

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9386 OF 2022**

Abasaheb Anandrao Tambe
Age 38 yers, Occu – Agriculture,
Residing at – Pimple Jagtap, Tal Shirur,
Dist. - Pune 412208 ... Petitioner

versus

1. Kunal Arun Bendbhar,
Age 26 years, Occu. Agriculture,
Residing at – Pimple Jagtap,
Tal Shirur, Dist. Pune 412208
2. The District Collector,
at Pune, having office at
District Collector Office at Pune ... Respondents

Mr. Sagar Joshi, for Petitioner.

Mr. Sanjiv Sawant with Mr. Abhishek Deshmukh, Mr. Malhar Bageshwar, for
Respondent No.1.

Mrs. V.S.Nimbalkar, AGP for Respondent No.2.

CORAM : N.J.JAMADAR, J.

RESERVED ON : 20 APRIL 2023

PRONOUNCED ON : 5 JUNE 2023

JUDGMENT :

1. This Petition under Article 227 of the Constitution of India assails the
legality, propriety and correctness of the judgment and order dated 23 June 2022
passed by the Additional Divisional Commissioner, Pune Division, Pune in Appeal
No.VP/Pune-20/2021 under Section 16(2) of the Maharashtra Village Panchayats Act,

1959 (the Act, 1959), whereby the appeal preferred by the Respondent No.1 herein against the judgment and order dated 1 December 2021 in Dispute Application No.29 of 2021 passed by the District Collector, Pune, disqualifying the Respondent No.1 under Section 14(1) (j-3) of the Act, came to be allowed by setting aside the said order.

2. Shorn of unnecessary details, the background facts leading to this Appeal can be stated as under :

2.1 The Petitioner is the applicant in Dispute Application No.29 of 2021. In the month of January 2021, general elections to Village Panchayats including Village Pimple – Jagtap, Tal. Shirur, Dist. Pune, were held. Respondent No.1 was elected as a member of Panchayat from Ward No.2.

2.2 The Petitioner being the resident of Village Pimple-Jagtap and also a voter at the said election, preferred Dispute Application No.29 of 2021 before the District Collector, Pune – Respondent No.2, alleging that the Respondent No.1 had incurred disqualification to be a member of the Village Panchayat under Section 14(1) (j-3) of the Act, as the father of the Petitioner had committed encroachment over the gairan land bearing Gat No.420 Hissa No.1 and erected an unauthorized construction admeasuring 32 x 29 ft. The Respondent No.1 was in the occupation and enjoyment of the encroached portion of the government land.

2.3 Respondent No.1 resisted the application. Respondent No.1, inter alia, contended that the Respondent No.1 did not hold any property in Village Pimple -

Jagtap. Nor committed any encroachment over any government land/public property. Respondent No.1 has been residing separately from his father Arun Bendbhar since the year 2015. Reliance was sought to be placed on a ration card in the name of Arun Bendbhar, which shows that the Respondent No.1 is not a member of the former's family, and the fact that the Respondent No.1 had obtained an independent gas connection.

2.4 An effort was also made to question the factum of encroachment, on the ground that the gairan land came to be allotted to the father of Respondent No.1 for poultry farming pursuant to a Resolution in the meeting of the Village Panchayat dated 28 December 1989 as the father of the Respondent No.1 was then unemployed. Questioning the motive of the Petitioner to file Dispute Application, the Respondent No.1 had prayed for the rejection thereof.

2.5 The District Collector, Pune, after appraisal of the rival contentions, the report submitted by the Circle Officer dated 5 June 2021, post physical inspection, and the copy of the assessment list in respect of property No.1241, arrived at a conclusion that the father of Respondent No.1 had committed an encroachment over the gairan land bearing Gat No.420/1. Applying the ratio in the case of **Janabai V/s. Additional Commissioner and Ors.**¹ the District Collector returned a finding that the Respondent No.1 incurred disqualification under Section 14(1)(j-3) of the Act.

