

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

WRIT PETITION NO.4758 OF 2022

1. Sonali Gajanan Dhepe,
Age:30 Years, Occu.: Agriculture,
R/o.: Kapsi (Kh), Tq.: Loha,
Dist.: Nanded
 2. Savita Madhukar Dhepe,
Age: 32 years, Occu.: Agriculture,
R/o.: Kapsi (Kh), Tq.: Loha,
Dist.: Nanded
- .. Petitioners**

Versus

1. The Additional Divisional Commissioner,
Aurangabad Division,
Aurangabad
 2. The Collector,
Nanded, Dist.: Nanded
 3. The Tahsildar,
Tahsil Office, Loha
 4. The Election Returning Officer,
Grampanchayat Kapsi (Kh),
Tq.: Loha, Dist.: Nanded
 5. Block Development Officer,
Panchayat Samiti, Loha,
Dist.: Nanded
 6. Anuradha Narayan Methe,
Age: 30 years, Occu.: Household and
Sarpanch of Village Panchayat,
R/o. Kapsi (Kh), Tq.: Loha,
Dist.: Nanded
 7. The Village Development Officer,
Village Panchayat, Kapsi (Kh),
Tq.: Loha, Dist.: Nanded
- .. Respondents**

...
 Advocate for Petitioners: Mr. Umakant B. Deshmukh
 AGP for Respondent/State: Mr. K. B. Jadhavar
 Advocate for Respondent Nos.2&3: Ms. Yogita Thorat
 Standing Counsel for Respondent No.4:
 Mr. A. B. Kadethankar
 Advocate for Respondent No.6: Mr. G. R. Ingole
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CORAM:	ARUN R. PEDNEKER, J.
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Reserved on:	06.02.2023
Pronounced on:	21.02.2023

JUDGMENT:

1. Heard Mr. Umakant B. Deshmukh, learned Counsel for the Petitioners, Mr. K. B. Jadhavar, learned AGP for the Respondent / State, Ms. Yogita Thorat, learned Counsel for Respondent Nos.2 and 3, Mr. A. B. Kadethankar, learned Standing Counsel for Respondent No.4, Mr. G. R. Ingole, learned Counsel for Respondent No.6.

2. **Rule.** Rule made returnable forthwith. With consent of parties heard finally.

3. The Petitioners challenge the impugned order dated 11.03.2022 passed by the Additional Commissioner, Aurangabad Division, Aurangabad in

file No.2022/GP/Appeal no.1/CR 14, whereby he allowed the appeal filed by the Respondent No.6, reversing the Judgment of the Collector disqualifying the Respondent No.6, under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958 (for short 'the Act') from holding the post of Sarpanch/Member of the village panchayat.

4. The elections were held in the year 2021 to the village panchayat Kapsi, Taluka – Loha, District – Nanded. In the said election Respondent NO.6 was elected as a Member of the village panchayat and subsequently elected as a Sarpanch of the village panchayat. In the nomination filed by Respondent No.6 she has stated her residence as house No.579. The said house is constructed in Gut No.32, which is admittedly a Government land. The Petitioner filed a dispute with Respondent No.2, thereby bringing to the notice of Respondent No.2 that Respondent No.6 is disqualified under Section 14(1)(j-3) of the Act for having encroached upon a Government property. The dispute bearing case No.2021 / G.B. / Desk-1 / GPN / appeal / CR-15,

was registered and the Respondent No.2, directed the concerned Block Development Officer to visit the place of residence of Respondent No.6 and submit his factual report about the alleged encroachment.

5. The Block Development Officer made inquiry and submitted his report on 11.10.2021. After notice, the Respondent No.6 appeared in the matter before the Collector and contended that the substantial part of the village is on an encroached area and in the instant case it is the brother-in-law of Respondent No.6, who is an encroacher and the Respondent No.6 is tenant of her brother-in-law and that Respondent No.6 is not the encroacher of the property and she is merely a tenant on the property.

6. She also filed before the Collector evidence of the Rent Agreement with her brother-in-law. She also produced her Ration Card and the Ration Card of her brother-in-law, which is

separately maintained depicting that they are separate families and not joint in nature.

