

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14727 OF 2022**

Vinod Baburao Sakat

...Petitioner

V/s.

Bhaskar Keda Sakat and Ors.

...Respondents

WRIT PETITION NO. 14726 OF 2022

Vinod Baburao Sakat

....Petitioner

V/s.

Sunil Ramesh Sakat and Ors.

...Respondents

Mr. Rupesh Geete, for the Petitioner.

Mr. Mufeez Ansari i/by. Mr. Jayendra Khairnar, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 7 November 2023.

P.C. :

1. These petitions challenge the order passed by the Additional Collector, Malegaon, Nashik in Gram Panchayat Complaint No.9/2020 filed by the Petitioner seeking disqualification of Respondent No.1 in both the petitions under the provisions of Section

14(1)(j-3) of the Maharashtra Village Panchayat Act, 1959 (**Act**). The ground on which disqualification of Respondent No.1 is sought is alleged encroachment committed by them on the government land. The allegation essentially is that the father of Respondent No.1 had committed encroachment on the government land. During the course of enquiry, it transpired that Respondent No.1 in both cases have been actually residing separately from their fathers. Thus a finding of fact is recorded by the Additional Collector, Malegaon in both the cases that the elected members do not actually reside in the structures which are alleged to have been erected by encroaching upon the government land. Mr. Geete, the learned counsel appearing for the Petitioner would contend that even if a legal heir is found to be in possession of encroached property, he attracts disqualification under the provisions of Section 14(1)(j-3) of the Act. In support of his contention, he places reliance on the judgment of Division Bench of this Court in **Devidas s/o. Matiramji Surwade V/s. Additional Commissioner, Amravati and Ors.** 2017 (1) Mh.L.J. 102. In that judgment, the Division Bench of this Court held in para-6 of the judgment as under :

“6. We find that there is a definite object in making the said amendment 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.”

2. Thus in *Devidas* (supra), this Court has held that if legal heir, assignee or transferee of a person who has indulged in encroachment, is found to be in occupation of the government land, such legal heir, assignee or transferee attracts disqualification under the provisions of Section 14(1)(j-3) of the Act. In the present case, the situation is exactly opposite. The elected members are not found to be in possession of the structures which are alleged to have been constructed on encroached land. A finding of fact is recorded that both the elected members are separated from their fathers and are residing separately.

3. The Apex Court in its judgment in **Janabai Versus. Additional Commissioner and Ors.** (2018) 18 SCC 196 has held that for the purpose of attracting disqualification under the provisions of Section 14(1)(j-3) of the Act, the elected member is required to be in continuous possession of the encroached property by residing thereon at the time of the election or disqualification. The Apex Court held in para-30 as under :

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 intendment, 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 lead 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 sub-serves the real warrant of the provision. Thus analysed, we are of the view that the decision in *Sagar Pandurang Dhundare v. Keshav Asha Patil* (2018) 1 SCC 340 does not lay down the correct position of law and it is, accordingly, overruled.

4. In my view, therefore no case is made out for interference by this Court in the impugned order. Both the writ petitions are accordingly rejected. Pending Interim Applications therein, if any do not survive. The same also stand disposed of.

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SANDEEP V. MARNE, J.