1 (2018) 18 SCC 196

2.6 Being aggrieved, the Respondent No.1 preferred an appeal under Section 16(2) of the Act, 1959. By the impugned order dated 23 June 2022, the Additional Divisional Commissioner, Pune was persuaded to allow the Appeal holding that it could not be established beyond doubt that the Respondent No.1 was residing together with his father and continued to occupy the encroached property. The facts that on 16 November 2020, the name of the Respondent No.1 came to be deleted from the ration card in the name of Arun Bendbhar. Respondent No.1 had obtained gas connection 4 to 5 years prior to the elections; address of Respondent No.1 on the Aadhar Card No.8060 8583 7437 was different than the allegedly encroached property and the Assessment List No.770 did not show the name of Respondent No.1 as one of the occupants, were cumulatively held to justify an inference that the Respondent No.1 was entitled to benefit of doubt on the score that he was not in the occupation of the encroached property. The Additional Divisional Commissioner was also of the view that the land beneath the unauthorizedly constructed structure was allotted to Arun Bendbhar under a Resolution passed by the Village Panchayat on 28 December 1989 to run a poultry farm and, therefore, the occupation of Arun Bendbhar cannot be termed as encroachment. Holding thus, the Additional Divisional Commissioner set aside the order of disqualification passed by the District Collector, Pune.

2.8 Being aggrieved, the Petitioner – Dispute Applicant, has invoked the writ jurisdiction of this Court.

3. I have heard Mr. Sagar Joshi, learned Counsel for the Petitioner, Mr. Sanjiv Sawant, learned Counsel for Respondent No.1 and Mrs. Nimbalkar, learned AGP for Respondent No.2 at some length. Learned Counsel for the parties took the court through the pleadings and the documents on record, including the reasons which weighed with the authorities below.

4. Mr. Joshi strenuously submitted that the Additional Divisional Commissioner was not at all justified in interfering with the well-reasoned order passed by the District Collector, Pune, explicitly keeping in view the legislative object in prescribing the disqualification. The finding of fact arrived by the District Collector that Arun Bendbhar, father of Respondent No.1, had committed encroachment over the gairan land, being based on material on record, could not have been upturned by ascribing wholly unsustainable reasons. Mr. Joshi submitted that none of the reasons ascribed by the Additional Divisional Commissioner sustain a finding that the Respondent No.1 had not incurred disqualification. In the process, according to Mr. Joshi, the Additional Divisional Commissioner completely lost sight of the legislative object in prescribing disqualification which has been expounded in a number of judgments including the judgment of the Supreme Court in the case of **Janabai (supra)**. In the light of the legislative object, the provision warrants a purposive interpretation which the Additional Divisional Commissioner failed to appreciate, submitted Mr. Joshi.

5. Per contra, Mr. Sawant stoutly supported the impugned order. It was urged with tenacity that the fact that the Respondent No.1 had not been residing in the allegedly encroached property since long is evidenced by documents of unimpeachable character. According to Mr. Sawant, what is of material significance is continued occupation of the encroached property. In the case at hand, even if the case of the Petitioner is taken at par, yet it cannot be said that the Respondent No.1 occupies and enjoys the encroached property and, thus, the Respondent No.1 cannot be visited with the drastic action of disqualification, submitted Mr. Sawant. The Additional Divisional Commissioner, according to Mr. Sawant, correctly appreciated the said fact and such finding on facts is not amenable to interference in exercise of the writ jurisdiction, urged Mr. Sawant.

6. To begin with, the legislative object in prescribing the disqualification, as discernible from the provisions contained in Section 14(1)(j-3) and Section 53 of the Act, 1959, deserves to be noted. Under Section 14(1)(j-3) of the Act, no person shall be a member of a Panchayat or continue as such who has encroached upon the government land or public property. The essence of disqualification is in encroachment over the government land or public property. As a member of the Village Panchayat, a person elected thereto is statutorily enjoined to perform duties cast under the Act, 1959. One of the duties of the Village Panchayat is to remove the obstruction and encroachment over the public streets, open sites or public property

etc. Under Section 53 of the Act, elaborate provisions have been made for removal of obstructions and encroachments over the public property. If the Panchayat fails to take action, the Collector is empowered to take requisite action *suo motu* or on an application in this behalf made to him.

