

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 6388 OF 2022

Pravin s/o. Janardhan Dhumal,
Age 42 years, Occu. Business and Agri.,
R/o. At post Chincholi,
Tq. And Dist. Jalgaon.

....Petitioner

Versus

1. The State of Maharashtra
Through the Minister,
Rural Development Department.
2. The Divisional Commissioner,
Nashik, Nashik Division.
3. The District Collector, Jalgaon.
4. The Block Development Officer,
Panchayat Samiti, Jalgaon.
Tq. & Dist. Jalgaon.
5. The Gramsevak,
Grampanchayat Chincholi,
Tq. & Dist. Jalgaon.
(Deleted as per Court's
order dt. 4.8.2022)
6. Sanjay Rambhau Varade,
At post Chincholi,
Tq. & Dist. Jalgaon.

....Respondents

...

Mr. V.D. Salunke h/f. Mr. M.V. Salunke, Advocate for petitioner.
Mr. K.B. Jadhavar, AGP for respondent Nos. 1 to 3.
Mr. M.S. Sonawane, Advocate for respondent No. 4.
Mr. V.B. Patil, Advocate for respondent No. 6.

...

CORAM	: ARUN R. PEDNEKER, J.
CLOSED ON	: 25/04/2023
DELIVERED ON	: 27/04/2023

ORDER :

1. By way of present writ petition, the petitioner challenges the

impugned order dated 23.5.2022 in Appeal No. 27/2022 passed by appellate authority, the respondent No. 2 – Divisional Commissioner, Nashik and the order dated 16.2.2021 passed by the respondent No. 3 – The Collector, Jalgaon, by which the petitioner stands disqualified under section 14 (1)(J-3) of the Maharashtra Village Panchayat Act, 1958, for having encroached over the Government land.

2. The facts giving rise to the present writ petition can be summarised as under :-

The petitioner is the elected member of Village Panchayat Chincholi, Taluka and District Jalgaon. The petitioner is further elected as Deputy Sarpanch of the Village Panchayat. The respondent No. 6 - Sanjay Rambhau Varade filed an application before the respondent No. 3 – Collector, Jalgaon for disqualification of the petitioner, being the member of Village Panchayat, for violation of sections 14 (g) and 14 (1)(J-3) of the Maharashtra Village Panchayat Act, 1958 (hereinafter referred to as 'the Act' for short).

3. In the complaint, it was alleged that the petitioner has encroached upon the village property No. 739 and has constructed a building of 450 Sq. Fts. and he is residing along with his family in the said building and as such, the petitioner is liable for disqualification under section 14 (1)(J-3) of the Act. It was further contended in the complaint that the petitioner is also liable for disqualification under section 14(g) of the Act. However, the complaint under section 14 (g) was dismissed by the respondent No. 2 – Collector against the petitioner and there was no appeal against the same. As such, there is no further discussion on this aspect in the present writ petition.

4. In the complaint, notice was issued to the petitioner by the Collector.

In response thereto, the petitioner submitted that in property No. 739, there is a Gharkul Scheme sanctioned and the name of the owner is Mr. Jairam Budha Pawar and it does not belong to the petitioner. The Collector called for a report of the Block Development Officer (BDO). After considering the report of the BDO, five members committee was constituted to submit the report to the Collector and the committee had submitted report that there is no violation of section 14 (1)(J-3) and so also, there is no encroachment of the petitioner on the property No. 739.

5. The Collector took into consideration various material on record and held that in the records the petitioner's family is in possession of the property No. 738, wherein the name of the owner is shown as Government and name of the occupant is shown as Sumanbai Janardan Dhumal, mother of the petitioner, family member of the petitioner. The Collector also held that in the property No. 739 in the year 2003-2004 the name of Government was shown as owner and name of the petitioner Pravin Janardhan Dhumal is shown as occupant and although the record was later on changed in respect of the properties Nos. 737, 738, 739, 740, there is another encroachment by the blood relations of the petitioner. As such, after considering the aforesaid material in inquiry, the Collector disqualified the petitioner being the member of the Village Panchayat for having encroached on property No. 739 and 738. In appeal, the appellate authority confirmed the order passed by the Collector.

