

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 15879 OF 2022
WITH
INTERIM APPLICATION NO. 30341 OF 2022**

Smt. Manisha Milind Chuneekar

...Petitioner

Versus

1. State of Maharashtra
2. Additional Commissioner of Kokan Division
3. The District Collector of Raigad, Alibaud,
District Raigad
4. Harshal Vinayak Gharat

...Respondents

Mr. Kishor Patil, i/b Ms. Prashant Raul, for the Petitioner.
Mr. Pramod Patil, a/w Ajit Hon, Shyamsunder Solanke, i/b
PNP & Asso., for Respondent No.4.
Mr. S. H. Kankal, AGP for the State.

CORAM: N. J. JAMADAR, J.

DATED : 8th JUNE, 2023

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties, heard finally.
2. The petitioner, who is an elected Sarpanch of village Revdanda, Taluka Alibaug, District Raigad, takes exception to the order dated 28th January, 2021, passed by the Additional Commissioner, Konkan Division, in Appeal/Desk/VP/66/2021 under Section 16(2) of the Maharashtra Village Panchayat Act,

1959 (“the Act, 1959”), whereby the appeal preferred by the petitioner against an order passed by the District Collector, Alibaug, in Dispute Application No.3 of 2020, declaring the petitioner to have incurred disqualification under Section 14(1) (j-3), came to be dismissed affirming the finding of the District Collector.

3. The petitioner was elected as a Sarpanch of village panchayat Revdanda in the election held in the year 2017. Respondent No.4 filed Dispute Application No.3 of 2020 alleging that the petitioner has incurred disqualification as the petitioner resides in a house premises bearing No.2902 Harihareshwar Bandar which is constructed by committing encroachment over the Government property bearing Survey No.122/1/1/A/1/A/1.

4. The petitioner appeared, and resisted the dispute application. It was the contention of the petitioner that the petitioner resides alongwith her husband in another premises bearing No.102/A1 and has not been residing in the house premises No.2902. The said house property does not stand in her name. Nor the said house has been constructed by committing encroachment over a Government land or public property.

5. The District Collector after appraising the material on record was persuaded to return a finding that the petitioner resides at house premises No.2902 alongwith her husband and in-laws. The said house premises is constructed by committing encroachment over the Government land bearing Survey No.122/1/1/A/1/A/1, which is designated as a reserved forest.

6. Being aggrieved the petitioner preferred an appeal before the Additional Commissioner under Section 16 of the Act, 1959. By the impugned judgment and order the Additional Commissioner concurred with the view of the District Collector and dismissed the appeal. Both the authorities have followed the decision of the Supreme Court in the case of *Janabai vs. Additional Commissioner and ors.*¹

7. Being further aggrieved the petitioner has invoked the writ jurisdiction.

8. I have heard Mr. Kishor Patil, the learned Counsel for the petitioner, Mr. Kankal, the learned AGP for respondent Nos.1 to 3 - State and Mr. Pramod Patil, the learned Counsel for respondent No.4 - original plaintiff, at some length.

9. Mr. Kishor Patil, the learned Counsel for the petitioner, strenuously submitted that both the authorities have committed **1(2018) 18 SCC 196.**

a manifest error in returning a finding that the petitioner resides alongwith her in-laws in house premises No.2902. It was urged that despite a specific stand having been taken by the petitioner that she resides separately alongwith her husband at property No.102/A1 and not at house premises No.2902, the authorities have not delved into the said aspect. In the absence of any material to show that the petitioner shares the house premises No.2902 with her mother-in-law, the District Collector as well as the Additional Commissioner have recorded a finding that the petitioner resides in house premise No.2902. This unjustifiable finding based on no evidence, renders the claim of the petitioner worthy of acceptance and, therefore, a democratically elected Sarpanch of the village panchayat cannot be unseated on the basis of such perverse finding, urged Mr. Kishor Patil.

