

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1713 OF 2022

Shri Radheshya s/o Natthu
Dogarwar, aged about 56 years,
Occ. Labour, T/o At Dhargaon, Tq.
& Dist. Bhandara.

.... PETITIONER

// VERSUS //

1. The Additional Commissioner,
Nagpur Division, Nagpur, Civil Lines,
Nagpur, Tq. And Distt. Nagpur.
2. The Collector, Bhandara, Tq. & Distt.
Bhandara,
3. Gram Panchayat, Dhargaon, R/o At
Dhargaon, Tq. & Dist. Bhandara,
acting through its Secretary.
4. Smt. Pratima w/o Ranjit Koche,
aged Major, Occ. Member of
Grampanchayat, Dhargaon, Tq. &
Distt. Bhandara.

.... RESPONDENTS

Shri A.I. Kaware, Advocate for the petitioner.
Shri Ukey, Addl. G.P. for respondent nos. 1 and 2.

CORAM : ROHIT B. DEO, J.
DATED : 29.03.2022

ORAL JUDGMENT :

Heard. **RULE.** With consent, the petition is heard finally.

2. The petitioner preferred an application under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1958 ('the Act'), seeking disqualification of respondent 4, who is the elected Member of the Gram Panchayat, Dhargaon.

3. A perusal of the application, preferred by the petitioner before the Collector, Bhandara, reveals that a cryptic statement is made that the father-in-law of the Member of the Gram Panchayat one Jivtu Koche, has encroached on forest land admeasuring 368.85 sq. mtrs., which is part of Survey 96, and the encroachment is duly recorded in the land records. It is then alleged that after the death of Jivtu Koche, the said construction is recorded in the name of his widow Smt. Anusaya. The next averment in the complaint is, that the husband of the elected Member one Ranjit Koche, resides in the house constructed on encroached land along with the elected Member.

4. The petitioner has not placed on the record the reply, which is filed by the elected Member, before the Collector. The Collector was pleased to disqualify the elected Member accepting the case of the petitioner that the father-in-law of the elected Member Jivtu encroached on forest land. The Collector referred to certain revenue entries in support of the view taken. However, the case of the elected Member that she is not as a fact, residing in the house, which is may have been constructed by her deceased father-in-law on encroached land, is not considered.

5. The Appellate Court took into consideration the Certificate issued by the Village Development Officer, Dhargaon vouching for the fact that the elected Member and her husband Ranjeet have constructed house by availing the benefits under the Indira Aawas Yojana and are as of fact, residing in the house, which is constructed under the Scheme. The Commissioner, further noted that in Form A maintained by the Gram Panchayat neither the elected Member nor her husband Ranjit Koche, are shown as encroachers. In essence, the case of the elected Member, that she is residing separately with her husband Ranjit Koche in Gram Panchayat house 538, which is constructed under the Scheme, is accepted by the Commissioner.

6. I see no reason to interfere in writ jurisdiction, with findings of fact, which are recorded by the Commissioner on the basis of the material on the record. The findings are not shown to be perverse.

7. The reliance placed by the learned Counsel for the petitioner on the decision of the Hon'ble Supreme Court in case of ***Janabai vs. Additional Commissioner, and ors. (2018) 18 SCC 196***, is clearly misplaced.

8. The Facts in *Janabai (supra)* were that Janabai was the member of the Gram Panchayat and she was disqualified on the ground of continued encroachment upon the government land by her father-in-law and her husband, who did not vacate the government land despite issuance of notice.

The Supreme Court has articulated that the words “Person” as used in Section 14(1) (j-3) of the Act, cannot be narrowly construed as would render the statutory scheme redundant. The Supreme Court notes that it is the statutory duty of the Gram Panchayat to remove the encroachments and further, the Gram Panchayat is statutorily obligated to protect the properties belonging to it.

9. The Supreme Court then observes that if a member remains in occupation of an encroached property, the Member has a conflict of interest. It would be fruitful to reproduce the paragraph 30 of the decision in order to ascertain the ratio thereof.

*“30. 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 unauthorised 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 panchyat 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 on 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 vs. Keshav Aaba Patil* (2018) 1 SCC 340 does not lay down the correct position of law and it is, accordingly, overruled.”*

10. Equally illuminating is the reference in *Janabai* (supra) to

Devidas vs. Commissioner, Amravati, which articulates that the term ‘Person’ has to include the legal heirs, if any, of the encroacher “**who continued to occupy the government land**”.

11. I am afraid that the decision in Janabai (supra) cannot be understood as laying down that a relative who is not residing jointly with a person, who has encroached a government land, and as a fact, is residing separately in a house legally constructed, can be disqualified.

12. Significantly, there is absolutely no material on the record to show that the land which is allegedly encroached by the deceased father-in-law of the elected Member belongs to the Gram Panchayat or that it was the Gram Panchayat, who is obligated to remove the encroachment or that there was conflict of interest in the matter.

13. The petition is dismissed.

(ROHIT B. DEO, J.)

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