

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5873 OF 2023

1. Smt. Satyabhama Shrihari Bhosle,
Age: 39 years, Occu.: Agriculture,
2. Shri Khobraji Ganpati Bhumre,
Age: 39 years, Occu.: Agriculture,
3. Smt. Rukmanbai Khobraji Bhumre,
Age: 39 years, Occu.: Agriculture,
4. Smt. Sunita Kishan Bhosle,
Age: 39 years, Occu. Household,

All are R/o Muli, Tq. Gangakhed,
Dist. Parbhani.

..Petitioners

VERSUS

1. Shri Mahadu Dattarao Bhosle,
2. Shri Ramesh Chandrabhan Pawar,
3. Jankiram Giridhar Pawar,
4. Shri Narayan Kamaji Bhosle,

All Age: Major, Occu.: Agriculture/Household,
R/o Muli, Tq. Gangakhed,
Dist. Parbhani

5. The Ld. Collector Parbhani,
Dist. Parbhani.
6. The Additional Commissioner Aurangabad,
Division Aurangabad.

..Respondents

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Advocate for the Petitioners : Mr. V.D. Salunke

AGP for Respondent/State : Mrs. R.R. Tandale

Advocate for Respondent Nos.1, 3 & 4 : Mr. Sachin S. Deshmukh h/f
Mr. S.S. Jangada

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CORAM : S.G. MEHARE, J.

RESERVED ON : FEBRUARY 02, 2024

PRONOUNCED ON : APRIL 10, 2024

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The petitioners/village panchayat members aggrieved by the judgment and order of the Additional Commissioner, passed in Case No.21/VP/Appeal No.1/CR-83 dated 25.05.2023 have preferred this writ petition against their disqualification for encroaching upon the Village Panchayat land.

3. Respondent no.1 had filed a complaint to the Collector against all the petitioners, alleging that the petitioners have encroached upon the government land. The spot inspection reports from the Village Development Officer were called. Accordingly, spot inspection panchnamas were drawn. The Village Development Officer reported that the name of the petitioner, Satyabhama was not found in the record of right. He did not find that she had committed encroachment or constructed the house on the encroached land. A similar opinion was given about the remaining petitioners. He has also noted that the Village Panchayat does not maintain the register of encroachment. The names of the petitioners were not shown on the website for regularizing their encroachment. However, Satyabhama's father-in-

law was the occupant of the government land. He also opined that the name of the grandfather of petitioner Khobraji found in Namuna 8 Register at Serial No.514 and he was occupying the government land. However, for the years 2020-2021 to 2023-24, the name of one Gulab Rehman was shown. In the case of Rukminibai, the name of her father-in-law was found in Namuna 8 Register as the occupant of the land owned by the Village Panchayat. However, for the years 2020-21 to 2023-24, the entry was changed and shown in the name of Gulab Rehman. Similarly, in the case of Sunita, the name of her father-in-law was shown in Namuna 8 Register as an occupant of the land of the Village Panchayat from 2001-02, and for the years 2020-21 to 2023-2024, the name of Rustum Bapurao Bhosle was taken. In a scheme of regularising the encroachment, the father-in-law's name was shown. However, he has opined that there is no other entry for the encroachment.

4. Based upon the evidence, the Collector declared the petitioners disqualified, and the Divisional Commissioner upheld his judgment.

5. Learned counsel Mr. Salunke for the petitioners has vehemently argued that the petitioners have no concern with the so-called encroachment by their relatives. The father-in-law of petitioner No.1 died long back. The Village Panchayat never took action against her father-in-law for encroachment. Referring to Namuna 8 for the

years 2021 to 2024, he submitted that the property number in possession of petitioner Satyabhama is different. She was never residing with her father-in-law. There were no allegations that she was residing in the encroached area. He has referred to the entries changed in the name of Gulab Rehman about the allegations against the petitioner Khobraji and the change of name of Rustum Bhosle. He would submit that the proposal of the father-in-law of Sunita for regularization was taken on the register. Therefore, it cannot be said that he is the encroacher. Since he was not the encroacher, she could not be said to be the encroacher on the Village Panchayat land. None of the petitioners are residing on the encroached land. He referred to the order of this Court in Writ Petition No.2896 of 2022, decided on 28.03.2023, and argued that the directions were issued to the Commissioner to decide the matter on the basis of the material available on record, including the additional evidence. However, he did not consider the documents placed by the petitioners. The Commissioner has recorded the finding against the directions of the High Court. He incorrectly shifted the burden on the petitioners to prove they had encroached upon the Village Panchayat land. He also went on arguing that the Commissioner has committed contempt for this Court, flouting the directions of this Court in the above writ petition. The facts of the case of Janabai Vs. Additional Commissioner and Others, (2018) 18 SCC 196, which has been relied

upon by the Authorities, were that the persons against whom the cases were filed were residing with the encroachers. In the case at hand, there is no evidence that the petitioners were residing with the so-called encroachers. In the case of Khobraji and Rukminibai, none of them were the encroachers. However, a permanent agreement of sale was executed in favour of one Gulab Rehman, and it was not challenged anywhere. Therefore, it cannot be said that they have encroached upon the government's land. He prayed to allow the petition.

