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

WRIT PETITION NO. 6361 OF 2023

Manisha W/o Raju Rathod
Age-35 years, Occ : Member of Grampanchayat,
R/o Ghatangri, Tq. & Dist. Osmanabad.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
   Through its Secretary,
   Rural Development Department,
   Mantralya, Mumbai.

2. Divisional Commissioner,
   Aurangabad Division, Aurangabad
   Tq. & Dist. Aurangabad.

3. Additional Collector,
   Osmanabad, Tq. & Dist. Osmanabad.

4. Gramsevak Grampanchayat,
   R/o Ghatangri, Tq & Dist. Osmanabad.

5. Arvind Ramdas Rathod
   Age-31 years, Occ : Agri.,
   R/o Ghatangri, Tq. & Dist. Osmanabad.

..RESPONDENTS

WITH

WRIT PETITION NO. 6366 OF 2023

Laxmibai W/o Rajendra Thorat
Age-45 years, Occ : Member of Grampanchayat,
R/o Ghatangri, Tq. & Dist. Osmanabad.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
   Through its Secretary,

Rural Development Department,
Mantralya, Mumbai.

2. Divisional Commissioner,
Aurangabad Division, Aurangabad
Tq. & Dist. Aurangabad.

3. Additional Collector,
Osmanabad, Tq. & Dist. Osmanabad.

4. Gramsevak Grampanchayat,
R/o Ghatangri, Tq & Dist. Osmanabad.

5. Arvind Ramdas Rathod
Age-31 years, Occ : Agri.,
R/o Ghatangri, Tq. & Dist. Osmanabad.

..RESPONDENTS

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Mr. R.D. Raut, Advocate for petitioners.
Mr.S.N. Morampalle, AGP for respondent/State
Mr. K.N. Shermale, Advocate for respondent no.4.
Ms.Sheetal V. Salunke, Advocate for respondent no.5.

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CORAM : SANJAY A. DESHMUKH, J

RESERVED ON : 9th SEPTEMBER, 2023
PRONOUNCED ON : 21st SEPTEMBER, 2023

JUDGMENT :-

1. Heard.

2. Writ Petition No.6361 of 2023 is filed for challenging the order dated 26.05.2023 passed by the Divisional Commissioner, Aurangabad in Appeal No.2022/Grampanchayat/appeal-2/CR 136 of 2022 and order dated 11.11.2022 passed by Additional Collector, Osmanabad in Appeal No.2022/Gen.Ad./Grapani/KA-1/KAV-221.

3. Writ Petition No.6366 of 2023 is filed for challenging the order dated 26.05.2023 passed by the Divisional Commissioner, Aurangabad in the Appeal No.2022/Grampanchayat/appeal-2/CR 135 of 2022 and order dated 11.11.2022 passed by Additional Collector, Osmanabad in the Appeal no.2022/Gen.Ad./Grapani/KA-1/KAV-220. The petitioners have prayed for setting aside the impugned orders of disqualifying of their membership of the village panchayat, Ghatangri, Tq. & Dist. Osmanabad.

4. The issues involved in these Writ Petitions are of same nature, hence these are being decided by this common judgment.

5. Brief facts of these cases are as under :-

(i) The petitioners and respondent no.5 are members of the Village Panchayat, Ghatangri, Tq. & Dist. Osmanabad, elected in the year 2020.

(ii) Prabhu Rama Rathod, the father-in-law of the petitioner in Writ Petition No.6361 of 2023 is the owner of the house property bearing No.538 situated in village Ghatangri, Tq. & Dist. Osmanabad. He deposited the yearly village panchayat’s tax of his house for the year 2020-2021. The petitioner is residing with her father-in-law in that house.

(iii) The husband of the petitioner viz. Rajendra Kashinath Thorat in Writ Petition No.6366 of 2023 is the owner of the house property bearing No.778 situated in the village Ghatangri, Tq. & Dist. Osmananabad. He has deposited the yearly village panchayat’s tax of his house for the year 2020-2021. The petitioner is residing with her husband in that house.

(iv) The Respondent No.4 the Village Development Officer of village panchayat issued notices for recovery of arrears of house taxes dated 24.05.2021 to both the owners of those houses where petitioners are residing. They did not pay those house taxes within 15 days as per that notice. Therefore, respondent no.5 filed two separate applications against the petitioners before the Respondent no.3 for cancellation of their memberships under section 14(1)(h) of the Maharashtra Village Panchayat Act on the ground of default in payment of house taxes.

6. The respondent No.3 on hearing both the sides held that the petitioners failed to pay the taxes of village panchayat, and held disqualified to them under section 14(1)(h) of the Maharashtra Village Panchayat Act. The appeals were preferred before the Respondent No.2. Those were also dismissed. Therefore, these writ petitions are filed.

