

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

WRIT PETITION NO. 3809 OF 2023

1. Dadasaheb s/o Vitthal Ghodke
Age : 32 years, Occu. : Agri., &
Member of Village Panchayat,
R/o. : Suratgaon, Tq. Tuljapur,
Dist. Osmanabad
2. Laxmi w/o Dadasaheb Ghodke
Age : 30 years, Occu. : Household &
Member of Village Panchayat,
R/o. : Suratgaon, Tq. Tuljapur,
Dist. Osmanabad

.. Petitioners

Versus

1. The State of Maharashtra
Through Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
2. The Addl. Divisional Commissioner-2
Aurangabad Division, Aurangabad.
3. The Collector, Osmanabad,
Tq. & Dist. Osmanabad.
4. Navnath s/o Vishwanath Surate
Age : 45 years, Occu. : Agri.,
R/o. : Suratgaon, Tq. Tuljapur,
Dist. Osmanabad.

.. Respondents

Mr. Shrikishan S. Shinde, Advocate for the Petitioners.
Smt. D. S. Jape, AGP for Respondent Nos. 1 to 3.
Mr. S. A. Wakure, Advocate for Respondent No. 4.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 13th July, 2023.

Date on which order pronounced : 08th September, 2023.

ORDER :-

. Heard the parties. Taken up for final disposal at the stage of admission by consent of the parties.

2. The petition is arising out of the orders passed under Section 16 of the Maharashtra Village Panchayats Act (for short “the said Act”) wherein, the present petitioners who were elected to the post of member of Grampanchayat, Suratgaon are held to be disqualified under Section 14 (1) (g) of the said Act.

3. The facts in short are that the present petitioners contested the election to the post of member of Grampanchayat. The petitioner No. 1 contested the election on the seat reserved for OBC category. The petitioner No. 2 contested the seat reserved for OBC (women) category. They both were declared to be elected on 18.01.2021. The respondent No. 4 filed dispute before the learned Collector for declaring the petitioners disqualified under Sections 14 (f) and 14 (g) of the said Act as the petitioners purchased plot No. 321 from one Jambuwant Gulab Kale. It is alleged that the said plot was allotted to Jambuwant Kale in

a *Gharkul* scheme and the same is purchased by the petitioners on 05.09.2018. It is thus alleged that, by purchasing the property which was allotted to the beneficiary of the scheme both the petitioners have incurred disqualification.

4. In a dispute it was say of the petitioners that they have not incurred disqualification under Sections 14 (f) and 14 (g) of the said Act. None of the petitioners were holding office or profit in the Grampanchayat. There is no allegation that the petitioners have derived any benefit directly or indirectly from the Grampanchayat. The land that was allotted to Jambuwant was allotted in the scheme of the Government in the year 1986. The said Jambuwant cannot be said to be beneficiary of the scheme of the Grampanchayat as the scheme is not of the Grampanchayat and the petitioners prayed for rejection of the dispute.

5. The learned Collector after hearing the parties held that the property purchased by the petitioners was allotted to Jambuwant for construction of house by Grampanchayat. Since Jambuwant was the beneficiary and as the property was received in the scheme by the Grampanchayat is purchased by the petitioners, they have incurred disqualification.

6. Being aggrieved and dissatisfied by the judgment of the learned Collector dated 29.09.2022 the petitioners approached the learned Additional Commissioner, Aurangabad. The learned Additional Commissioner rejected the appeal of the petitioners by the judgment and order dated 28.02.2023. It is held that, the land was purchased without obtaining permission of the competent authority. Though the land was acquired by the Government, the beneficiaries were selected by the Grampanchayat. The allotment of the plot was only for the beneficiary of that particular plot and not for any other person.

7. The petitioners are thus before this Court. It is mainly submitted that the petitioners have purchased the property of Jambuwant by paying consideration. Though the said property is shown as Grampanchayat's property No. 321, however, it was the scheme of the Government. In view of the same, the petitioners cannot be said to have incurred any disqualification. It is further case of the petitioners that the sale deed is of the year 2018 whereas, the elections are held in 2020-21.

8. The petition is opposed by the respondent No. 4 stating that the property purchased by the petitioners was allotted to Jambuwant being a landless person.

