

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 12192 OF 2019**

Shri. Ravindra Hanumant Kamble

Age – Adult, Occupation – Village Sarpanch,

R/o Village-Panseth,

Taluka Velhe, District Pune.

.....Petitioner

Vs.

1. Smt. Swathi Sunil Gaikwad,

Age – Adult, Occupation – House Wife,

R/o Village-Panseth,

Taluka Velhe, District Pune.

2. Gramsevek, Gram Panchayat, Panseth,

Taluka Velhe, District Pune.

3. District Collector, Pune at Pune,

4. Additional Commissioner,

Pune, Division Pune.

.....Respondents

Mr. P. G. Kathane for the Petitioner.

Mr. Veerdhaval Kakade for the Respondent No.1.

Mr. A. P. Vanarase, AGP for Respondent Nos.3 & 4-State

CORAM : A. S. GADKARI, J.

DATE : 18th APRIL, 2022.

ORAL JUDGMENT:-

Rule. Rule made returnable forthwith. By consent of learned Advocates for the respective parties taken up for final hearing.

2. Heard Mr. Kathane, learned Advocate for the Petitioner, Mr. Kakade, learned Advocate for the Respondent No.1. and Mr. Vanarase,

learned AGP for Respondent Nos.3 and 4.

Petitioner, who was elected as Sarpanch/Member of village Kurankhurd (Panshet), Taluka Velhe, District Pune, has impugned the Order dated 21st May, 2019 passed by the Respondent No.4, disqualifying him to be a member of the said Grampanchayat under Section 14(1)(j-3) of the Bombay Village Panchayats Act, 1958 (for short 'the said Act'). The Application under Section 14(1)(j-3) of the said Act was filed by Respondent No.1 alleging that, the Petitioner had encroached in official residence No.S-1/8 belonging to the Irrigation Department. The said premises was allotted to Mr. Rambhau C. Sangle by the Branch Officer, Panshet Dam Branch, Panshet, Taluka Velhe, District Pune and the Petitioner after being elected as Sarpanch of the said village, had encroached upon the said Government property and was personally using it.

3. Record indicates that, the Application No.42 of 2018 filed by the Respondent No.1 was rejected by the Respondent No.3 i.e. Collector of Pune on the ground that, at the time of conducting panchanama by the Circle Officer, the said premises was found to be vacated by the Petitioner. In an Appeal preferred by the Respondent No.1, by the impugned Order dated 21st May, 2019 the Respondent No.4, while allowing the said Appeal, has set aside Order dated 27th November, 2018 passed by Respondent No.3 and has held that, the Petitioner is responsible for the act as contemplated under Section 14(1)(j-3) of the said Act and has disqualified him.

4. Mr. Kathane, learned Advocate for the Petitioner submitted that, after receipt of notice dated 9th April, 2018 from the Irrigation Department, Petitioner immediately handed over possession of the said premises in favour of the said Department and therefore on the date of conducting panchanama on 24th July, 2018, he was not in possession of it and therefore he cannot be held disqualified under Section 14(1)(j-3) of the said Act. He submitted that, after receipt of notice dated 9th April, 2018 from the Irrigation Department, the Petitioner had immediately vacated the said residential premises No.S-1/8, therefore there is no 'continuous encroachment' by him as has been observed in para No.13 by the Hon'ble Supreme Court in the case of *Janabai Vs. Additional Commissioner and Others reported in 2018(5) Mh.L.J. 921*. He submitted that, even otherwise the said premises was not situated within the jurisdiction of Group Grampanchayat, Kurankhurd (Panshet), Taluka Velhe, District Pune and therefore the Provisions of Section 14(1)(j-3) of the said Act cannot be made applicable to the Petitioner. He therefore prayed that, the impugned Order may be set aside by allowing the present Petition.

5. Mr. Kakade, learned Advocate for the Respondent No.1, vehemently opposed the Petition and submitted that, the Respondent No.4 being an Appellate Authority has rightly appreciated the evidence on record in its proper perspective and therefore there is no need to interfere with the impugned Order by this Court under Article 227 of Constitution of India.

He therefore prayed that, present Petition may be dismissed.

6. It is to be noted here that, Section 14 of the said Act specifies about disqualification of a member of a panchayat and Section 14(1)(j-3) mentions about encroachment upon Government land on public property by a member. Section 2(b) of Prevention of Damage to Public Property Act, 1984 defines “public property” means any property, whether immovable or movable (including any machinery) which is owned by, or in the possession of, or under the control of -

(i) the Central Government; or

(ii) any State Government; or

(iii) any local authority; or

(iv) any corporation established by, or under, a Central, Provincial or State Act; or

(v) any company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or

(vi) any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specify in this behalf.

The premises wherein the Petitioner had committed encroachment is owned by the Irrigation Department of the State of Maharashtra. It is thus clear that, the suit premises was and is a part of property owned by Irrigation Department, is a “public property” as contemplated under Section 2(b) of the Prevention of Damage to Public

Property Act, 1984.

7. The Respondent No.1 filed the said Application No.42 of 2018 on 21st March, 2018 with a specific allegation that, the Petitioner had committed encroachment in the Government residence No.S-1/8, owned by Irrigation Department, which was initially allotted to Mr. Rambhau C. Sangle. It is the case of the Petitioner that, Mr. Rambhau C. Sangle had given consent to the Petitioner to reside in the said premises and after demise of Mr. Rambhau C. Sangle, the Petitioner continued to reside therein. However, the alleged consent given by the said Mr. Rambhau C. Sangle in favour of Petitioner has not been produced on record before both the Authorities below and before this Court till date. Even otherwise, Mr. Rambhau C. Sangle was not having any authority under the law to permit the Petitioner to occupy said premises without there being permission from the Irrigation Department, who is the lawful owner of the said property. The notice issued by Irrigation Department dated 9th April, 2018 to the Petitioner clearly indicates that, on 9th April, 2018 he was in unlawful possession of the said property. The said unlawful possession was in fact an encroachment committed by the Petitioner on the public property and it is the reason that, after receipt of the said notice, as per the admission of the Petitioner himself, he vacated it. It is thus a duly established fact on record that, on the date of filing of the said Application No.42 of 2018 under Section 14(1)(j-3) of the said Act i.e. on 21st March, 2018, the Petitioner

had committed encroachment upon the said public property belonging to Irrigation Department.

8. Perusal of impugned Order would clearly indicate that, the Respondent No.4 has taken into consideration all the necessary and relevant aspects of the case and has not committed any error either in law or on facts while passing it. In view thereof, this Court finds that, there are no merits in the Petition and is accordingly dismissed.

(A.S. GADKARI, J.)