7. Respondent No.6 further submits that her brother-in-law has also filed an affidavit before the the Collector stating that he is the owner of the concerned house and Respondent No.6 is a monthly tenant and a property lease agreement has been executed with Respondent No.6.

8. The Collector has analysed the evidence and held that Respondent No.6 is an encroacher on the Government property and, as such, disqualified Respondent No.6. Respondent No.6 filed an appeal before the Revisional Authority / Appellate Authority and the appellate authority by order dated 11.03.2022 reversed the Judgment passed by the Collector and held that Respondent No.6 is merely a tenant and she is not an encroacher on the Government property, as such, the objectors / original complainants have filed the present Writ Petition.

9. It is the contention of the petitioners that nomination form of Respondent No.6 shows that she resides in House No.579. Undisputedly, House No.579 is on an encroached property and that there have been various representations made to the State Government to legalize the said properties, however, till date, the Government has not taken any action on the representations and has not granted regularisation of the said lands to the encroachers. The lease agreement also indicates that Respondent No.6 stays in the encroached property.

10. The learned counsel for the Petitioners submits that, once Respondent No.6 joins the house and stays in the encroached property she is disqualified from being a member / Sarpanch of the village panchayat. He further submits that under Section 53 of the Maharashtra Village Panchayat Act, Respondent No.6 being the Sarpanch of the village is duty bound to remove the encroachment and she being staying in the encroached property, her duty would be in conflict

and she would not perform her duties effectively. The learned counsel for the petitioners relies upon the following Judgments of the Hon'ble Supreme Court and this Court:-

"[A] Janabai Vs. Additional Commissioner and others, 2018 (18) SCC 196.

[B] Sandip Ganpatrao Bhadade Vs. Additional Commissioner, Amravati and others, 2017 (1) Mh.L.J. 79.

[C] Dnyaneshwar M. Satav Vs. Jalindhar Dgondiba Kharabi and others, 2013 2 Bom.CR 789."

11. Per contra, the learned counsel appearing for Respondent No.6 submits that she is merely a tenant on the encroached property and that she has herself not encroached over the property and thus she has not joined the property as an encroacher and, as such, she does not incur disqualification under Section 14 (1) (j-3) of the Act.

12. Having considered the rival submission, I proceed on the basis of the finding of the fact rendered by the authorities below that Respondent No.6 is resident of House No.579. House No.579 is on an encroached property. Respondent No.6 is residing in House No.579 as a tenant of her brother-in-law.

13. The question of law that arise for consideration in the fact situation above is,

“whether the Respondent No.6 could be said to be an encroacher on the Government land so as to incur the disqualification under Section 14(1) (j-3) of the Maharashtra Village Panchayats Act, 1958 ?”

14. While dealing with disqualification under Section 14(1) (j-3) of the Act, the Hon'ble Supreme Court in the case of Janabai (*supra*), the Hon'ble Supreme Court has held at Paragraph Nos.26, 27, 28, and 29 as under:-

"26. We may hasten to add here that we do not intend to take the said route. We think it appropriate to analyse the provision, understand the purpose and the contextual relevance and also appreciate the nature of the provision in the backdrop of the democratic set-up at the grassroot level. Having said that, we shall now analyse the statutory scheme. Section 53 that occurs in Chapter III deals with obstruction and encroachment upon public streets and upon sites. It confers power on the panchayat to remove such obstruction or encroachment or to remove any unauthorisedly cultivated grazing land or any other land. That apart, it also empowers the panchayat to remove any unauthorised obstruction or encroachment of the like nature in or upon a site not being private property. The distinction has been made between private property and public property. It has also protected the property that vests with the panchayat. If the panchayat does not carry out its responsibility of removing the obstruction or encroachment after it has been brought to its notice in accordance with the procedure prescribed therein, the higher authorities, namely, the Collector and the Commissioner, have been conferred with the power to cause removal. There is a provision for imposition of fine for commission of offence.

27. On a schematic appreciation of the Act including Sections 10, 11 and 53, it is quite vivid that the Members elected in panchayat 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.