10. It was further submitted that though the authorities have copiously quoted the portions of the Three-Judge Bench judgment in the case of *Janabai* (supra) yet the authorities have missed the ratio of the said judgment that it is the occupation of the premises by the person, who is sought to be disqualified for having committed encroachment over the Government land, which plays a crucial role. In the absence of any material to show that the petitioner had been in the occupation of house

premises No.2902, the judgment in the case of *Janabai* (supra) does not govern the facts of the case.

11. In contrast to this, the learned AGP stoutly supported impugned orders. It was submitted that the petitioner nowhere contests the fact that her mother-in-law is in the occupation of house premises No.2902. Nor the fact that the Survey No.122/1/1/A/1/A/1 is the Government property, is in contest.

12. The learned AGP would further urge that what exacerbates the situation is the conduct of the petitioner in making an effort to regularize the encroachment over the Government property by presiding over the meeting of the village panchayat in which the resolution was passed to regularise the encroachments and give property numbers to those houses. This conduct, according to the learned AGP, is plainly in derogation of the duty which the Sarpanch is expected to discharge under the provisions of Section 53 of the Act, 1959.

13. The learned Counsel for respondent No.4 supplemented the submissions of the learned AGP. The learned Counsel for respondent No.4 laid emphasis on the fact that the petitioner has been taking different stands at various stages to suit her convenience in a given situation. Inviting the attention of the

Court to the declaration made by the petitioner, while filing nomination, that she was residing in a rented premises bearing House No.1792, which has a toilet facility, the learned Counsel for respondent No.4 submitted that to wriggle out of a disqualification, which the petitioner would have otherwise incurred, to contest the election, it was then asserted that the petitioner resides in a rented premises. It was further submitted that the petitioner has resorted to the defence of residing separately with her husband in another premises by banking upon a ration card which came to be issued in the year 2020, post the election of the petitioner. In the circumstances, according to the learned Counsel for respondent No.4, the authorities have committed no error in declaring that the petitioner has incurred the disqualification.

14. The learned Counsel for respondent No.4 laid particular emphasis on the resolution passed in the meeting of the village panchayat on 30th December, 2020 to regularise the encroachments including the encroachment committed by the mother-in-law. Attention of the Court was also invited to the assessment lists which indicate that the mother-in-law and rest of the relations of the petitioner have encroached over the Government property. It was submitted that the aforesaid

conduct of the petitioner validates the necessity of prescribing disqualification for the elected representatives as the element of conflict of duty and interest arises where an elected representative is alleged to have committed the encroachment.

15. I have given careful consideration to the submissions canvassed across the bar. With the assistance of the learned Counsel for the parties, I have also perused the relevant documents.

16. Under section 14(1)(j-3) no person shall be a member of a village panchayat, or continue as such, who has committed encroachment over the Government land or public property. The essence of disqualification is in encroachment over the Government land or public property. The provisions contained in the Act, 1959 cast certain duties on the members of the village panchayat. One of the duties of the village panchayat is to remove the encroachment over the Government land/public property. Elaborate provisions have been made under Section 53 of the Act, 1959 for removal of the encroachment over the Government property, as distinct from private property. It is in the context of this duty, the disqualification prescribed under Section 14(1)(j-3) has been interpreted.

17. The above object of prescribing the disqualification of person who commits encroachment over Government land or public property is to obviate a situation of conflict of duty and interest which occurs where the person who is statutory enjoined to take action under the provisions of the Act, 1959 himself happens to be a privy to such unauthorized act either directly or indirectly. The scope of the expression, “person” is thus expanded to include a legal representative or family member of the person whose qualification to get elected or continue as a member of village panchayat on account of alleged encroachment over the Government land or public property, is questioned.

18. The import of the provisions contained in section 14(1) (j-3) fell for consideration before a Division Bench of this Court in the case of **Devidas s/o. Matiramji Surwade vs. Additional Commissioner, Amaravati**². A submission was sought to be canvassed on behalf of the petitioner therein that the alleged encroachment was by the father of the appellant and that too way back in the year 1966 and, thus, the petitioner could not have been visited with disqualification under section 14(1)(j-3).

