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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 452 OF 2019**

SHRI. SHAHAJI BAJIRAO JADHAV

....PETITIONER

V/s.

UTTAM BAJIRAO PATIL AND ORS

....RESPONDENTS

Mr. Drupad S. Patil, Advocate for the Petitioner

Mr. S. S. Patwardhan i/b Mr. Chetan G. Patil, Advocate for Respondent No.1.

Mr. Pavan S. Patil , a/w Mr. Nitin Jagtap, for Respondent No.2.

Mr. P. P. Pujari, AGP for Respondent No.4.

CORAM : NITIN W. SAMBRE, J.

DATE: JUNE 23, 2022.

P.C.:

1) In October, 2017, the Petitioner got elected as member of the Respondent No.2 Grampanchayat.

2) Having noticed that the Petitioner has encroached on property No.11 out of Gat No.489 which is admittedly Gairan, (Government Land) proceedings under section 14 r/w 16 of the Maharashtra Grampanchayat Act (Hereinafter referred to as 'the Act' for the sake of brevity) were taken out seeking disqualification. The Respondent

Collector vide order impugned dated 05/10/2018 ordered disqualification which is confirmed in an appeal by the Divisional Collector. As such this Petition.

- 3) The facts necessary for deciding the present Petition as under.
- 4) The Petitioner was elected as member of the Grampanchayat in the earlier term i.e. prior to October 2017. Alleging that Gram Panchayat property No. 9 and 10 out of Gat No.489 is encroached by the Father of the Petitioner namely Bajirao, proceedings under section 14 for disqualification appears to have been allowed against him by the order of the Collector, confirmed in an appeal and also before this Court in Writ Petition No.4251 of 2016. The Petitioner's disqualification was as such questioned before the Apex Court and I am informed that the Apex Court allowed the Special Leave Appeal and set aside the disqualification as it is claimed that the Petitioner was not in continuous possession or enjoying the property on the date of disqualification proceedings were initiated.
- 5) Fact that land Gat No. 489 is Gairan land i.e. Government Land is not in dispute by either of the parties to the proceedings.
- 6) After the Petitioner successfully got elected in October 2017 as

member of Grampanchayat, another proceedings alleging that he has encroached on property no. 11 which is also part of the land Gat No. 489 (Gairan land) came to be initiated. Said property appears to have been earlier encroached by one Sadashiv Jadhav from whom Petitioner vide registered sale deed dated 30/04/2007 purchased land to the extent of 138 Sq. meters.

7) Petitioner, subsequent thereto vide registered gift deed dated 27/03/2017 gifted the said property in favour of his father. Father of the Petitioner namely Bajirao Jadhav expired on 29/11/2017.

8) Forming the aforesaid factual matrix to be basis, proceedings for disqualification were taken out under Section 141(1)(j-3) before the Collector which has resulted into passing of the order impugned which is confirmed in Appeal by the Divisional Commissioner.

9) Contentions of Mr. Patil, while questioning the aforesaid orders passed by the Collector and confirmed by Divisional Commissioner in Appeal under Section 16 of the Act are, property viz. property no. 11 never remained in continuous physical possession of the Petitioner or in his actual enjoyment post execution of the gift deed dated 27/03/2017. According to him, after the death of his father namely

Bajirao on 29/11/2017, he has in express terms communicated to the revenue authorities that he has no interest in the said property and his name be not taken on record or mutation entries be not carried out in his name qua aforesaid property no. 11. As such, contention put forth by Petitioner is, scheme of Section 14(1)(j-3) which provides for disqualification as interpreted in the Judgment of **Janabai Versus Additional Commissioner and others**¹ by the Apex Court, it has to be appreciated that alleged encroacher must be in actual and continuous possession of the property and he is enjoying such possession on the date of proceedings for disqualification. A specific support is drawn from the aforesaid Judgment of the Apex Court as reflected in para 29 which reads thus:

“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 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

¹ Civil Appeal No. 6832 of 2018

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”.