6. Learned counsel for respondent nos.1, 3 and 4 Mr. Deshmukh, has vehemently argued that the petitioners have admitted the encroachment of their relatives. The relatives of the petitioners have sold the government land to one Gulab Rehman. It is an illegal transfer with the aim of defeating the complainant. The government land cannot be transferred on a stamp paper. In Janabai (supra), the Hon'ble Supreme Court held that as per the scheme of the Village Panchayat Act, elected members are duty-bound to remove the obstruction or encroachment of public land or government land and initiate prosecution therefor. It has been further observed that a member being duty-bound under the law to remove the encroachment if he continues to encroach public land or government land, such a situation would lead to a conflict of interest. In that case, the father-in-law of the petitioner and husband, as well as she, are

using the government-encroached land. He would submit that the petitioners are enjoying the encroached land with their relatives. They did not rebut the evidence *prima facie* produced against them. He further relied on the case of Tasleembee Akram Pathan Vs. State of Maharashtra, AIR Online 2020 Bom 2907 and argued that in the absence of any record showing separations of ration cards prior to her election, the petitioner was certainly attributed to the use of encroached premises. His arguments were that the burden was on the petitioners to prove that they were residing separately from their families and not using the encroached land. He further relied on the case of Khimji Vidhu Vs. Premier High School, 2000 AIR SCW 2333. In this case, the Hon'ble Apex Court laid down the law that jurisdiction under Article 227 should be exercised to correct errors of jurisdiction and the like but not to upset pure findings of fact, which falls in the domain of the Appellate Court only. Relying on this judgment, he wanted to submit that there are two fact findings. Therefore, under Article 227, this Court could not upset pure findings of fact, and there were no errors of jurisdiction. Therefore, the petition stands dismissed.

7. In reply, learned counsel for the petitioners would submit that the Commissioner did not appreciate the facts correctly. Hence, this Court can re-appreciate the facts. No objections were raised against the petitioners when they filed their nominations. Since the

families of Khobraji and Rukminibai have disposed of that property, they cannot be said to be encroachers. The position on the day of election should be considered and not subsequent thereafter. The election was held in 2020, and before that, the so-called property was disposed of. Respondent No.1 was a member of the Village Panchayat for five years. He never took action against the petitioners to remove the encroachment. He submits that for non-action of removal of encroachment, Section 39 would apply and not Section 14. The Village Panchayat had taken the resolutions for encroachment of the government land.

8. The petitioners have been disqualified under Section 14 (J-3) for encroachment. The petitioners have no serious dispute about their relatives' occupation of the Village Panchayat land. However, they have a case that the burden was on the complainant to prove that they were using the encroached land by residing with their families. The landmark judgment on this point is the case of Janabai (supra). Admittedly, the record of the Village Panchayat i.e. Namuna 8, does not disclose the names of the petitioners in the register of properties. However, the records reveal that their relatives were using and enjoying the government land.

9. The case of Janabai has been referred to in which the Hon'ble Apex Court has laid down the law that 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.

10. The Village Development Officer drew the spot panchnama. It is signed by the relatives of the petitioners and also by the petitioner Khobraji. Jointness is a presumption under Hindu law. Unless a separation is specifically proved, it is presumed that the family members are residing jointly. The petitioner, Satyabhama filed the Namuna 8 of property No.184 in her name. She has a case that her father-in-law and husband both died. Since the beginning, she has had a separate ration card from the lifetime of her father-in-law. He had filed many other documents. However, the impugned order does not reveal a discussion on such evidence, nor were there findings on this fact. The Namuna 8 of House No.184 and other documents like her Election Card, Pan Card, and voters list. Similar were the documents filed for the remaining petitioners. The serious arguments of the learned counsel for the petitioners were that though this Court, by order, directed to consider the additional evidence, the Commissioner did not whisper about those documents and passed a

mechanical order. A bunch of documents were filed to rebut the allegations of encroachment and residence with their family members,

11. The Commissioner had to discuss the documents and take an appropriate decision. He seems to have considered not a single document. There are no findings on the material facts. He has observed in para 9 of his judgment that the petitioners have not filed any documents except Namuna 8 to prove that in which house they are residing. However, the other relevant documents showing different numbers of the house properties and addresses in the documents were not considered. The judgment of the Additional Commissioner appears incomplete and does not consider the documents on record. Therefore, the following order :

ORDER

- (i) The petition is allowed.
- (ii) The impugned judgment and order of the Additional Commissioner, Aurangabad dated 25.05.2023 in Case No.21/VP/Appeal No.1/CR-83 is quashed and set aside, and once again the matter is remitted to him to decide the matter on merit considering all documents placed on record within two months from the date of receipt of this order.
- (iii) Both parties are directed to appear before the Additional Commissioner, Aurangabad on 22.04.2024.

- (iv) No order as to costs.
- (v) Rule is made absolute in the above terms.

(S.G. MEHARE, J.)