²2017(1) Mh.L.J. 102.

19. Repelling the contention, this Court enunciated the law as under:-

4] We have heard the learned counsel for the appellant. On the facts described by the learned counsel for the appellant, we find that the State Legislature while enacting the said provision fully accepted the Statement of Objects and Reasons in respect of the said particular provision regarding encroachment on the Government properties. The Statement of Objects and Reasons states that the person, who has encroached on the Government property, shall not only be disqualified to be a member of Gram Panchayat, but also the disqualification shall be attached to such person till his tenure. In other words, on such disqualification the member can be disqualified and thus removed.

5] We find that there is a definite object in making the said amendment to the provisions of disqualification and the object is that one, who encroaches upon the Government land or the Government property, cannot make any claim to represent the people by becoming an elected member of the Gram Panchayat. The term 'person' in the said amended provision has to be interpreted to mean the legal heirs of such person, who has encroached and continues to occupy the Government land or the Government property, his agent, assignee or transferee or as the case may be. If such an interpretation is not made in the said provision, the result would be absurd in the sense that the Government land would continue to remain encroached and the legal heirs or the assignees or the transferees remaining on such encroached Government land shall claim the right to get elected as a member of democratically elected body. In no case our conscious permits such type of interpretation to defeat the very object of the Bombay Village Panchayats (Amendment) Act, 2006.

20. The aforesaid exposition of the legislative object in prescribing the disqualification was approved by the Supreme Court in the case of Janabai (supra). The observations in paragraph Nos. 26, 27, 29 and 30 are instructive and hence extracted below.

“26] Section 53 that occurs in Chapter III deals with obstruction and encroachment upon public streets and upon sites. It confers power on the Panchayat to remove such obstruction or encroachment or to remove any unauthorizedly cultivated grazing land or any other land. That apart, it also empowers the Panchayat to remove any unauthorized obstruction or encroachment of the like nature in or upon a site not being private property. The distinction has been made between private property and public property. It has also protected the property that vests with the Panchayat. If the Panchayat does not carry out its responsibility of removing the obstruction or encroachment after it has been brought to its notice in accordance with the procedure prescribed therein, the higher authorities, namely, the Collector and the Commissioner, have been conferred with the power to cause removal. There is a provision for imposition of fine for commission of offence.

27] On a schematic appreciation of the Act including Sections 10, 11 and 53, it is quite vivid that the Members elected in Panchayat are duty bound to see to it that the obstruction or encroachment upon any land, which is not a private property but Government land or a public property, should be removed and prosecution should be levied against the person creating such obstruction or encroachment.

.....

29] In the case of *Devidas Surwade* (supra), it has been clearly stated, as noticed earlier, that the term ‘person’ has to include the legal heirs, if any, of the encroacher who continue to occupy the government land. Emphasis has been laid on encroachment and continued encroachment. After the said Division Bench judgment, number of learned Single Judges have adopted a different approach without noticing the judgment which is against judicial discipline.

30] We may note here with profit that the word “person” as used in Section 14(1)(j-3) is not to be so narrowly construed as a consequence of which the basic issue of “encroachment”

in the context of disqualification becomes absolutely redundant. The legislative intent, as we perceive, is that encroachment or unauthorised occupation has to be viewed very strictly and Section 53, therefore, provides for imposition of daily fine. It is also to be borne in mind that it is the panchayat that has been conferred with the power to remove the encroachment. It is the statutory obligation on the part of the panchayat to protect the interest of the properties belonging to it. If a member remains in occupation of an encroached property, he/she has a conflict of interest. If an interpretation is placed that it is the first encroacher or the encroachment made by the person alone who would suffer a disqualification, it would lend to an absurdity. The concept of purposive interpretation would impel us to hold that when a person shares an encroached property by residing there and there is continuance, he/she has to be treated as disqualified. Such an interpretation subserves the real warrant of the provision. Thus analysed, we are of the view that the decision in *Sagar Pandurang Dhundare vs. Keshav Aaba Patil (2018) 1 SCC 340* does not lay down the correct position of law and it is, accordingly, overruled.”