7. The above object of prescribing disqualification for a person who commits encroachment over the government land or public property is to obviate the situation of conflict of duty and interest which surely occurs where a person who is statutorily enjoined to take action under the provisions of the Act, 1959, himself happens to be a privy to such an unauthorized act either directly or indirectly. The scope of term 'person' appearing in Section 14(1) of the Act, 1959, is, thus, expanded to include the legal representative or family member of the person whose qualification to get elected or continue to be a member of the Village Panchayat on account of alleged encroachment over the government land or public property is put in contest.

8. Keeping in view the aforesaid legislative object, reverting to the facts of the case, it is necessary to first consider the factum of encroachment. A report of the Circle Officer, Koregaon-Bhima, makes it abundantly clear that inspection of the subject premises on 30 June 2021 revealed that the house of Arun Bendbhar, father of Respondent No.1, was situated in gairan land bearing Gat No.420/1. The said property was shown at Sr. No.1241 of the Assessment List (Form VIII) as a gairan land. It was described as a RCC structure admeasuring 32 x 29 sq.ft. An

endorsement is made in the assessment list to the effect that the encroachment and unauthorized construction entry in the Assessment List was only for the purpose of taxation.

9. In the face of the aforesaid record, it could not be controverted and no endeavour, in fact, has seriously been made to controvert, that the house of Arun Bendbhar is situated in a gairan land. A faint attempt was made, which found favour with the Additional Divisional Commissioner that the gairan land was duly allotted to Arun Bendbhar, who was then an unemployed person. This contention is required to be stated to be repelled for reasons more than one. Firstly, on facts, it was found that RCC structure admeasuring 32 x 29 sq.ft. has been constructed over the gairan land. This dismantles the case that the gairan land was allotted for poultry farming. Secondly, and more importantly, the Village Panchayat has no authority in law to allot the gairan land. The Supreme Court has in the case of **Jagpal Singh and Ors. V/s. State of Punjab and Ors.**² held as under :

“23. Before parting with this case, we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal / unauthorized occupants of the Gram Sabha/Gram Panchayat/poramboke/shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose, the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the governments. The said scheme should provide for the

² (2011) 11 SCC 396

speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some government notification to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.”

10. The Additional Divisional Commissioner, thus, recorded an erroneous finding that since the gairan land was allotted to Arun Bendbhar pursuant to a resolution passed in the meeting of the Village Panchayat on 28 December 1989, erection of structure thereon did not constitute an encroachment. The Additional Divisional Commissioner squarely lost sight of the legislative intent.

11. Once a finding of fact recorded by the District Collector that the father of the Respondent No.1 had committed encroachment over the gairan land, was found to be impeccable, the question that wrenches to the fore is whether the Respondent No.1 entailed disqualification on that count. It seems that the District Collector proceeded on the premise that since the Respondent No.1 was found to have committed encroachment over the government land, in view of the decision of the Supreme Court in the case of **Janabai (supra)**, the Respondent No.1 must be visited with the consequences that emanate from the said encroachment. The Additional Divisional Commissioner differed, taking the view that the Respondent No.1 could

show that the Respondent No.1 had been residing separately from Arun Bendbhar. Whether this approach of the Additional Divisional Commissioner is justifiable ?

12. For exploring an answer, it may be apposite to note the provisions contained in Section 53 of the Act, 1959. Sub-Section (1) of Section 53, inter alia, prescribes penalty for building a structure, within the limits of gaathan area of the village, in or over any public street or place, not being private property. Under sub-Section (2), Village Panchayat shall have the power to remove any obstruction or encroachment in any open site, not being private property, whether such site is vested in the panchayat or not. However, if the site is vested in the government, the permission of the collector or any officer authorized by him in this behalf shall have first been obtained.

