

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

WRIT PETITION NO.9232 OF 2021

Shivraj S/o Raghunath Ravle
Age: 35 years, Occu: Agri.,
R/o: Shirad-Shahapur,
Tq. Aundha (Nagnath), Dist. Hingoli

... Applicant

VERSUS

1. The Additional Divisional Commissioner
At. Aurangabad.
2. The Collector, Hingoli
3. The Deputy Chief Executive Officer
(Panchayat), Zilla Parishad Hingoli,
District: Hingoli.
4. The Village Panchayat, Shirad-Shahapur
Though its Gramsevak/Village Development Officer,
Shirad-Shahapur, Tq. Aundha (Nagnath),
District: Hingoli.
5. Sayed Kutub Sayed Husain
Age: Major, Occu: Agril,
R/o.: Shriad-Shahapur, Tq. Aundha (Nagnath),
District: Hingoli.

... Respondents

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Mr. A. N. Nagargoje holding for Mr. Sudhir K. Chavan, Advocate for
the Petitioner

Mr. S. W. Munde, AGP for Respondent Nos.1 & 2

Mr. S. B. Ghute, Advocate for Respondent No.3

Mr. K. M. Nagarkar, Advocate for Respondent No.5

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 08th JUNE, 2022

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally by
the consent of the parties.

2. This petition filed under Article 227 of the Constitution of India, impugns the decision of Respondent No.2 Collector, Hingoli dated 15-01-2021 bearing Outward No.2020/VPE/Kavi 395, confirmed by respondent No.1 Additional Divisional Commissioner, Aurangabad, by judgment dated 15-07-2021 in case No. Village Panchayat/Appeal-2/Appeal/CR-10/2021.

3. By filing the dispute, petitioner claimed disqualification of respondent No.5 under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1958 (for short 'the said Act'). The petitioner contended that respondent No.5 is an elected Member of Village Panchayat, Shirad-Shahapur, Taluka Aundha Nagnath, District Hingoli and in property No.16 standing in the name of his wife, there is encroachment on the public property of 2 x 18 feet in North-South direction. Respondent No.5 denied all the contentions in the said dispute. Pursuant to the directions of the Collector, Deputy Chief Executive Officer directed the Extension Officer, Panchayat Samiti, Aundha to visit the site and submit report. Accordingly, site inspection was conducted on 05-10-2020 in the presence of petitioner, respondent No.5, other villagers and Village Development Officer. The record of the Village Panchayat was also perused. The Extension Officer submitted report that, in property No.16 standing in the name of wife of respondent No.5 there is an

encroachment on public property to the extent of 2 x 18 feet in North-South direction. Accordingly, report was submitted by the Extension Officer to the Deputy Chief Executive Officer, Zilla Parishad, who forwarded the same to the Collector.

4. After hearing the parties, the Collector has held that though the Extension Officer has submitted a report that there is an encroachment on public property, however, it is not stated in the report that the measurement for ascertaining the encroachment is carried out by the Extension Officer. In the said report, it is also not stated that though notice for removal of encroachment was given to the wife of respondent No.5, the encroachment was not removed. By referring to the decision of the Hon'ble Apex Court in ***Janabai Vs. Additional Commissioner and Others, (2018) 18 SCC 196***, the Collector held that it is not true that respondent No.5 or his family member has encroached on the Government property. So also, the fact that, in spite of the notice issued by Village Panchayat for removal of encroachment they continued to enjoy the said property, is not proved on record, and therefore, it would not be proper to disqualify respondent No.5. The Collector, therefore, dismissed the dispute filed by the petitioner.

5. Decision of the Collector is unsuccessfully challenged by the petitioner by filing appeal before the Commissioner. The orders

passed by the Collector and Commissioner are impugned in the present petition.

6. Heard Mr. A. N. Nagargoje holding for Mr. Sudhir K. Chavan, learned advocate for petitioner, Mr. S. B. Ghute, learned advocate for Respondent No.3, Mr. K. M. Nagarkar, learned advocate for Respondent No.5, Mr. S. W. Munde, learned Assistant Government Pleader for respondent – State, at length. Perused the documents placed on record.

7. Section 14(1)(j-3) provides that no person shall be a Member of a Panchayat continue as such, who has encroached on the Government land or public property. The act of encroachment on the part of wife of respondent No.5 is brought on record in the report submitted by respondent No.3. In spite of specific report that in property No.16 standing in the name of wife of respondent No.5, there is an encroachment on the public property to the extent of 2 x 18 feet in North South direction, the Collector has erroneously proceeded to hold that that there is no notice issued by the Village Panchayat, as it is the duty of the Village Panchayat to remove the encroachment under Section 53 of the said Act and no such notice for removal of encroachment is brought before him and that, there is no clarity in the report of respondent No.3 as to whether the competent officer has measured the encroachment or

property No.16.

