



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 WRIT PETITION NO.1049 OF 2024

PALLAVI SANDIP THORAT

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. V.D. Hon, Senior Counsel i/b Mr. V.P. Raje, Advocate for petitioner

Mr. S.N. Kendre, AGP for respondent Nos.1 to 3

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CORAM : S.G. CHAPALGAONKAR, J.

DATE : 16th JULY, 2024

ORDER :

1 Petitioner impugns order dated 19.12.2022 passed by District Collector, Dhule in Grampanchayat Dispute Application No.28/2021, which has been confirmed by Additional Commissioner, Nashik Division, Nashik in Appeal No.190/2022 vide order dated 05.09.2023.

2 Petitioner was elected as Member of Village Panchayat, Betawad for the period from 2020 to 2024. Petitioner's mother-in-law was possessor of property bearing No.2129 situated at village Betawad. Respondent No.4 filed a Dispute Application No.28/2021 before respondent No.3 under

provisions of Section 43 (8) and (3) of Maharashtra Village Panchayats Act, 1959 alleging that petitioner is beneficiary of encroachment made by his mother-in-law. In pursuance of such dispute, Collector caused inquiry in to allegations through Block Development Officer. Report of inquiry suggests that petitioner's mother-in-law occupies property bearing Nos.2110, 2120 and 2129. All these properties are part and parcel of Government lands. Aforesaid factual position is not controverted by petitioner by leading any cogent evidence. Consequently, learned Collector concluded that mother-in-law of petitioner has encroached upon Government land and petitioner is beneficiary of such encroachment. Accordingly, disqualification order dated 19.12.2022 is passed against petitioner. Petitioner approached Divisional Commissioner, Nashik Division, Nashik in Appeal No.190/2022. However, appeal is also dismissed concurring findings of District Collector.

3 Mr. V.D. Hon, learned Senior Counsel appearing for petitioner submits that in fact, there were many encroachments on Government land and such encroachments have been regularized by Village Panchayat, however, petitioner's mother-in-law is singled out.

4 It is true that proposal for regularization of encroachment of petitioner's mother-in-law was placed in the meeting of Grampanchayat, however, with observation that such encroachment is made after 2011,

Grampanchayat refused to consider her case for regularization. Therefore, fact remains that construction of petitioner's mother-in-law is an encroachment on Government land.

5 If that is the scenario, then disqualification under Section 14 (J-3) of Maharashtra Village Panchayats Act would attract. At this stage, reference can be given to certain observations of Hon'ble Supreme Court in case of **Janabai vs. Additional Commissioner** [(2018) 18 SCC 196], particularly paragraph No.30, which reads thus -

“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 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 (supra) does not lay down the correct position of law and it is, accordingly, overruled.”

6 Considering law espoused by Hon’ble Supreme Court and fact that both authorities below have applied mind to the aforesaid facts and concurrently held that petitioner incurred the disqualification. There is no merit in writ petition. Hence, writ petition stands dismissed.

(S.G. CHAPALGAONKAR)
JUDGE

agd