

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

WRIT PETITION NO.4191 OF 2023

Archana w/o. Vilas Jambhulkar,
Age: 30 years, Occu. Agri.,
R/o. Taj, Tq. Karjat,
Dist. Ahmednagar.

.. PETITIONER

VERSUS

1] The Additional Divisional Commissioner,
Nashik Division, Nashik.

2] The District collector,
Ahmednagar.

3] Tahsildar, Karjat,
Tq.Karjat, Dist. Ahmednagar.

4] Gramsevak, Group Grampanchayat
Talwadi/Taj, Tq. Karjat,
Dist. Ahmednagar.

5] Nanansaheb s/o. Laxman Pandule,
Age: 38 Years, Occu. Agril.
R/o. Taj, Tq. Karjat,
Dist. Ahmednagar.

.. RESPONDENTS

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Mr.R.R.Karpe, Advocate for the petitioner
Mr.K.B.Jadhavar, AGP for the respondent-State
Mrs.S.M.Zaware, Advocate for the respondent no.4
Mr.A.S.More, Advocate for the respondent no.5

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CORAM : ARUN R. PEDNEKER, J.

Reserved on : 24.04.2023
Pronounced on : 25.04.2023

JUDGMENT :

1] By the present Writ Petition, the petitioner is challenging the order dated 28.03.2023 passed by the Additional Commissioner, Nashik Division, Nashik in Grampanchayat Appeal No. 142/2022, thereby confirming the order dated 30.08.2022 passed by the District Collector, Ahmednagar in Grampanchayat Dispute Application No. 95/2021, disqualifying the petitioner under Section 14 (1) (j-3) of the Maharashtra Village Panchayats Act, 1958 [for short 'Act of 1958'], for having encroached on the government property as a member of the Grampanchayat.

Briefs facts leading to filing the present Writ Petition is as under:

2] The elections to the respondent no. 4 Grampanchayat was held on 15.01.2021 for the period of five years i.e. 2021-2026. The petitioner got elected from ward no.2, which is reserved for women category, for being a member of Grampanchayat. Thereafter, the respondent

no. 5 filed a complaint before the respondent no. 2 Collector that the petitioner has encroached upon the government property. The complaint indicated that the petitioner has been residing with the joint family in an encroached property.

3] The respondent – Collector held that in the Government record of property no.340 i.e. village record of Namuna no.8 indicate that the land belongs to the Maharashtra Government and the occupant is the mother-in-law of the petitioner and the petitioner being a joint family member is residing in the said property and as such has encroached on a government land. The said finding was upheld by the Appellate Authority and relying upon the judgment of the Hon'ble Supreme Court in the case of **Janabai Vs. Additional Commissioner and others** in Civil Appeal No.6932 of 2018, decided on 19.09.2018 wherein it has been held that if the candidate himself has not encroached the Government property but continues on the Government property as an encroacher or has continued

encroachment done by his family members or joined the encroachment in any form would be liable for disqualification under Section 14 (1) (j-3) of the Act of 1958.

4] The learned counsel for the petitioner challenges the order passed by the authorities and submits that there is no property No. 340/1 in the village and there was no panchanama of the said property concerned. However, Namuna No.8 which has been produced before the Collector, the owner of the said property is mentioned as the State of Maharashtra and occupant name is 'Vilas Babu Jambhalkar' husband of the petitioner.

5] Property No.340/1 is not in existence and further the petitioner also contends that the property no.340 is granted under Gharkul scheme which is sanctioned to the mother in law of the petitioner and in any event there is no proper panchanama of the said property and the petitioner is not staying with the mother in law and occupying the said house. He submits that Gharkul scheme

is sanctioned on the property no.340 and the property does not continue to be a government property after the sanction of Gharkul scheme on the said property and the mother in law is the legitimate occupant of the said property in view of the Gharkul scheme being sanctioned on the said property.

6] The Hon'ble Supreme Court in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others** reported in [2012] 4 SCC 407 has held at para nos.35, 36 and 37 as under:

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the

provisions provided by the legislature for his removal (vide Jyoti Basu v. Debi Ghosal, Mohan Lal Tripathi v. District Magistrate, Rae Bareilly and Ram Beti v. District Panchayat Raj Adhikari].

36. *In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency / electoral college is also deprived of representation by the person of their choice.*

37. *A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like “no confidence motion”, etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have*

serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period.

7] In the case of **Sunil Daulat Patil Vs. The State of Maharashtra & others** in Writ Petition No.3419 of 2013, decided on 04.12.2013 held at para nos.14 and 15 :

14. *Upon careful perusal of the contents of the notice, which was issued to the petitioner under Sections 7 and 36 of the said Act, it is abundantly clear that there is no mention of any specific charges-points, which are required to be answered by the petitioner. This Court in the case of **Pratiba Sanjay Hulle Vs. Additional Collector & others** reported in **2010(4)Bom.C.R.700**, more particular, in para No. 36 held that, 'to enable Sarpanch to raise proper defence and explain sufficient cause for his failure to perform any statutory function, he must be informed essentially as regards his failure meaning thereby he must be communicated the specific charges.'*

15. In the facts of that case, the allegation was that the petitioner therein i.e. Sarpanch, did not perform his statutory obligation as envisaged under Sections 7 and 36 of the said Act. This Court taking into consideration the fact that the specific charges were not communicated to the petitioner therein, held that enquiry and the order passed against the petitioner therein is vitiated.