13. A conjoint reading of sub-sections (1) and (2) unmistakably underscores the legislative object of proscribing the obstruction or encroachment in or over the property which is not a private property. The manner in which the power to remove the obstruction or encroachment is to be exercised by the Panchayat is, in a sense, a matter of regulatory significance. The primary legislative intendment is to prevent and remove the encroachment over public property. Thus, the expression “not being private property” finds place both in sub-sections (1) and (2). This brings to the fore the legislative intendment that the encroachment over the public property by a person who is either elected or desires to be elected is not be tolerated. Thus, the essential

distinction between the public property and private property.

14. In the case of **Janabai (supra)**, a three Judge Bench of the Supreme Court expounded the legislative object in prescribing the disqualification after adverting to the relevant provisions of the Act, 1959 and the previous pronouncements. Relevant observations in paragraphs 26 and 29 read as under :

“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.

29. 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 unauthorized 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 subserves the real warrant of the provision. Thus analysed, we are of the view that the decision in Sagar Pandurang Dhundare V/s. Keshav Aaba Patil and Ors.³ does not lay down the correct position of law and it is, accordingly, overruled.”

(emphasis supplied)

15. In the aforesaid case, the Supreme Court has enunciated the necessity of resorting to the purposive interpretation so that the word ‘person’ is not constructed in a constricted sense to include only the encroacher or the person who commits encroachment for the first time. The Supreme Court adverted to the conflict of interest which would arise if such a constricted meaning is given to the word ‘person’ as an elected representative, in such a situation, such person would not be in a position to discharge the duty by protecting the public properties.

16. Mr. Sawant would urge that there can be no quarrel with the proposition that Section 14(1)(j-3) warrants a purposive interpretation. Nonetheless, according to Mr. Sawant, the primary fact that the person should share the encroached property or continue to occupy or derive the benefit of, the encroached property must first be established. Strong reliance was placed on the observations of the Supreme Court in paragraph 29 to the effect that “the concept of purposive interpretation would impel

³ AIR 2017 SC 5420

us to hold that when a person shares the 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”.

17. Mr. Sawant would urge that in the facts of the case at hand, there is material to indicate that the Respondent No.1 had not at all shared the encroached property. From this standpoint, according to Mr. Sawant, the Additional Divisional Commissioner was within his rights in allowing the Appeal.

18. At this stage, it may be necessary to immediately notice the decision of this Court in the case of **Devidas s/o Matiramji Surwade V/s. Additional Commissioner, Amaravati and Ors.**⁴ which was expressly approved by the Supreme Court in the case of **Janabai (supra)**. The facts of **Devidas (supra)** have an element of resemblance to the facts of the case at hand. In the said case, a submission was sought to be canvassed on behalf of the Petitioner therein that the alleged encroachment was by the father of the Petitioner and that too wayback in the year 1966, and, thus, the Petitioner therein could not have been visited with the disqualification under Section 14(1)(j-1). 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

4 2017 (1) Mh.L.J. 102

regarding encroachment on the government properties. The Statement of Object 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 disqualification and thus removed.

6. We find that there is a definite object in making the said amendment to the provisions of disqualification and the object is tht 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."

19. This Court has, in terms, held that the term 'person' in Section 14(1)(j-3) has to be interpreted to mean the legal heirs of such person who have encroached or continued to occupy the government land or government property, his agent, assignee or transferee, as the case may be. In this case, the endeavour on the part of Respondent No.1 has been to show that he had not been in the enjoyment of the encroached property. He has been residing separately from Arun Bendbhar, his father.

20. I am conscious that, in exercise of writ jurisdiction, an erroneous finding

of fact is not amenable to correction. However, if the view taken by the authority borders on perversity and in derogation of the object of the legislation, under which the order is passed, the Court would be justified in interfering with the order passed by the statutory authority.

