

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

WRIT PETITION NO.387 OF 2023

Gorakh Baban Zende.
Age: 44 years, Occ: Agril.,
R/o: Chikhali, Tq. Shrigonda,
District: Ahmednagar.

...PETITIONER

VERSUS

1. Vaishali Ramdas Zende,
Age; Major, Occ; Agril,
R/o; Chikhali,Tq. Shrigonda,
District; Ahmednagar.
2. The Gramsevak,
Gram Panchyat Chikhali,
Tq. Shrigonda, District; Ahmednagar
3. The Collector, Ahmednagar.
4. The Additional Commissioner,
Nashik.

...RESPONDENTS

...
Advocate for Petitioner : Mr.Shelke Shivaji T.
Advocate for Respondent No. 1 : Mr. A.A. Khande h/f Mr.Dond
Manoj A.
Advocate for Respondent No. 2 : Mr. Lokhande Kishor N.
AGP for Respondent Nos. 3 & 4/State : Mr.K.B.Jadhavar
...

CORAM : KISHORE C. SANT, J.

DATE : 05.07.2023.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith by consent of the parties.

2. Heard the learned Advocates for the parties. The petitioner the original disputant who assailed the order of the Collector contending that respondent No. 1 be declared as disqualified to be a member of Grampanchyat under Section 14 (1) (j-3) of the Maharashtra Village Panchyat Act, 1958, on the ground that her father-in-law had encroached upon the land belonging to the Grampanchyat.

3. Respondent No. 1 is the elected member of the Grampanchyat. Respondent No. 2 is Gramsevak and the respondent No. 3 is the Collector, whereas, respondent No. 4 is the Additional Commissioner, Nashik.

4. The learned Collector by the judgment and order dated 21.06.2022, held respondent No. 1 as disqualified to be a member of Grampanchyat. However, the learned Additional Commissioner, in Grampanchyat Appeal No. 91 of 2022 set aside the order passed by the learned Collector by allowing the appeal and therefore, the petitioner is before this Court.

5. The facts in short are that respondent No. 1 came to

be elected as a member of the Grampanchyat in the election held on 15.01.2021. The petitioner who is a voter from the said village filed a dispute. It is the main contention of the petitioner that the father-in-law of respondent No. 1 was occupying the land of the Grmpanchyat since 1991. After his death till 1997, the same is occupied by the husband of the respondent No. 1. The said occupation is illegal and without any authority of law and therefore, respondent No. 1 has incurred disqualification.

6. The learned Collector considered that the land in question i.e. the property No. 666 is shown to be of the Grampanchyat. The husband of respondent No. 1 is shown to be occupant, having constructed building with 5 shops in it. The defence of respondent No. 1 was that the said land was given by the Grampanchyat to her father-in-law namely Bhagwant Dagadu Zende by passing a resolution in monthly meeting dated 17.10.1992, bearing resolution No. 4. The said land as per the resolution was given for raising a cattle shed. It was resolved that the name of deceased Bhagwant be entered into the record. The learned Collector has observed that this defence is not acceptable. The said land was given to the

deceased Bhagwant without any authority of law. From the resolution, it was observed that in fact the Gramsevak has raised the objection stating that the Grampanchyat has no authority to transfer the land, in such manner and still the land was given to the deceased Bhagwant, which is now in occupation of the husband of respondent No. 1.

7. The learned Commissioner however, held that the land was given in possession of deceased Bhagwant by passing a resolution and the name of the husband of respondent No. 1 is shown as occupant, therefore, it cannot be said to be an encroachment. Further, it is held that there is nothing on record to show that, at any point of time, notice was issued to the occupant. The Additional Commissioner, thus, allowed the appeal.

8. The learned Advocate for the petitioner at the outset submits that assuming that the Grampanchyat had given the land to the father-in-law of respondent No. 1, but the same is not recognized by law in view of **Section 55 of the Maharashtra Village Panchyat Act**. Section 55 of the Act reads as under :

“55. Competency of panchayat to lease, sale or transfer property.- Every panchayat shall be competent to lease, sell or otherwise transfer movable or immovable property which may become [vested in (otherwise than under the provisions of sub-section (1) of section 51)] or be acquired by it and to contract and do all other things necessary for the purpose of this Act:

Provided that no lease of immovable property other than property referred to in sub-section (1) of section 56 for a term exceeding three years, and no sale or other transfer of any such property shall be valid unless such lease, sale or other transfer has been made with the previous sanction of the [Chief Executive Officer.]”

9. He, therefore, submits that there is no sanction obtained from the Chief Executive Officer under the Act. Even otherwise, the land is not transferred by any legally recognized mode. The land could not have been granted for more than three years period. He then submits that this is clearly an encroachment and merely because taxes are paid possession cannot become legal.

10. The learned Advocate for respondent No. 1 submits that in view of Section 51 of the Act the land was vested in the Grampanchyat. Since the land was vested in the Grampanchyat, the Grampanchyat has every authority to deal with the said land in accordance with the law.

