

4th October, 2022.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9212 OF 2022**

Kundalik Janardhan Bhise

...Petitioner

V/s.

Anil Baban Bagal and anr.

...Respondents

Mr. N.V.Gaikwad, Advocate for the petitioner.

Mr. Abhijeet P. Kulkarni, Advocate for respondent no.1.

Mr. P.P. Pujari, AGP for State-respondent no.2.

CORAM : SANDEEP K. SHINDE, J.

CLOSED FOR ORDERS ON : 3RD OCTOBER, 2022.

PRONOUNCED ORDER ON : 4TH OCTOBER, 2022.

P.C. :

1. Heard Mr. Gaikwad, learned counsel for the petitioner, Mr. Abhijit Kulkarni, learned Counsel for respondent no.1 and Mr. Pujari, AGP for State.

2. The petitioner who stands disqualified from continuing as a Member of the Gram Panchayat under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958 lays the challenge to the said adjudication. The

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Collector, Pune, as well as, Additional Divisional Commissioner, Pune Division, Pune concurrently held that, there was encroachment committed on the Gayran land Gat No.1 of Group Panchayat, Pimpale and though it was the case of the petitioner, the house property Gayran land belonged to his father and reliance was sought to be placed on Rationing Card, to contend, petitioner was not living with his partner in the said house, yet, in view of the judgment in the case of **Janabai Versus. Additional Commissioner and Others, (2018) 18 Supreme Court Cases 196** and **Devidas V/s. Commissioner (Amravati), 2012 SCC Online Bom 2126** the petitioner was held liable to be disqualified under the provisions of Section 14(1)(j-3) of the said Act.

3. Mr. Gaikwad, learned Counsel for the petitioner argued that atleast since 2017 petitioner was not residing with his father in the house allegedly constructed on the Gayran land. However, indisputably, the nomination paper submitted by the petitioner indeed show that he was residing with his father in the house constructed on the encroached land of the Village Panchayat. The contention of the petitioners that he was living in another house, yet the Village Form No.8 shows that, the said new house was registered in the office of the Panchayat in February, 2021.

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4. In any case, in **Devidas** (supra), it has been clearly stated that the expression “person” has to include the legal heirs, if any, of the encroacher who continues to occupy the Government land. In **Janabai** (supra), the Hon’ble Apex Court has held 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 becomes absolutely redundant. If an interpretation is placed, that it is the first encroacher or the encroachment made by the person alone who would suffer disqualification, it would lead to an absurdity. The dictum in the **Janabai** (supra) followed in **Parvatabai @ Shobha d/o. Kisan Kakde Vs. Additional Commissioner, Nagpur and Others**, 2015 5 Mh.L.J. 238, and **Devidas** (supra), squarely applies to the facts of the case in hand.

5. In the result, I do not find any merit in the petition. It is rejected.

NEETA
SHAILESH
SAWANT

(SANDEEP K. SHINDE, J.)

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