8] Thus, in view of the law lay down in the case of **Ravi yashwant Bhoir [supra]** and **Sunil Daulat Patil [supra]** that the charges has to specific and disqualification of elected member is a serious issue, in the instant petition, since notice was issued to the petitioner that he has encroached upon the government land i.e. property bearing No.340 and the petitioner cannot be held liable for having encroachment upon the property bearing No.340/1.

9] This Court, by order dated 18.04.2023, has asked the Superintendent of Land Record, Ahmednagar to depute a person from his office to personally inspect this property and submit a report as to whether property

no.340/1 is in existence. The Superintendent of Land Record, Ahmednagar has submitted a report to that effect.

10] In view of the order passed by this Court, the Deputy Superintendent of Land Record, Karjat visited the village and submitted as under :-

उपरोक्त संदर्भीय विषयांकित बाबतचा अहवाल सादर करणेत येतो कि, मौजे ताजू ता. कर्जत जि. अहमदनगर येथील विषयांकित बाबतची स्थळनिरीक्षण व पंचनामा करणे कामी आज दि. २१/०४/२०२३ रोजी प्रत्यक्ष गावी जागेवर गेले असता विषयांकित बाबतचे ग.न. ३४० हा ताजू या गावास गाव नकाशा पाहता शेवटचा ग.न. २६३ असून ग.न. ३४० नाही. परंतु चौकशी केली असता मौजे ताजू गावापासून साधारण १ कि. मी. अंतरावर बरकडे नावाची वस्ती वसली असून संपूर्ण वस्ती हि शासकीय ग.न. २५७ याव बसली आहे. सादर शासकीय ग.न. २५७ यात ग्रामपंचायत घर न. ३४० घर आहे. तसेच लगत घर न. ३४०/१ पत्रा वजा शेडचे घर आहे. सदर ग्रामपंचायत घर न. ३४० हे गाव नमुना ८ पाहता महाराष्ट्र शासन भोगवटादार श्रीमती जांभळकर बाळूबाई बापू असे नमूद आहे. तसेच घर न. ३४०/१ हे गाव नमुना ८ पाहता महाराष्ट्र शासन भोगवटादार श्री विलास बापू जांभळकर यांचे नाव दाखल आहे. वरील प्रमाणे चौकशी व पंचनामा केला आहे. यासोबत सविनय सादर करीत आहे.

11] From the record, it appears that as regards property no.340 is concerned, the said property is away from the village and the property has been allotted under

Gharkul scheme to the mother in law of the petitioner. In view of the same, it is necessary to render a finding that the property on which the Gharkul scheme is sanctioned, whether the person in whose favour Gharkul has been sanctioned, continues to be in illegal occupation of the said house as an encroacher over the government property. Further, finding would be necessary whether the petitioner has joined the mother in law and is occupying the same house. Only if it is held the property continues to be an encroached property and that the petitioner continues to occupy the encroached property that the petitioner would be disqualified.

12] As regards property no.340/1, the said property is not in the village but reflected in Namuna No.8. There is no proper panchanama of the said property by the Collector at the time of proceedings before the Collector. It is on the basis of the government record and the name appearing therein that the petitioner has been held to be an encroacher of the property no.340/1, by the appellate

authority.

13] In the original complaint, there is no reference to the property No.340/1, so also, there is no reference of property no.340/1 in the order of the Collector. However, the appellate authority held that the petitioner is in encroachment of property No.340/1.

14] The report submitted by the Deputy Superintendent of Land Records, Karjat dated 21.04.2023, is taken on record.

15] In view of the same, the order dated 28.03.2023 passed by the Additional Commissioner, Nashik Division, Nashik in Grampanchayat Appeal No. 142/2022 and the impugned order dated 30.08.2022 passed by the District Collector, Ahmednagar in Grampanchayat Dispute Application No. 95/2021 are quashed and set aside. The matter is remanded back to the Collector for rendering the finding; (1) whether the property No.340 is in the name of the mother in law and allotted under Gharkul scheme and

the said property continues to be in illegal occupation of the mother in law as an encroacher of the said property after sanction of the Gharkul scheme on the said property; (2) whether the petitioner has joined encroachment and is occupying the said property along with her mother in law.

16] That there is no reference of the property No.340/1 in the complaint so also in the order of the Collector. In view of the same, without specific charge the complaint cannot be pressed with respect to the property no.340/1. However, liberty is granted to the respondents to raise specific complaint in respect of the property no.340/1 and if the application is filed, the Collector to adjudicate the same.

17] In view of the same, the Writ Petition is disposed of with above observations.

[ARUN R. PEDNEKER]
JUDGE