

Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5927 OF 2023

Raju Arjun Dhatrak

...Petitioner

Versus

Krushna Shantaram Nagare & Ors

...Respondents

Mr Prashant D Patil, *for the Petitioner.*

Mr Kishor Patil, *i/b Pratik Rahade, for Respondent No. 1.*

Mrs Rupali Shinde, AGP, *for the Respondent-State.*

Mr Bhushan Deshmukh, *with Vedant Bhende, for Respondent No. 6.*

**CORAM G.S. Patel &
 Kamal Khata, JJ.**

DATED: 18th October 2023

PC:-

1. Heard.

2. **Rule.** Rule returnable forthwith.

3. The Petition challenges an order of 26th August 2022 of the Additional Collector, Nashik. That order was passed in a Gram Panchayat Dispute Application No. 54 of 2021. The other challenge is to an order dated 13th March 2023 by the Additional Commissioner, Nashik Division in Gram Panchayat Appeal No. 132 of 2022.

4. To cut a long story short, the complainant, Respondent No.1 alleged that the Petitioner had encroached upon public lands and was therefore liable to suffer a disqualification as a member of the Hinganwedhe Gram Panchayat under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959. The Section is not controversial and does not fall for consideration. The words used in the sub-clause are “*has encroached upon Government land or public property*”.

5. The Petitioner says that the Petitioner privately owns immediately adjacent land for which he paid a purchase price and which sale transaction has long been recognized as being concluded.

6. Our attention is drawn to the report of the Gram Sevak at page 57. This makes it clear that even according to the Gram Sevak it could not be conclusively determined whether there was indeed an encroachment by the Petitioner on Government land or public property.

7. A copy of the complaint in question is at page 20. It is dated 24th March 2021. It is clear from the record that there was no survey done of the Petitioner’s abutting property or the allegedly encroached Government land or public property after the complaint at Exhibit “A”. It seems to us self-evident that without a survey done as contemplated under the Maharashtra Land Revenue Code, 1966 demarcating the respective boundaries, it could never have been conclusively established whether there was or was not an

encroachment sufficient to warrant a finding of disqualification under Section 14(1)(j-3) of the Village Panchayats Act.

8. Matters of disqualification are serious. These cannot be the subject of inference, conjecture, or surmise. The factual basis must be without controversy. It cannot be contentious. There must be a demonstrable factual basis for the finding that has been returned. Both impugned orders have completely overlooked this aspect of the matter.

9. Learned Advocate for the Petitioner is correct in pointing out that on the mere complaint and say-so of the complainant, and despite the Gram Sevak's report that the allegation could not be conclusively assessed one way or the other, the impugned orders have ordered the disqualification of the Petitioner.

10. Now the additional complication is that thereafter Respondent No. 6 has been elected to the post from which post that fell vacant after the impugned disqualification. This means that the Petitioner and Respondent No. 6 are rival contenders for that post.

11. Had there been no further election and had Respondent No. 6 (or any other person) not been elected to that post, we would have immediately ordered the reinstatement of the Petitioner to that post in the Gram Panchayat upon setting aside the two impugned orders. But we must, we believe, balance the rival and competing equities between the Petitioner and Respondent No. 6. It is not possible to oust Respondent No. 6 and to place the Petitioner in that post. The

only viable method appears to us to hold that both the Petitioner and Respondent No. 6 will now be at liberty to contest as eligible candidates for election to the post that was once held by the Petitioner, later held by Respondent No. 6 and will now have to undergo a fresh election. The authorities in question will have to take the necessary steps in that regard.

12. Accordingly, Rule is made absolute in the above terms. There will be no orders to costs.

(Kamal Khata, J)

(G. S. Patel, J)