21. It seems that the fact that the name of Respondent No.1 was deleted from the ration card of Arun Bendbhar, influenced the decision of the Additional Divisional Commissioner, Pune, substantially. The name of Respondent No.1 appeared to have been deleted on 16 December 2020, less than a month prior to the elections to the Village Panchayat. The time lag is too short for comfort.

22. Conversely, no material was placed on record to show that the Respondent No.1 had been residing separately from Arun Bendbhar and other family members, in another household. Reliance on the address furnished in the Aadhar card to show that the Respondent No.1 was residing with one of his relatives namely Mr. Dilip Bendbhar appears to be too fragile a material to bear the weight of the finding that the Respondent No.1 was residing separately from his parents and siblings. Likewise, the fact that the Respondent No.1 had obtained a separate cooking gas connection is not of determinative significance as it does not sustain a finding that the said connection was obtained in respect of a premises distinct from the house premises of Arun Bendbhar.

23. Where the disqualification is alleged on the ground of encroachment

over the government land and the said fact is fairly established, the authorities cannot be oblivious to the devices which may be adopted to wriggle out of the situation by placing reliance on documents to show that the person concerned has not been residing in the encroached property. In the absence of cogent material and documents of impeccable character, it would be hazardous to draw an inference of separate residence and mess. In such a situation the primary onus would lay on the person who desires to prove disruption in the apparent state of affairs. In the case at hand, apart from the fact that the Respondent No.1 was shown in the ration card as a member of the family of which Arun Bendbhar was the head till less than a month prior to the elections, the name of Respondent No.1 was included in the voter's list along with his family members at House No.231. Thus, there was material to show that a state of affairs continued to exist upto the date of election, and, in any event, a couple of weeks prior to the election.

24. Viewed through this prism, the documents pressed into service on behalf of the Respondent No.1 do not adequately establish that the Respondent No.1 had been residing separately from Arun Bendbhar. The Additional Divisional Commissioner was, therefore, in error in recording such a finding.

25. In any event, the element of conflict of duty and interest persists. The endeavour on the part of the Respondent No.1 to contest the factum of encroachment by his father, further renders the position of Respondent No.1 as a member of the

Village Panchayat tenuous. Such a stand manifests the practical application of the utility of providing disqualification under Section 14(1)(j-3) of the Act, 1959.

26. In my view, a person who is alleged to have incurred disqualification on account of encroachment over the government land or public property cannot successfully wriggle out of the situation by asserting that he has no concern with the encroachment by his family members or legal representatives, in all conceivable cases. Such an interpretation would give a long leash to the persons who either continue the encroachment indirectly or condone encroachment by the immediate family members and would defeat the avowed object of the legislature in prescribing disqualification on that count.

27. The upshot of aforesaid consideration is that the Additional Divisional Commissioner, Pune committed an error in interfering with the order passed by the District Collector, Pune, disqualifying the Respondent No.1 under Section 14(1)(j-3) of the Act, 1959. The Petition, therefore, deserves to be allowed.

28. Hence, the following order :

ORDER

(i) The Writ Petition stands allowed.

(ii) The impugned order dated 23 June 2022 passed by the Additional Divisional Commissioner, Pune Division, Pune, stands quashed and set aside and the order dated 1 December 2021 passed by the District Collector, Pune, in Dispute

Application No.29 of 2021 declaring that the Respondent No.1 had incurred disqualification under Section 14(1)(j-3) of the Act, 1959 stands restored.

(iii) Rule made absolute in the aforesaid terms.

(iv) No costs.

(N.J.JAMADAR, J.)

29. At this stage, Mr. Deshmukh, learned Counsel for Residing No.1 seeks stay to the execution and operation of this order.

30. Since the Appellate Authority had decided in favour of the Respondent No.1 and the said order is set aside by this order, the prayer seeking stay of this order seems reasonable.

31. The execution, operation and implementation of this order is stayed for a period of four weeks.

(N.J.JAMADAR, J.)