



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13196 OF 2023

SANGITABAI GANGADHAR NARWADE

VERSUS

THE ADDITIONAL DIVISIONAL COMMISSIONER AND
OTHERS

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Advocate for the Petitioner : Mr. U.B Deshmukh

AGP for Respondents 1,2 : Mr. N D Raje

Advocate for Respondent no.5 : Mr. S.B. Ghute

Advocate for Respondent 6 : Mr. K.M. Nagarkar

Respondent Nos.3, 4 served.

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : 02nd August, 2024

ORDER :-

1. The petitioner impugns the order dated 5.4.2023 passed by the Collector, Hingoli in dispute No.2021/G.PN./Kavi-836, which is confirmed vide order dated 22.08.2023, passed by the Additional Divisional Commissioner, Aurangabad in File No.2023/GP/Appeal-2/CR-51, disqualifying the petitioner under section 14 (1) (j-3) read with 16 of the Maharashtra Village Panchayats Act, 1958 (for short MVP Act).

2. Petitioner contends that he has been elected as Member of Grampanchayat in the month of June, 2021. Respondent No.4 moved a dispute before District

Collector-Respondent no.2 seeking disqualification of the petitioner as Member of the Panchayat, alleging that petitioner has encroached upon public property. In pursuance to the dispute, Block Development Officer - Respondent no.5 caused inquiry and made a spot panchnama and submitted report of inquiry to respondent no.2 – District Collector, who pleased to disqualify the petitioner being the Member of the Panchayat under section 14 (1) (j-3) of the MVP Act.

3. Mr. U.B. Deshmukh, learned advocate appearing for petitioner vehemently submits that Petitioner has been victimized for political reasons. In absence of cogent evidence as regards to encroachment on public property, Respondent nos.1 and 2 recorded perverse findings. There is nothing to indicate encroachment on the public property. The son of Petitioner was allotted house under Gharkul Scheme of Government. The scheme was implemented on the basis of Grampanchayat Resolution. Apart from son of Petitioner, many other beneficiaries are granted houses. Petitioner resides separately from her son and no way concerned with encroachment, as alleged. In support of his contentions, Mr. Deshmukh relies upon Judgment of this Court in case of *Shri Mallesh Shivan Shetty Vs. The Commissioner, Kalyan Dombivali Municipal and others* in Writ Petition no.3707 of 2016 (dated 6.4.2016) and the judgment in

case of **Anita Laxman Junghare Vs. Additional Commissioner, Amravati Division and others in Writ Petition No.1660 of 2017** dated 21.9.2017 (at Nagpur).

4. Learned advocates appearing for Respondents supports the impugned orders.

5. Having considered the submissions advanced and on perusal of the document tendered alongwith writ petition, it cannot be disputed that Petitioner has been elected as Member of the Village Panchayat. In pursuance to a dispute filed by respondent no.4, a report of inquiry was submitted by the B.D.O. dated 14.02.2022 which states that land gat no.332 is part of the Government land. However, form no.8 shows 1089 sq. feet land is in enjoyment and possession of Sandip Gangadhar Narvade, who is son of the petitioner. There is no serious dispute as regards to the fact that Sandip Gangadhar Narvade i.e. son of the petitioner has been allotted a house under 'Gharkul Scheme' and construction has been raised on Government land. Therefore, encroachment at the hands of family member of the petitioner appears to be duly established which attracts disqualification under section 14 (1) (j-3) of the MVP Act.

6. Second contention raised by the petitioner is that, son is independent of her and encroachment made by son cannot attribute disqualification against the petitioner.

The petitioner's contention cannot be accepted considering the provision under section 14 (1)(j-3), encroachment by family member is also sufficient to attract disqualification.

7. In this context, it would be apposite to refer the observations of the Supreme Court in case of *Janabai Vs. Additional Commissioner reported in (2018) 18 SCC 196*. The Supreme Court, while disagreeing with the view taken by this Court in case of Sagar Pandurang Dhundare observed in paragraph no.29 as under :-

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 intent, 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 analyzed, 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.

8. In the present case, petitioner's son was found in occupation of the property, which is a part of Gayran land. Except petitioner's contention that her son is separate, no material is placed on record in support of such contention. A copy of Ration Card is placed on record to show that name of petitioner's son has been scored down from the ration card which is in the name of petitioner. However, on specific query as to when such change is brought on record, learned advocate appearing for the petitioner could not furnish the particulars. Both the authorities have concurrently recorded finding that encroachment is carried by family member of petitioner.

9. At this stage, Mr. Deshmukh learned advocate appearing for the petitioner seeks to rely upon the judgment in case of *Sau. Anita Laxman Junghare Vs. Additional Commissioner, Amravati and others* dated 21.9.2017 in writ petition no.1660 of 2017 and judgment in case of *Shri Mallesh Shivan Shetty Vs. The Commissioner, Kalyan Dombivali Municipal and others reported in 2106 3 Mh.L.J. 901*. So far as observations of this court in case of Anita Junghare (supra) is concerned, those would not be helpful for petitioner in light of the law laid down by the Supreme Court in case of *Janabai (supra)*. So far as the observations of this Court in case of Shri Mallesh (supra) is concerned, it can be observed that

this Court was dealing with the provisions of the Maharashtra Municipal Corporation Act and disqualification of the Councilor in terms of section 10 (1) (d). Disqualification as contemplated under section 10 (1) (d) of the Maharashtra Municipal Corporation Act relates to unauthorized structure violating provisions of the said Act or MRTP Act, 1966.

10. In the present case, encroachment on the Government Land and consequential disqualification under section 14 (1) (j-3) is the subject matter. The language and purport of both the sections is completely different as interpreted by the Supreme Court of India in case of Janabai.

11. In that view of the matter, there is no merit in this writ petition. Writ Petition stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

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