9. Learned A.G.P has supported the orders passed by the authorities.

10. Learned advocate for the petitioners relied upon following judgments.

- (i) **Rukhminibai Badrinath Shedage Vs. State of Maharashtra and others** reported in **2019 (3) All.M.R. 834.**
- (ii) **Jyotitai Vikas Gawande Vs. Additional Commissioner and others** reported in **2009 BCI 194.**
- (iii) Writ Petition No. 7294/2014 in the case of **Nandabai Ramesh Wakude Vs. Shivprasad Waman Wakude and others.**

11. In the case of **Rukhminibai Badrinath Shedage** (supra), this Court held that, if the scheme is not sponsored by the panchayat then it would not amount to be a scheme introduced or implemented by the panchayat and in such case no disqualification would be attracted under Section 14 (1) (g) of the said Act.

12. In the case of **Jyotitai Vikas Gawande** (supra), this Court held that the cheques of the works done for the panchayat were withdrawn by the husband of the petitioner. Though the said payment was accepted, however, still it would not attract to disqualification under

Section 14 (1) (g) of the said Act as there was no allegation that the husband of the petitioner had any interest or share in the works done for the panchayat and in that view the action of declaring the petitioner therein as disqualified was set aside by allowing the writ petition.

13. In the case of **Nandabai Ramesh Wakude** (supra), this Court at Nagpur held that, the *Gharkul* scheme was not the scheme, which was sponsored or implement by the panchayat, as defined under Section 2 (14) of the said Act. In the said case, the scheme was prepared by the Social Welfare Department of the State Government and the same was implemented through the Block Development Officer of the Panchayat Samiti holding that it is independent statutory authority. The Panchayat Samiti is established under the Maharashtra Zilla Parishads and Panchayat Samitis Act whereas, the Grampanchayat is constituted under Section 10 of the said Act. Those are distinct statutory bodies. In the said case, it was further held that, except preparing the list of persons eligible to get the benefit under the scheme no role was played by the panchayat. Thus, the petition was allowed by quashing and setting aside the orders of the authorities holding the petitioner therein as disqualified.

14. This Court has to consider as to whether in the present case, looking to the undisputed/established facts, a case is made out to hold

the petitioners disqualified under Sections 14 (1) (f) and 14 (1) (g) of the said Act. For better understanding, both the Sections are reproduced as below :

14. **Disqualifications.** - [(1)] No person shall be a member of a *panchayat* continue as such, who -

(a) -----

(f) holds any salaried office of place of profit in the gift or disposal of the *panchayat*, while holding such office or place; or

(g) has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the *panchayat*, or in any contract with, by or on behalf of, or employment with or under, the *panchayat*; or

(h) -----

15. In the present case, this Court finds that, no case is made out under Section 14 (1) (g) of the said Act as there is no allegation that anything is done by the petitioners while holding such office or place. So far as clause (g) is concerned, it is necessary to show that the person has directly or indirectly has any share or interest in any work done by order of the panchayat, or in any contract with, by or on behalf of, or employment with or under, the panchayat. Considering this wording this Court finds that, no case is made out even attracting clause (g). There is no allegation that, the petitioners have any interest in any work done by the order of the panchayat. There is also no allegation

that, they have derived any benefit out of any contract with or on behalf of panchayat. There is also no allegation that the petitioners were in the employment or under employment of the panchayat.

16. If the allegations are seen it is only that, Jambuwant was allotted a plot in 1986. The same is purchased in the year 2018 by the petitioners. There is nothing to show that in the year 1986 the petitioners have participated in the process of allotment to Jambuwant. Even the property is purchased in the year 2018 whereas, the elections took place in 2021. Thus there is no even remote connection in the transaction and they have not derived any benefit thereof while working with the panchayat. The sale deed is executed for consideration and thus this Court finds that in no case the petitioners can be held to be disqualified under Sections 14 (1) (f) and 14 (1) (g) of the said Act, hence, the following order is passed.

17. The petition stands allowed. The impugned judgment and order is set aside. Necessary consequences to follow.

(KISHORE C. SANT, J.)

PS.B.