10) Mr. Patil then would urge that even if it is presumed that such property was purchased by the Petitioner vide registered sale deed dated 30/04/2007, fact remains that he has parted with every interest in the said property after having executed registered gift deed in favour of his father. So as to establish his contention that he is not residing in the suit property, reliance is placed on unregistered leave and licence agreement dated 22/08/2016 executed with one Usha Ambekar whereby Grampanchayat property no. 385 plot area 1088

Sq. ft. was taken on lease/leave and licence by the Petitioner. He would further rely on entries in the voters list at serial no. 45 so also 46 in relation to himself and his wife wherein address of the Petitioner is shown to be in house no. 385 as reflected in the aforesaid agreement. In addition, Mr. Patil would draw support from the entries in ration card wherein it is mentioned that Petitioner is residing in aforesaid house no. 385 and ration card was issued in 2018 in his favour.

11) As such, the contentions are, both orders impugned are not sustainable.

12) Counsel for Petitioner has clarified that till the proceedings before the Collector were pending, since the Judgment of the Apex Court in the case of **Janabai** [cited supra] was not delivered, petitioner was prompted to produce aforesaid document at Appellate stage. Appellate Authority i.e. Additional Commissioner while dealing with Appeal under Section 16 of the Act has considered the same, however, dismissed the Appeal purely on the ground that the issue is covered by the Judgment of **Janabai** [cited supra]. As such, according to him, both the authorities below have failed to consider that (a)

Petitioner on the date of Application for disqualification or subsequent thereto was not in physical/actual possession of property no. 11 and was not enjoying the same directly or indirectly;(b) he was in actual possession of house no. 385 and was occupying the same alongwith his family as could be inferred from various documents such as extract of electoral roll, agreement with land lady, ration card entries etc; (c) According to him, once the registered gift deed executed on 27/03/2017 and further having communicated to the authority post death of his father on 29/11/2017, he has not claimed any interest over the alleged encroached property. As such, he would urge that orders impugned are not sustainable.

13) While countering the aforesaid submissions, counsel for Respondent-complainant Mr. Patwardhan so also learned AGP would support the orders impugned. According to Mr. Patwardhan, the fact that Petitioner acquired interest in the property no. 11 which is admittedly Government land, sufficiently establishes his intention to create interest in Government land that too contrary to the record by taking recourse to illegal means. He would urge that merely because Petitioner has communicated to the authorities that he gave up

interest in the aforesaid land i.e. property no. 11 is not sufficient enough to infer that Petitioner cease to be interested in the said property. He would further urge that neither registered purchase deed dated 30/04/2007 from the earlier encroacher Sadashiv was cancelled nor the gift the deed executed by him in favour of his father late Bajirao. As such, according to him, the only inference that can be drawn is, Petitioner holds interest and intends to enjoy the property in question. Drawing support from the observations of the Apex Court in the matter of **Janabai** [cited supra] particularly para 27, he would urge that Petitioner has conflict of interest qua encroached property as he will not be in position to take any action against his own brothers on whom the property alleged to have been devolved or otherwise, the Petitioner is rightly said to have disqualified. He would further urge that except the plea before the Collector that the property was transferred to the father and Petitioner has no interest in the same, no other plea viz. alternate accommodation at house no. 385 or otherwise raised and it is by way of afterthought before the Appellate Authority so also before this Court, aforesaid additional evidence is produced.

14) I have considered rival submissions.

15) From the rival claims, admitted position is, land Gat No. 489 is Gairan land and as such is Government land. Grampanchayat property no. 11 is out of the aforesaid Gat No. is also not disputed fact. Petitioner from earlier encroacher namely Sadashiv Jadhav has purchased property no. 11 vide registered sale deed dated 30/04/2007 to the extent of 138 Sq. Meters is also not in dispute. Registered gift deed by the Petitioner in favour of his father namely Bajirao who expired on 29/11/2017 is also not in dispute.

16) In the aforesaid background, factual inference that can be drawn is, Petitioner knowing fully well that property no. 11 is Government property, has purchased same from the encroacher who had no lawful title to the same and continued his possession from 30/04/2007 till 27/03/2017 i.e. the date on which registered gift deed was executed in favour of his father namely Bajirao.