7. The learned advocate for the petitioners pointed out that the notices issued under section 129(1) of the Maharashtra Village Panchayat Act for the depositing arrears of house taxes within 15 days were illegally relied upon by the respondent nos.3 and 4 against the petitioners. Additionally, demand notices as contemplated under section 14(1)(h) of the Maharashtra Village Panchayats Act, 1959 were not issued and sent to the petitioners to deposit the arrears of taxes within three months. The respondent no.3 illegally held disqualified to them. The respondent no.2 dismissed the appeals of the petitioners illegally without following the mandate of section 14(1)(h)

of the Maharashtra Village Panchayat Act. It is lastly submitted to set aside both the impugned orders.

8. Learned AGP for the State, learned advocate for respondent no.4 and learned advocate for respondent no.5 strongly objected the petitions by contending that the demand notices of house tax were legally issued and served upon the petitioners relatives. The arrears of house taxes were not deposited by the petitioners within time, hence the impugned orders are legal and correct. No interference is warranted in it. It is lastly prayed to dismiss both the writ petitions.

9. Perused the impugned orders, copies of the demand notices and affidavit in reply filed by respondent no.5, which are marked as Annexure `X' and `X-1' respectively.

10. Issuing of tax demand notices to the relatives of petitioners are undisputed facts. Those were regular demand notices as per section 129(1) of the Maharashtra Village Panchayats Act, 1958. The written warning printed in the said notices are as under :-

> “1) कर नमुद केलेला टॅक्स, फी अगर येण्याची रक्कम आपलेकडून पंचायतीस येणे आहे. त्याची कृपया दखल घ्यावी. बील मिळाल्यानंतर 15 दिवसाचे आत सदरहून रक्कम पंचायतीस द्यावी अशी आपणास विनंती आहे.
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> 2) जर सदरहुन रक्कम आपण वर निर्दिष्ट केलेल्या मुदतीत दिली नाहीतर 1958 च्या मुंबई ग्रामपंचायत कायद्याचे कलम 129 (2) अन्वये मागणी पत्रक तुमच्यावर बजावण्यात येईल. आणि त्यावरुण सदर रक्कम तुम्ही पंचायतीस देय पात्र व्हाल.”

11. The learned advocate for petitioners is relying upon the judgment in the case of ***Vishwanath Kisan Dhage Vs. Divisional Commissioner and others in Writ Petition No.5941 of 2018 decided on 15.11.2019***, in which it is held that authority was expected to analyze whether ingredients of section 14(1)(h) of the Act were made out or not and whether demand of tax was made by the village panchayat against the elected member and it was duly served upon him/her and if he/she failed to pay such taxes.

12. The learned advocate for respondent no.5 is relying upon the judgment of this Court in the case of ***Pandurang Mahadeorao Makrampure Vs. Additional Commissioner, Amravati and others*** reported in ***2020(3) Mh.L.J. 171.*** Para 15 of it reads as under :-

> "15. This leaves the last limb of the petitioners contentions to be considered. It is contended that section 14(1)(h) has to be interpreted as being applicable to the elected representatives considering the date on which they were elected. In short, the submission of the petitioners is that if they are not in arrears of taxes on the date of their election, section 14(1)(h) would not be attracted during their elected tenure. I do not find that the said submission would stand the test of law in the light of the language used in section 14(1)(h) which aims at dealing with the continuous payment of taxes by the elected representatives."

Nobody has disputed the ratio laid down in the above authorities cited by both sides.

13. Admittedly, the demand notices were served upon the petitioners relatives who are owners of house properties.

14. The section 14(1) (h) gives concession to pay the tax or fee within three months from the date of tax demand notice for which bill is to be duly served on the member of village panchayat. This procedure prescribed by law is not followed by the Village Panchayat, Ghatangri. However, tax demand notices issued under section 129(1) of the Maharashtra Village Panchayat Act, which were relied upon by the respondent no.3 while passing the impugned orders. These notices were not legal for the purpose of taking action under section 14(1)(h) of the Maharashtra Village Panchayat Act. Those were general notices of demand bill upon which action of disqualification of member of village panchayat cannot be sustained.

15. Admittedly, the house tax demand notices were not issued and served upon the petitioners under section 14(1)(h) of the Maharashtra Village Panchayat Act and three months time was not given to them to deposit house taxes, which is mandatory provision. When any legal action of quasi judicial authority is regulated by the law, that procedure has to be followed mandatorily, particularly when such actions have drastic penal consequences of holding them disqualified as members of village panchayat which affects their legal rights perpetually. This legal aspect was not considered by both the respondent nos.2 and 3 while passing impugned orders and dismissed the appeals of the petitioners. Thus, illegal impugned

orders are not sustainable in the eye of law. Therefore, interference is warranted in the decisions of both the authorities.

16. The ratio laid down in the authority of **Pandurang Makrampure (cited supra)** is not useful to respondent no.5. The arguments of the learned advocate for respondent no.5 is not acceptable that notices were legally issued to the petitioners and they failed to pay the arrears of house tax. Therefore, impugned orders deserve to be set aside. The writ petitions deserve to be allowed. Hence the following order :-

ORDER

1. Both the writ petitions are allowed in terms of prayer clauses "B" and "C".

2. No costs.

(SANJAY A. DESHMUKH, J.)

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