

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

934 WRIT PETITION NO.310 OF 2023

VITTHAL DEVRAM PATIL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ADDITIONAL COMMISSIONER
AND OTHERS

...
Advocate for Petitioners : Mr. P.B. Patil (Borse)
AGP for Respondents 1 and 2 : Mrs. V.N. Patil-Jadhav
Advocate for Respondents 3 & 4 : Mr. P.B. Patil
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CORAM : ARUN R. PEDNEKER, J.
CLOSED ON : 27/04/2023
DELIVERED ON : 28/04/2023

PER COURT :

1. Heard the learned counsel for the respective parties.
2. By way of present writ petition, the petitioner No. 1 is challenging the orders of disqualification passed under section 14(1)(J-3) of the Maharashtra Village Panchayat Act. The petitioner No. 1 is the member of the Village Panchayat Anwarde (Bk), Taluka Chopda, District Jalgaon. After the election of petitioner No. 1 in February 2021, the dispute application was filed before the Collector for disqualification of the petitioner No. 1 under section 14 (1)(J-3) of the Maharashtra Village Panchayat Act for encroachment upon the Government land by the petitioner.
3. It was the contention of the complainant that the petitioner No. 1 has encroached upon the Government property i.e. Gram Panchayat House No. 251. In response thereto, the petitioner No. 1 has submitted before the Collector that he had applied to the State/Panchayat to take back the possession of the encroached house and the said property was taken over on 19.3.2022 by conducting the panchanama on 19.3.2022. The

panchanama is signed by the panchas. The panchanama indicates that the property was surrendered to the Panchayat.

4. The learned counsel for the petitioner submits that since the property is already surrendered and the application was made in the year 2022 and the property is no more in possession of the the petitioner or the petitioner should not be held to be in possession of the encroached property. Undisputedly, the petitioner has surrendered the property on 19.3.2023 although the application is made prior in time, the petitioner surrendered the property after the elections are over and as such incurred disqualification under section 14(1)(J-3) of the Act. Thus, the disqualification order passed by the authorities against the petitioner No. 1 cannot be said to be illegal. In exercise of the writ jurisdiction this Court would not set aside the findings on facts against the petitioner No. 1.

5. As regards petitioner No. 2 Ashabai Balu Patil is concerned, she is also the member of the Village Panchayat of the same village. The dispute was filed against her that her husband has encroached on property No. 303 and has constructed a house. The petitioner has contended that the petitioner is staying away from her husband from 2015 onwards. There is also divorce proceedings filed on 22.2.2022. In the divorce proceedings both the parties have filed affidavit and it is their contention that they have been staying separately from 2015 onwards and had separated as a husband and wife. The family court has granted divorce. Divorce proceeding was filed during the pendency of the proceedings before the Collector. The divorce proceeding was allowed and their marriage was dissolved on 22.2.2022. The family Court accepted the statement of the petitioner and her ex-husband that they were residing separately and as

such, has granted divorce. The contention before the Family Court was that they are not having any children for long period of time after marriage. As such, there was disputed between the petitioner No. 2 and her husband.

6. Per contra, learned counsel appearing for the respondent has produced the copy of school leaving certificate of the child in which mother's name is shown as petitioner No. 2 and name of the father is shown as husband of petitioner No. 2. The learned counsel for the petitioner No. 2 has produced the birth certificate of the same child in which the name of the mother is shown as Pushpabai Balu Patil and the father as husband of the petitioner No. 2 and the same is registered on 29.3.1998.

7. The matter was adjourned to verify the birth certificate of the child namely Damini Balu Patil (now major). The respondent No. 4 has also filed an affidavit along with the documents including the voters list of the assembly election published by the Election Commission, which is taken on record. The voters list indicates that ex-husband of the petitioner No. 2 has another wife by name Pushpabai Balu Patil and daughter from Pushpabai by name Damini (Now major) and they are residing in the house property No. 303. The petitioner is disqualified on account of encroachment made by the ex-husband of the petitioner No. 2 on the same house property No. 303. Thus, the fact remains that the husband of the petitioner has a second wife as reflected from the voters list and daughter, now major, from the second wife.

8. The documents on record shows that the divorce is granted to the petitioner No. 2 on 22.2.2022. It has been contention of the petitioner No. 2 in divorce proceedings that they have been living separately from 2015

onwards. The birth certificate of the child clearly indicates that the husband of the petitioner had a child from some other lady, who is the present wife of the husband of the petitioner No. 2. The birth certificate also indicates that birth date of the child is 28.3.1998 and the birth is registered on the next date i.e. on 29.3.1998. The father's name of the child is shown to be the husband of petitioner No. 2, while mother's name is Pushpabai Balu Patil. Thus, the contention of the petitioner No. 2 that she did not have a child and as such, there was dispute between the petitioner and her husband and that they have been living separately from 2015 needs to be accepted. It cannot be said that the petitioner No. 2 has obtained divorce only to avoid disqualification. In the instant case, in view of the fact that the encroachment is made by the ex-husband of the petitioner No. 2 and that the allegation in the complaint is that her ex-husband has encroached on property No. 303 and has constructed the house, it cannot be said that the petitioner No. 2 is the encroacher on the said property.

9. In view of the same, the orders passed by the authorities below are quashed and set aside and the position of the petitioner No. 2 is restored as the member of the Village Panchayat.

10. In view of the discussion made above, the petition is disposed of accordingly.

[ARUN R. PEDNEKER J.]

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