11. He invited attention of this Court to Section 56 of the Act. He submits that the only permission of the CEO was not obtained, otherwise the said transfer was perfectly legal in view of Section 56. He submits that the Gram Sabha had passed a resolution within its power. The taxes were also levied and are paid. The possession is thus, totally permissive possession. He further submits that if there was an encroachment, there has to be a notice issued by some authority to the member. In this case, admittedly, no notice is issued by any of the authorities to the member. He thus, submits that the permissive possession needs to be recognized. His one more submission is that the sanction can be granted even post facto and in this case he may receive the post facto sanction and in that case it cannot be said to be an illegal possession or encroachment. He submits that the land was originally given to the deceased Bhagwant.

12. The learned Advocate for the Grampanchyat supports the petition submitting that in spite of objection from the Gramsevak, the Gramsabha has passed a resolution in monthly meeting and therefore, the allotment of the land is clearly fallen to Section 55 of the Act. He submits that assuming that the permission was granted and it was only for the cattle

shed, however, now there is construction of shops on the land, the occupation is thus unauthorized.

13. In form No. 8, it is seen that there are buildings plus shops are constructed. The learned Advocate for the respondent No. 1 submits that in view of Section 51, the land vests in Grampanchyat, whereas, the Section 14 (1) (j-3) speaks that the encroachment should be on the Government/public land and not on the Grampanchyat land. He thus, submits that the present matter will not be covered under Section 14 (1) (j-3).

14. The learned AGP submits that the Commissioner has considered all the aspects and has passed a reasoned order. The same cannot be said to be totally perverse or illegal.

15. Having heard the learned Advocates for the parties. This Court finds that Section 55 requires that, to create any interest in the property, to give land or to transfer the land vested in Grampanchyat can be transferred, however, the proviso makes it clear that no such transfer for a period exceeding three years can be made and no sale or other

transfer of property shall be valid unless made only with the previous sanction of the C.E.O. For considering Section 55 we also need to consider Section 51, on which the learned Advocate for the respondent No. 1 has placed reliance. Section 51 states that all lands i.e. open sites, waste, vacant or grazing lands or public roads and streets, bridges, ditches, dikes and fences, wells, river beds, tanks, streams, lakes, nallas, canals, water courses, trees or any other property in the village vests in Grampanchyat and naturally the Grampanchyat has complete control over such lands. This Court, therefore, finds that the Grampanchyat will not get unfettered rights to transfer such lands in view of proviso to Section 51.

16. So far as, giving notice about the encroachment is concerned, Section 40 does not contemplate any such notice to be given to the person against whom the allegation of encroachment is made. If such argument is accepted, it would be frustrating the very object of the provisions, as if the notice is given then another proceeding will start and this would again require an adjudication and that will put the petitioner into another litigation by keeping the main issue aside. This Court

finds that the petitioner has rightly relied upon a judgment in the case of Janabai Vs. Additional Commissioner and Others **2018(5) Mh.L.J. 921**. The Full Bench of the Hon'ble Apex Court in paragraph No. 27 held as under :

“On a schematic appreciation of the Act including Sections 10, 11 and 53, it is quite vivid that the Members elected in Panchyat are duty bound to see to it that the obstruction or encroachment upon any land, which is not a private property but Government land or a public property, should be removed and prosecution should be levied against the person creating such obstruction or encroachment.”

17. By considering the object of the provisions, the Hon'ble Apex Court has held that the procedure is required to be strictly followed, keeping in mind the object of the Act and the provisions. Even this Court in **Writ Petition No. 4758 of 2022**, - Sonali Gajanan Dhepe and Anr. Vs. The Additional Divisional Commissioner, Aurangabad Division, Aurangabad and Others, by considering the case of Janabai (supra) has held that

“If a member of the Village Panchyat occupied as tenant, it was a Government land even though it can be said to be encroachment and incur disqualification under Section 14 (1) (j-3) of the Act.”

18. The learned Collector had rightly considered the matter and come to conclusion that respondent No. 1 has incurred disqualification. The learned Additional Commissioner, however, committed an error in appreciating that merely Grampanchyat had granted land to deceased Bhagwant. It cannot be said to be an encroachment. This observation is totally against the object of the Act. Further observation of the learned Additional Commissioner that a notice was not given to the member is also against the spirit of the provisions. Now there is no procedure prescribed for deciding the matter under Section 14 (1) (j-3) of the Act. In fact, the reports were called from B.D.O. and in the said report also it was clearly mentioned that the Grampanchyat had given land without any authority and in spite of the objection raised by the Gramsevak. Considering the above, this Court finds that the impugned judgment and order passed by the learned Additional Commissioner deserves to be quashed and set aside. Hence following order :

ORDER

- a) The Writ Petition stands allowed.
- b) The impugned order passed by the

learned Additional Commissioner, dated 12.12.2022 in Grampanchyat Appeal No. 91 of 2022 is quashed and set aside.

- c) The learned Advocate for respondent No.1 submits that since the respondent No.1 is still holding the post, this order be stayed for four weeks, so as to facilitate her to approach to the Hon'ble Court. This request is voluntarily opposed by the learned Advocate for the petitioner, however, considering that respondent No. 1 is occupant, the effect of the same to take effect after four weeks.

**(KISHORE C. SANT)
JUDGE**

mahajansb/