6. Mr. V.D. Salunke, learned counsel for the petitioner submits that the order passed by the authorities below are unlawful as the complaint filed by the complainant, so also the notice issued to the petitioner indicated that the petitioner has encroached on property No. 739 and there was no notice

to the petitioner as regards the property No. 738 and although in the time of argument, property No. 738 was referred to by the complainant, the petitioner was not put to notice in the complaint and the notice issued that he has encroached upon the property No. 738 and as such, holding the petitioner liable for disqualification for having encroached upon the property No. 738 by the family members of the petitioner, is erroneous in law and it should be set aside.

7. Mr. Salunke, learned counsel further contends that as regards property No. 739 is concerned, the name of the petitioner was wrongly recorded on this property in the year 2003-2004. This fact having noticed by the authority, the authority had cancelled all the entries and there is a Gharkul Scheme sanctioned in property No. 739 and the name of the owner is Mr. Jairam Budha Pawar. In the year 2003-2004 on property No. 739 the name of the owner is shown as Government and occupant is shown as the petitioner. The learned counsel submits that holding the petitioner guilty for encroachment on property No. 739 is patently illegal as the Government record does not indicate, so also the report submitted by the committee does not indicate that the petitioner is in occupation of property No. 739.

8. Per contra, Mr. V.B. Patil, learned counsel for respondent No. 6/complainant submits that during the course of the proceedings it was found that various family members have encroached on the Government properties. The learned counsel further submits that as regards the property No. 739 is concerned, there was name of the petitioner in 2003-2004 recorded as occupant of the said property. Although it is later on changed, it is not known as to how it is changed and therefore, the order of the authorities below holding the petitioner liable for illegal occupant of property

No. 739 as an encroacher is correct and concurrent orders passed by the authorities be sustained.

9. Mr. V.B. Patil, learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Janabai Vs. Additional Commissioner and others** reported in **2018 (5) Mh.L.J. 921** and on the judgment of this Court in the case of **Raju Mansaram Pawar and Anr. Vs. Additional Divisional Commissioner and others**, reported in **2020 (3) Mh.L.J. 110**. In the case of **Janabai** (supra), it has been held that even if there is encroachment by the family members, if the candidate is occupant of the encroachment or joint encroachment or continued encroachment in any form then elected member be disqualified under section 14 (1)(J-3) of the Act.

10. Having been considered the rival submissions and having perused the record and the law on the subject, as regards the nature of charges and evidence to be recorded before an elected member is disqualified is discussed by the Hon'ble Supreme Court and this High Court in the cases 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.

11. 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, this Court has 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 chargespoints, 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.

12. 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. Since in the instant case, the complaint was only with respect to property No. 739, it is not permissible for the authorities below to travel beyond the complaint unless specific charge is raised of any other property. As regards Property No. 739 is concerned, it clearly indicates that in the year 2003-2004 the name of the Government is shown as owner and name of the petitioner was shown as occupant. However, the record from the year 2013 to 2021 shows that on the property No. 739 the name of the Government is shown as owner and name of the occupant is shown as Jairam Buddha Pawar. Thus, the petitioner is not found to be in occupation of property No. 739. So also, the panchanama as well as the report of the committee indicate that the petitioner is not in occupation of property No. 739. As such, the disqualification of the petitioner on the ground of being occupant on property No. 739 is liable to be quashed and set aside and accordingly, the orders passed by the authorities below are quashed and set aside.

13. In the instant case, the petitioner or none of the family members are the occupant of the property No. 739. As such the judgment in the case of **Janabai (supra)** is not applicant in the present case. As regards the case of **Raju Mansaram Pawar (supra)** is concerned, this Court has held that if the person continues to remain in occupation of the encroached property and has a conflict of interest, he would be disqualified under section 14 (1)(J-3) of the Act. However, in the instant case, I have rendered the finding that the petitioner is not in possession or in occupation of property No. 739 and

as such, this judgment is also not applicable to the facts of the instant case. Liberty is reserved to the complainant/State to raise any further complaint as regards the encroachment of the petitioner on any other properties and in the event, such complaint is filed, the Collector to decide the same on it's own merits.

14. The writ petition is allowed and disposed of accordingly with the above observations.

[ARUN R. PEDNEKER J.]

SSC/