted the arguments of learned advocate for respondent No. 1.

9. The learned advocate for respondent No. 6 has relied on the report of the Village Development Officer. He has further pointed out the application filed by respondent No. 3 for removal of his name from the encroachment register. By relying on photo copies filed along with reply he submits that on 13.11.2019, gram panchayat has already taken possession of the encroached property. He therefore, supported the impugned orders.

10. The learned Assistant Government Pleader has supported the impugned orders and submits that there is no substance in the petition and the petition may be dismissed.

11. It is a matter of record that encroached property bearing No. 152 was standing in the name of respondent No. 3 and property No. 153 was standing in the name of deceased mother of respondent No. 1. It is mentioned in the partition deed that the encroached property bearing No. 152 is in occupancy of respondent No. 3 and property No. 153 is in occupancy of Fattabai Gavit. Respondents No. 1, 2 and 4 have no concern with said properties. It is further mentioned that respondent No. 3 and Fattabai Gavit were residing separately from respondents No. 1, 2 and 4 since year 2010.

12. Report dated 24.10.2019 submitted by the Village Development Officer, as per the directions of Collector, makes it clear that, encroachment in property No. 152 was made in the year 2010 by respondent No. 3 wherein temporary tin shade was erected, however, same was washed away in the flood occurred in the year 2018 and therefore respondent No. 3 is not occupant of said encroached property. The report further states that

property No. 153 standing in the name of Fattabai was earlier recorded in the name of her deceased husband Fattesingh Gavit, which was given to him by the gram panchayat vide resolution No. 17 dated 30.09.1989. In village panchayat record at form No. 8 said property No. 153 is recorded only in the name of Fattabai and none other. In the encroachment register maintained by the gram panchayat name of respondent No. 1 does not appear.

13. By application submitted by respondent No. 3 dated 11.11.2019, respondent No. 3 has requested the Village Development Officer and Sarpanch of gram panchayat Visarwadi to cancel his name as well as his grand mother Fattabai's name from form No. 8. As per the affidavit filed by respondent No. 6, possession of encroached properties bearing No. 152 and 153 are taken by the village panchayat on 13.11.2019.

14. In the backdrop of these facts and documents on record, the Collector has recorded a finding that respondent No. 1 and 3 are staying separately and encroachment on the part of respondent No. 3 cannot be attributed to respondent No. 1. Though, the petitioners have alleged that respondents No. 1, 2

and 4 have encroached on the Government property, they have failed to prove the same by leading cogent evidence. The findings recorded by the Collector are on the basis of record produced before him and in the opinion of this Court, same are not liable to be interfered with. The Additional Commissioner was justified in confirming the order passed by the Collector.

15. In *Janabai* (supra), the Apex Court has held '*the concept of purposive interpretation would impel us to hold that when a person shares an encroached property by residing there and there is continuance, he/she has to be treated as disqualified. Such interpretation subserves the real warrant of the provision.*'

In the case in hand there is no material on record to show that respondents No. 1, 2 and 4 are sharing encroached property by residing there and they have continued sharing of the encroached property. In that view of the matter also, the Collector was justified in rejecting the application filed by the petitioners seeking disqualification of respondents No. 1, 2 and 4. Concurrent finding of fact recorded by the Collector and Additional Commissioner are on the basis of record, which are not liable to be interfered in the extra ordinary writ jurisdiction.

Proper view is taken by the authorities below while rejecting the application filed by the petitioners, which is not liable to be interfered with.

16. For the aforestated reasons, there is no merit in the writ petition. The writ petition being devoid of substance is dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]