

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

WRIT PETITION NO. 12873 OF 2022

Laxman Shrikrushna Jadhav

.. Petitioner

Versus

1. Tanaji Nana Ghodke
2. District Collector, Latur
3. Additional Commissioner, Aurangabad .. Respondents

Mr. Sharad V. Natu, Advocate for the Petitioner.

Mr. R. D. Biradar, Advocate for Respondent No. 1.

Mr. K. N. Lokhande, AGP for Respondent Nos. 2 and 3.

CORAM : KISHORE C. SANT, J.

DATED : 19th AUGUST, 2023.

P. C. :-

. Heard learned advocates for the parties. By consent of the parties taken up for final disposal at the stage of admission.

2. The petition is filed by a member elected to the Grampanchayat who is held to be disqualified by the learned Collector, Latur by judgment and order dated 22.08.2022 and confirmed by the learned Additional Commissioner, Aurangabad by judgment and order dated 29.11.2022. The respondent No. 1 had raised a dispute before the learned Collector under Section 16 of the Maharashtra Village Panchayats Act (for short "said Act") alleging that, the petitioner

incurred disqualification under Section 14 (1) (j-3) of the said Act. The authorities found on the basis of panchanama dated 04.06.2013 that, encroachment is found on the land.

3. Learned advocate for the petitioner submits that, the panchanama dated 04.06.2013 which is produced in support of the case of the respondents which is already considered in the civil suit that was filed by the petitioner in the Civil Court in the year 2010. There is specific finding in the judgment in the civil suit i.e. Regular Civil Suit No. 368/2010 that, no any encroachment is proved. The panchanama was drawn at the request of defendants therein. This fact was brought to the notice of both the authorities. Both the authorities have referred to the said panchanama and the judgment in the civil suit, however, have not discussed anything about the said finding recorded by the Civil Court and have come to different conclusion than that of the Civil Court. There is no case of the respondents that, after 2013 any encroachment is done. It is also not a case that, pursuant to filing of the dispute fresh panchanama is drawn or the measurement is taken. He thus prays that, both the judgments deserve to be quashed and set aside firstly, for the reason that no Civil Court order is considered and secondly, there is no independent material collected to come to conclusion that there is an encroachment.

4. Learned advocate for the petitioner relies upon the following judgments.

- (i) Yunus Shah s/o Anwar Shah Vs. Additional Commissioner, Amravati reported in 2011 (5) Mh.L.J. 249.
- (ii) Subhash Krushnarao Khartadkar Vs. Divisional Commissioner reported in 2022 DGLS (Bom.) 2894.
- (iii) Dinkar Sampatrao Mogal and others Vs. Additional Commissioner and others reported in 2022 DGLS (Bom.) 3593.

5. Learned advocate for respondent No. 1 vehemently opposes the petition stating that, both the authorities have rightly considered the submissions and the material in the case. He submits that, the map and panchanama relied by the authorities are never challenged by the petitioner. It was necessary for the petitioner to challenge the panchanama and the map.

6. Learned advocate for respondent No. 1 relies upon the following judgments.

- (i) Janabai Vs. Additional Commissioner and others reported in (2018) 18 SCC 196.
- (ii) Sonali Gajanan Dhepe and another Vs. The Additional Divisional Commissioner, Aurangabad Division and others in Writ Petition No. 4758 of 2022.
- (iii) Shri Shahaji Bajirao Jadhav Vs. Uttam Bajirao Patil and others in Civil Writ Petition No. 452 of 2019.

7. Learned advocate for respondent No. 1 also points out the copy of deposition recorded in the regular civil suit of witness Maruti. The said witness in the chief examination has stated that, there was encroachment to the extent 25 R by this petitioner and he prays for rejection of the petition.

8. In rejoinder, learned advocate for the petitioner submits that, though the witness in the chief examination had said about the encroachment, in the cross examination he could not even give the details of the machine which was used for the measurement. He could not tell the area of Maharwada and Gavthan. He submits that, the Civil Court therefore did not believe this witness as the evidence of Maruti could not prove the accuracy of the map. He further submits that, it has clearly come on record that, this panchanama was drawn in absence of this petitioner and therefore, it was rightly not relied upon.

9. Learned A.G.P. supports the orders passed by the authorities stating that once the authorities have come to conclusion that, there is encroachment, the authorities are bound to declare a member as disqualified when the encroachment is found.

10. Considering all the submissions and the record, this Court has to consider as to whether there is any encroachment at the hands of the petitioner or any of the relatives of the petitioner. Admittedly, there is

no map or panchanama is drawn after filing the dispute. The respondent No. 1 relied upon the panchanama dated 04.06.2013 and the map which was considered in the civil suit much prior to filing of the present dispute. There is no case that, any measurement is done after the dispute was filed or any changes are made in the property by the petitioner after 04.06.2013. When there is finding recorded by the Civil Court, it was not open for the authorities to come to different conclusion in absence of any other subsequent material. The finding of the Civil Court was thus binding upon the authorities. Both the authorities though have referred to the civil proceedings, however, have not recorded any reason or finding for not considering the finding while deciding the proceedings before them.

11. In the case of Yunus Shah s/o Anwar Shah (supra), this Court has specifically considered this aspect. In the said petition the dispute was filed under Section 14 (1) (j-3) of the said Act. This Court has held that the proceedings before the learned Collector are in the nature of quasi judicial proceedings and the quasi judicial authority must deal with the contentions raised before it and only after recording the findings should pass an order. In that case the petitioner was unseated on the finding that he has incurred disqualification under Section 14 (1) (j-3). The High Court relegated the matter to the learned

Additional Commissioner for de novo consideration of the appeal.

12. In the case of Subhash Krushnarao Khartadkar (supra), this Court at Nagpur Bench partly allowed the petition and the matter was referred to the learned Collector.

13. So far as judgment in the case of Janabai (supra) is concerned, there is no dispute about the proposition of the respondent made on the basis of this judgment. However, to make this judgment applicable, there has to be first finding that the encroachment is found. It is only then a question would come as to whether the encroachment made by any other member of the family would make member elected disqualified. In this case, very finding on encroachment is not against the petitioner and thus the authority in the case of Janabai (supra) would not be applicable in this case.

14. In the case of Sonali Gajanan Dhepe and another (supra), there was no dispute about the encroachment. The only dispute was whether the encroachment at the hands of any other member of the family of the person elected can be considered to apply the provisions of Section 14 (1) (j-3) of the said Act. Similar is the case of Shri Shahaji Bajirao Jadhav (supra).

15. Thus, considering the case laws submitted by both the parties,

this Court finds that, the judgments in the case of Yunus Shah s/o Anwar Shah (supra) and in the case of Subhash Krushnarao Khartadkar (supra) are applicable in this case. In the present case, since the Civil Court has already recorded the findings and the same are confirmed by the appellate Court this Court finds that, it was necessary for both the authorities to give specific finding on the point of encroachment. No exercise is undertaken to ascertain the fact of encroachment after the dispute is filed. There is no case that, the encroachment is done after the panchanama that was drawn in the civil proceedings.

16. This Court finds that, no encroachment is proved at the hands of the petitioner or any member of the family. The impugned judgment deserves to be quashed and set aside by allowing the writ petition. Hence, the following order is passed.

17. The writ petition stands allowed.

18. The impugned judgment and order passed by the learned Additional Commissioner confirming the order passed by the learned Collector is quashed and set aside.

19. The writ petition stands disposed off.

(KISHORE C. SANT, J.)

PS.B.