

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

WRIT PETITION NO. 2551 OF 2020

1. Hanumant s/o. Bhagwan Belge .. Petitioner
Age. 35 years, Occ. Agri.,
R/o. Lakhephal, Post. Yerandgaon,
Tq. Shevgaon, Dist. Ahmednagar.

Versus

1. The State of Maharashtra .. Respondents
Through the Secretary
Rural Development & Panchayatraj Department,
Mantralaya, Mumbai – 32.
2. The Additional Commissioner,
Nashik Division, Nashik.
3. The District Collector, Ahmednagar,
Dist. Ahmednagar.
4. Grampanchayat Lakhephal
Tq. Shevgaon, Dist. Ahmednagar,
Through Village Development Officer.
5. Sau. Savita w/o. Sharad Sonwane,
Age. 40 years, Occ. Sarpanch,
R/o. Lakhephal, Post. Yerandgaon,
Tq. Shevgaon, Dist. Ahmednagar.

Mr. Ravi Balasaheb Gite, Advocate for the petitioner.
Mr. S.B. Pulkundwar, AGP for the respondent/State.
Mr.PP. Kothari, Advocate for respondent No.4.
Mr.N.S. Jaju, Advocate for respondent No.5.

CORAM : KISHORE C. SANT, J.
DATED : 19.07.2023

PC :-

01. Heard learned Advocates for the parties. The petition is taken up for final disposal by consent of the parties.

02. The petitioner is an elected member of the Grampanchayat, Lakhephal, Tal. Shevgaon, Dist. Ahmednagar, whereas respondent No.5 is Sarpanch of the village. Both were elected in the election held in 26.09.2018 as a member of Grampanchayat. Respondent No.5 is thereafter elected by the members to the post of Sarpanch. The petitioner raised dispute before the learned Collector, Ahmednagar against respondent No.5 stating that she has committed encroachment on Government/Public land and therefore has incurred disqualification under section 14 (j-3) of the Maharashtra Village Panchayats Act. It is defence of the respondent No.5 that their village is submerged because of Jayakwadi project and the entire village has gone under backwater in 1974. As per directions of the Collector in 1974 all the villagers shifted to Gat No.128 of Lakhephal, which happens to be a Gayran land. Since 1978 even the Government has provided civil amenities like road, electricity, water supply, school, Anganwadi etc. Now even a proposal is

moved for regularization of the alleged encroachment. The respondent has not committed any encroachment willfully. When entire village is now situated in Gat No.128 including the present petitioner, it is defence that in such circumstances no disqualification can be attracted.

03. The learned Collector by considering the case of both the parties has observed that though respondent – Sarpanch with family members staying on the land Gat No.128, however, said encroachment cannot be said to be done deliberately. Further fact is considered that all the villagers including the present petitioner are residing in the said Gat Number and rejected the dispute raised by the petitioner.

04. The petitioner therefore approached the learned Divisional Commissioner, Nashik. The learned Divisional Commissioner observed that there is encroachment, however, again observed that said encroachment cannot be said to be done deliberately. Both the authorities have also considered that the proposal for regularization of all the constructions on Gayran is already moved to the concerned authority. The petitioner is, therefore, before this Court challenging the judgment and order dated

09.01.2020 in Grampanchayat Appeal No.63 of 2019.

05. The learned Advocate for the petitioner submits that when both the authorities have specifically recorded finding of fact that there is encroachment, it was incumbent on both the authorities to hold that respondent No.5 has incurred disqualification. The learned Advocate for the petitioner submits that every villager is allotted land in lieu of their original land in the village which is now submerged. Respondent No.5 is still residing on land Gat No.128. The land allotted to her family is sold out by the family. He submits that it is not case that land Gat No.128 is allotted to respondent No.5 or her family.

06. The learned Advocate for respondent No.4 i.e. Grampanchayat Village Lakhephal submits that entire village is situated on Gayran Gat No.128 and prays for passing appropriate order.

07. The learned Advocate for respondent No.5 submits that there is record to indicate that all the villagers have shifted to Gat No.128 in 1974. In-fact, entire village is now situated in view of the order passed by the Collector.

He relies upon report submitted by the Dy. Collector, Ahmednagar to the Block Development Officer, Panchayat Samiti, Shevgaon dated 04.01.2019. He further submits that when entire villagers' land is submerged and when the Collector directed the villagers to occupy Gat No.128, said cannot be said to be encroachment. From the Grampanchayat record maintained of the properties, he submits that all the persons are issued certificate in Form No.8A showing that all the persons are occupying the land and same is recognized by the Grampanchayat. He thus supports the impugned order and submits that the petition deserves to be dismissed.

08. The learned AGP submits that both the authorities have considered this aspect in detail and have passed order, no interference is required at the hands of this Court.

09. Having considered the submissions of both the parties, this Court finds that there is no dispute that land Gat No.128 is a Gayran land. Both the parties have also accepted that land No.128 is Gayran land, where all the villagers are occupying and have constructed houses. From the communication dated 04.01.2019 what is seen is that the respondent – Dy.

Collector had directed the Block Development Officer to remove encroachment on the land pursuant to GR dated 12.07.2012. Though the proposal for regularization is sent, however, no action is yet taken on the said proposal. The petitioner rightly pointed out that the election took place on 26.09.2018, whereas the proposal for regularization is moved by the Grampanchayat only after the election i.e. on 16.02.2019. This Court finds that merely because the proposal is sent for regularization is not sufficient to say that there is no encroachment.

10. The learned Advocate for respondent No.5 Mr. Jaju submits the elections were held on 26.09.2018. The term of the Grampanchayat is to come to an end in September, 2023. Thus, only two months period is remaining and therefore disqualification may not be ordered.

11. This Court finds that the reasoning of the authority that encroachment is not deliberate cannot be accepted as under the law there is no distinction made in the deliberate encroachment and otherwise encroachment. More so, when a person holds a public office, he is not expected to be an encroacher. The public representative should be of integrity.

The last submission that only two months term is remaining also cannot be considered as from record it is seen that the petitioner had approached the authority in time. The petition is also pending in this Court since January, 2020. The delay in disposal cannot be a reason to allow a person to hold office, who is otherwise disqualified. Considering the above aspects, this Court finds that the petition needs to be allowed. Hence, following order :-

ORDER

- i) The writ petition is allowed.
- ii) The impugned order passed by the learned Additional Collector in Appeal No.63 of 2019 dated 09.01.2020 is quashed and set aside.
- iii) Dispute Application No.7 of 2019 filed before the learned District Collector, Ahmednagar stands allowed.
- iv) Respondent No.5 is declared as disqualified under section 14(1)(j-3) of the Maharashtra Village Panchayats Act.
- v) With this, the petition stands disposed off.

. At this stage, learned Advocate for the petitioner requests to stay the effect, execution and operation of this order. In the facts and circumstances of the case, this Court finds that said request cannot be granted and same stands rejected.

[KISHORE C. SANT, J.]