28. Section 184 of the Act provides that every Member of the panchayat and every officer and servant maintained by or being employed under the panchayat shall be deemed to be a public servant for the purpose of Section 21 of the Penal Code, 1860. Analysing the various provisions, the learned Single Judge in Sandip Ganpatrao Bhadade [Sandip Ganpatrao Bhadade v. Commr., Amravati, 2016 SCC OnLine Bom 8991 : (2017) 1 Mah LJ 79] has opined : (SCC OnLine Bom para 11)

"11. It is in the background of the aforesaid provisions of law, that the provisions of qualifications and disqualifications to vote, contest the election and being continued as a member of panchayat, are required to be considered. Section 13 of the said Act deals with the persons qualified to vote and be elected. The persons incurring any disqualification under the provisions of the said Act are neither qualified to vote nor to be elected as a member of a panchayat. Section 14 deals with different kinds of disqualifications, as stipulated in clauses (a) to (k) under sub-section (1), which operate against two kinds of persons (i) who proposes to become a member of a panchayat, and (ii) who has become a member of a panchayat. If a person has incurred any one or more disqualifications, then he is prohibited from becoming a member of a panchayat, and if he becomes a member of a panchayat, then he is

not entitled to continue as such. The disqualification under Section 14 is in respect of the acts, events, deeds, misdeeds, transactions, etc. which have been done, happened or occurred before entering into the office as a member of a panchayat as well as those which take place during continuance as a member of a panchayat."

And again : (SCC OnLine Bom para 13)

"13. The very object of introducing the provision of disqualification under Section 14(1)(j-3) of the said Act is to avoid the conflict of interest by prohibiting the persons, who are the encroachers upon the government land or public property to get elected or continued as a member of the panchayat, which is a democratically elected body of the villagers. It is beyond comprehension to assume that a person under statutory obligation or a duty to protect the government land or public property from encroachment, commits an act of such encroachment. To permit person, who proposes to become a member or becomes a member of the panchayat to be the encroacher upon the government land or public property, would be anathematic, acting in breach of statutory duty, exposing himself to prosecution under sub-sections (1) and (4) of Section 53, resulting ultimately in losing the protection under Section 180 read with Section 184 of the said Act. It is in this context that the text of disqualification under Section 14(1)

(j-3) of the said Act is required to be analysed and interpreted."

In Devidas [Devidas v. Commr., Amravati, 2012 SCC OnLine Bom 2126 : (2017) 1 Mah LJ 102] , it has been clearly stated, as noticed earlier, that the term "person" has to include the legal heirs, if any, of the encroacher who continue to occupy the government land. Emphasis has been laid on encroachment and continued encroachment. After the said Division Bench judgment, a number of learned Single Judges have adopted a different approach without noticing the judgment which is against judicial discipline.

29. 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 panchayat 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 of 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 [Sagar Pandurang Dhundare v. Keshav Aaba Patil, (2018) 1 SCC 340] does not lay down the correct position of law and it is, accordingly, overruled."

15. Thus, in the case of Janabai (*supra*), this court has held that it is the statutory obligation on the part of the panchayat 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 of interest. If an interpretation is placed on Section 14(1)(j-3) of the Act, that it is only the first encroacher or the encroachment made by the person alone who would suffer a disqualification, it would lead to an absurdity. The Hon'ble Supreme Court has held that 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.

16. In the case of Sandip Ganpatrao Bhadade (*supra*), this Court at Paragraph Nos.14, 15 and 16 has defined the word 'encroacher' and at Paragraph No.17 has held that if any member of a family has made encroachment decides to join the encroacher property he cannot be escaped the clutches of Section 14(1)(j-3) of the Act. The same is reproduced as under:-

"14. The word 'encroach' is a verb, which is defined in Black's Law Dictionary as under:

*"**encroach**, vb. 1. To enter by gradual steps or stealth into the possessions or rights of another; to trespass or intrude. 2. To gain or intrude unlawfully upon another's lands, property, or authority."*

Similarly, it is defined in Advanced Law Lexicon as under:

*"**Encroach**. To intrude usurpingly; make gain upon, occupy, or use the land, right, or authority of another; to gain unlawfully lands, property or authority of another."*

The word 'encroachment' is a noun, and it is defined in Black's Law Dictionary as under:

*"**encroachment**, n. 1. An infringement of another's rights. 2. An interference with or intrusion onto another's property."*

Similarly, in Advanced Law Lexicon, it is defined as under:

“Encroachment— *Is “an unlawful gaining upon the right or possession of another man”, a gradual entering on and taking possession by one of what is not his own; the gaining upon the rights or possession of another. The action of encroaching i.e. intruding usurpingly (on others' territory, rights etc.)”*

15. *“To encroach” means to enter, intrude, infringe gradually upon the rights of others by unlawfully and without authority taking possession of the property, which is not of his own. Upon completion of such act, it becomes an “encroachment”. The further act of continuing or remaining in such occupation or possession of the property with an intention or object of beneficial enjoyment would mean that the person committing encroachment has ‘encroached’ upon the property. An encroacher is a person, who encroaches.*

16. *In view of the aforesaid meaning of the terminologies “to encroach”, “encroachment”, “encroacher” and “encroached”, whoever resides in the property or any portion thereof, which is an encroachment upon the Government land or public property, can be said to have “encroached” upon it and becomes an “encroacher”. Whether such an encroachment is jointly with others and/or individually, either at one time or at different times remains hardly of any significance’ as he becomes liable to be removed and prosecuted under section 53 of the said Act. Whether a person has become liable to be removed and/or*

prosecuted under section 53 of the said Act from the Government land or public property, becomes a real test of attracting disqualification under section 14(1)(j-3) of the said Act. If the answer is in the affirmative, the disqualification is incurred.

17. In view of the aforesaid position, the provision of section 14(1)(j-3) of the said Act is attracted even in a case where a member of a Panchayat resides in the property or any portion thereof, which is an encroachment upon the Government land or public property. The question as to whether any other person or a member of a family has already made an encroachment, loses its significance and as soon as a member or proposed member joins such act, he cannot escape from the clutches of disqualification under section 14(1)(j-3) of the said Act. The question framed, is answered accordingly."

17. Sandip Ganpatrao Bhadade (*supra*) case proceeds on the basis that any one who occupies an encroached Government land would incur disqualification irrespective of the fact, whether he is the first encroacher or is a transferee or claims by inheritance. It is the occupation of the encroached land that is relevant for incurring disqualification.

Sandip Ganpatrao Bhadade (*supra*),

Judgment has been overruled by the Hon'ble Supreme Court in the case of Sagar Pandurang Dhundare Vs. Keshav Aaba Patil and others, (2018) 1 SCC 340.

However, the Judgment of Sagar Pandurang Dhundare (*supra*), was held to be not laying down the correct position of law and was overruled by the Larger Bench of the Hon'ble Supreme Court in the case of Janabai (*supra*).

18. It is not the case of the Respondent No.6 that she is not aware that the house she occupies of her brother-in-law is on an encroached Government land. She is fully aware that the house owned by the brother-in-law is on an encroached Government land and yet she occupies the house as a tenant of brother-in-law. She also continues to occupy the said house as a tenant for year after year as she does not have another property in the village.

19. Applying the principle in Janabai (*supra*), that once the member of village panchayat

with knowledge of encroachment joins the encroacher and occupies the Government land, even as a tenant of the original encroacher her duty to remove the encroachment would be in conflict with her own occupation of the encroached Government land. The petitioner's occupation of the said house on the encroached Government land, at the time of contesting the village panchayat elections and continuing to do so after the elections has made her liable to disqualification under Section 14(1)(j-3) of the Act.

20. Thus, I hold that, if, a member of village panchayat with knowledge occupies as a tenant an encroached Government land from the original encroacher of the Government land, at the time of election of the village panchayat or during the term of the panchayat, the member would incur disqualification under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958. Thus, the Writ Petition is allowed. The Rule is made absolute in above terms.

21. The Writ Petition stands allowed and disposed of.

[ARUN R. PEDNEKER, J.]

22. At this juncture, the learned counsel appearing for the Sarpanch / Respondent No.6, prays for stay of this Judgment for a period of four (04) weeks to enable Respondent No.6 to approach the Hon'ble Supreme Court.

23. The prayer cannot be accepted, since the disqualification of Respondent No.6 has already come into effect. However, it is clarified that for the period of four (04) weeks from today, the post of the Sarpanch shall not be filled up. In the meanwhile, the Upa-Sarpanch to hold the post of the Sarpanch.

[ARUN R. PEDNEKER, J.]

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