8. Both these findings recorded by the Collector are contrary to the record and the Collector has misread and misconstrued the provisions of Section 14(1)(j-3) and Section 53 of the said Act. The report of respondent No.3 clearly establishes encroachment made on the public property by the wife of respondent No.5. Merely because the Village Panchayat has failed in it's duty to issue notice under Section 53 of the said Act for removal of encroachment, that by itself cannot be a ground to refuse disqualification of respondent No.5.

9. The finding of the Collector that the competent officer has not measured the property No.16 and/or the encroachment is also contrary to the record, since respondent No.3 has submitted report of encroachment after visiting the site and after verifying the Village Panchayat record. The Collector has erred in ignoring the same while recording the said finding. It, therefore, appears that the impugned order is passed by the Collector on irrelevant factors and by ignoring the relevant factors.

10. Section 53 of the said Act makes a provision for removal of encroachment by the Village Panchayt and also provides for the manner in which the encroachment can be removed.

11. Merely because the Village Panchayat has not taken any action under Section 53 against respondent No.5 or his wife, that by itself does not obliterate fact of encroachment by the wife of respondent No.5 on public property, which is clear from the report of respondent No.3.

12. Reading of Section 14(1)(j-3), does not, in any manner, indicate that there is a requirement of initiation of action under Section 53 against the encroacher, so as to disqualify him. The Collector as well as the Commissioner while passing the impugned orders have misread and misconstrued the provisions of Sections 14 and 53 of the said Act and thereby committed an error apparent on the face of record.

13. The judgment of ***Janabai Vs. Additional Commissioner and Others, (2018) 18 SCC 196***, was brought to the notice of Collector as well as the Commissioner. In paragraph Nos.26 and 29 of the said judgment it is held :

"26. We may hasten to add here that we do not intend to take the said route. We think it appropriate to analyse the provision, understand the purpose and the contextual relevance and also appreciate the nature of the provision in the backdrop of the democratic set-up at the grass root level. Having said that, we shall now analyse the statutory scheme. Section 53 that occurs in Chapter III deals with obstruction and encroachment upon public streets and upon sites. It confers power on the Panchayat to remove such obstruction or encroachment or to remove any unauthorizedly cultivated grazing land or

any other land. That apart, it also empowers the Panchayat to remove any unauthorized obstruction or encroachment of the like nature in or upon a site not being private property. The distinction has been made between private property and public property. It has also protected the property that vests with the Panchayat. If the Panchayat does not carry out its responsibility of removing the obstruction or encroachment after it has been brought to its notice in accordance with the procedure prescribed therein, the higher authorities, namely, the Collector and the Commissioner, have been conferred with the power to cause removal. There is a provision for imposition of fine for commission of offence.

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29. We may note here with profit that the word 'person' as used in Section 14(1)(j-3) is not to be so narrowly construed as a consequence of which the basic issue of —encroachment|| in the context of disqualification becomes absolutely redundant. The legislative intendment, as we perceive, is that encroachment or unauthorized occupation has to be viewed very strictly and Section 53, therefore, provides for imposition of daily fine. It is also to be borne in mind that it is the Panchayat that has been conferred with the power to remove the encroachment. It is the statutory obligation on the part of the Panchayat to protect the interest of the properties belonging to it. If a member remains in occupation of an encroached property, he/she has a conflict of interest. If an interpretation is placed that it is the first encroacher or the encroachment made by the person alone who would suffer a disqualification, it would lead to an absurdity. 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 an interpretation subserves the real warrant of the provision. Thus analysed, we are of the view that the decision in Sagar Pandurang Dhundare (supra) does not lay down the correct position of law and it is, accordingly, overruled."

14. There is no observation of the Hon'ble Supreme Court that issuance of notice and/or action under Section 53 of the said Act is pre-requisite condition for incurring disqualification. The said judgment is misinterpreted by the Commissioner while coming to the conclusion that since no action is initiated by the Village Panchayat under Section 53 of the said Act against the wife of respondent No.5, it cannot be said that there is an encroachment on their part on public property.

15. Since the findings recorded by the Collector as well as by the Commissioner are contrary to the record and are based on irrelevant factors, they are unsustainable in law and facts of the present case.

16. In the result writ petition is allowed in terms of prayer clause 'C' and 'D'.

17. The impugned order passed by Respondent No.2 Collector, Hingoli, dated 15-01-2021 in Outward No.2020/VPE/Kavi 395 and the judgment passed by respondent No.1 Additional

Divisional Commissioner, Aurangabad, in case No. Village Panchayat/Appeal-2/Appeal/CR-10/2021, dated 15-07-2021, are hereby quashed and set aside.

18. The dispute filed by the petitioner is hereby allowed. The respondent No.5 is disqualified from holding the post of Member of Respondent No.4 Village Panchayat.

19. Rule is made absolute in the above terms with no order as to costs.

(NITIN B. SURYAWANSHI, J.)