21. The Supreme Court has, in terms, observed that if an interpretation is placed that it is the first encroacher or the encroachment made by the person alone who would suffer a disqualification, absurd results would follow. The concept of purposive interpretation warrants that when a person shares an encroached property by residing there and there is continuance, he has to be treated as disqualified. Such an interpretation subserves the real warrant of the provision.

22. Mr. Patil, the learned Counsel for the petitioner, would urge that there can be no quarrel with the aforesaid proposition. However, in the case at hand, there is no material to show that the petitioner has been residing in house premises No.2902. It

was urged with a degree of vehemence that the authorities have not delved into this aspect of the matter at all.

23. The reliance sought to be placed on behalf of the petitioner on the ration card to indicate that the petitioner has been residing separately from her in-laws, does not seem to be of much assistance. Evidently, the said ration card seems to have been obtained in the year 2020, post the election of the petitioner and the dispute having been raised about her disqualification.

24. It is true that the authorities have not delved into the question as to whether the petitioner resides at house property No.102/A/1 as claimed by the petitioner. The said issue would have assumed significance had cogent material been brought on record by the petitioner to show that the petitioner resides at house No.102/A1. On the contrary, as noted above, the petitioner has claimed that she had been residing at a rented premises, in the declaration made while filing the nomination form.

25. In any event, in the backdrop of the material which has emerged, the aforesaid aspect pales in significance. I find substance in the submission on behalf of respondent No.4 that

the instant case manifests an example of the conflict of duty and interest which would arise, where an elected representative has committed encroachment, either directly or indirectly.

26. The resolution passed by the village panchayat in its meeting held on 30th December, 2020, presided over with by the petitioner, records that it was decided to regularize the encroachments over Survey No.118/2 and one of the encroachment which was resolved to be regularised was that of house premises No.2901. The said resolution appears to have been passed in brazen defiance of the duty cast on the village panchayat to remove the encroachment over the Government land.

27. Mr. Patil, the learned Counsel for the petitioner, attempted to salvage the position by canvassing a submission that the said act on the part of the petitioner can be a subject matter of an action under Section 39 of the Act, 1959. However that cannot be a ground to disqualify the petitioner by invoking the provisions contained in Section 14(1)(j-3).

28. I find it difficult to accede to this submission. It is this very conflict of duty and interest which the legislature has sought to obviate by the prescribing disqualification under

Section 14(1)(j-3). The conduct attributed to the petitioner demonstrates the practical utility of the provisions contained in Section 14 (1) (j-3). The said act on the part of the petitioner, in a sense, also fortifies the allegations that the petitioner has been residing at house premises No.2902 and to insulate herself from the action of disqualification an endeavour was made to regularize the encroachment itself.

29. In the totality of the circumstances, I am not inclined to interfere with the impugned order.

30. Hence, the petition deserves to be dismissed.

31. Thus, the following order:

: O R D E R :

- (i)** The petition stands dismissed.
- ii)** Rule discharged.
- iii)** No costs.
- (iv)** In view of disposal of the petition, interim application does not survive and stands disposed.

At this stage, Mr. Patil, the learned Counsel for the petitioner, seeks continuation of the interim relief. The learned Counsel for respondent No.4 opposes the prayer as

the term of the village panchayat is to expire in the month of July, 2023.

Since the order of disqualification was passed on 19th January, 2021 and the petitioner has enjoyed the protection till date, continuation of the interim protection would defeat the very object of prescribing the disqualification as the petitioner's term would expire by efflux of time. Thus, the oral application for continuation of interim protection stands rejected.

[N. J. JAMADAR, J.]