17) No doubt, it is brought on record through various documents that Petitioner is not residing in the said property as he has acquired alternate accommodation on the rent i.e. Grampanchayat house no. 385 vide tenancy agreement dated 22/08/2016.

Vide Maharashtra Act 38 of 2006, sub-clause (j-3) was inserted on 21st December, 2006. The said provision is inserted so as to provide disqualification of a person to be a member of Panchayat if he has encroached upon government land or public property. The encroachment by the Petitioner is alleged to be 30th April 2007 i.e. from the date of purchase of the government land. As such, fact remains that the Petitioner continued in possession and enjoyment of the said property undisputedly from 30th April, 2007 to 27th March, 2017.

18) Rightly so pointed out by Mr. Patwardhan so as to infer that even if Petitioner has communicated to various revenue authorities not to mutate the aforesaid property in his name, however, Petitioner has failed to cancel the registered sale deed in his favour by executing another deed viz. sale deed dated 30/04/2017 so also alleged gift deed dated 27/03/2017 in favour of his father.

19) As a sequel, intention of the Petitioner is quite apparent that he intends to carry forward his interest in the aforesaid property and he continued his father and subsequent thereto other of his blood relatives viz legal heirs of his father such as his brother etc. to

continue possession over such property.

20) Even if the Petitioner has tried to demonstrate before this Court that by tenancy agreement dated 22/08/2016 he has made separate arrangement for stay by taking Grampanchayat House no.385 on lease/leave and license. That by itself will not absolve the Petitioner of his act encroaching on government land as referred to hereinabove particularly considering his conduct. Intention of the Petitioner to continue in possession of aforesaid property even after incorporation of clause (j-3) in the statute book and Petitioner's continuous possession over the same by virtue of aforesaid title can be inferred, as till date neither the land is returned by the Petitioner to the Government nor he executed any registered deed so as to demonstrate that he has relinquished his interest in the said land. Court is required to seriously view the conduct of the Petitioner of purchasing government land from encroacher that too by registered Sale Deed dated 30th April, 2007 and after period of about 10 years gifting the same to his father by registered gift deed. The aforesaid gift deed is executed by the Petitioner purely with a view to take himself out of clutches of the aforesaid provision or to get rid of

proceedings for disqualification.

21) Apex Court in the matter of Janabai cited supra, particularly in para 29 interpreted the aforesaid provision i.e. section 14(1)(j-3). The Apex Court has warned that the said provision is not to be narrowly construed so as to make the basic issue of encroachment redundant. The Apex Court highlighted the legislative intent viz. encroachment or unauthorized occupation is directed to be viewed very strictly.

22] The fact that Panchayat is conferred with the power to remove encroachment and statutory obligation on the part of the Panchayat is to protect the properties belonging to it or the Government appears to be reason behind incorporation of the aforesaid provision for disqualification. If the person like the Petitioner who is elected Grampanchayat Member remained in possession or occupation of the encroached property of the government, same is inferred to be having conflict of interests. The Apex Court then considered the purposive interpretation and has held that when a person shares encroached property by residing, he/she incurs disqualification.

23) The conjoint reading of the observations of Apex Court in

Paragraph 27 and 29 referred supra, in my opinion, as such has rightly prompted both the authorities below to order disqualification of the Petitioner. Merely because the Petitioner is not in actual possession of the said property or directly enjoying the said property, by itself will not save him from the clutches of the very object with which the provision of disqualification is incorporated particularly having regard to registered purchase and thereafter gift-deed.

24) The object of said provision has been dealt with by the Apex Court in the aforesaid judgment from **Janabai** [cited supra] and shelter was taken to provisions of section 53 of the said Act.

25) In the aforesaid background in my opinion, the orders impugned are quite justified. No illegality could be noticed which warrants interference in extraordinary jurisdiction. Petition as such fails stands dismissed.

[NITIN W. SAMBRE, J.]