

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1340 OF 2023

Harku S/o. Kisan Magar,
Age: 49 years, Agri.,
R/o. Waghunde Kh. Tq. Parner,
Dist. Ahmednagar.

...Petitioner

VERSUS

1. The Divisional Commissioner,
Nashik Division Nashik
2. The Collector, Ahmednagar,
Tq. & Dist. Ahmednagar.
3. Grampanchayat Waghunde Kh.,
Tq. Parner, Dist. Ahmednagar
Through the Gramsevak
Grampanchayat Waghunde Kh.
4. Sandeep S/o. Sukhdeo Magar,
Age: 32 years, Occ.: Agri.,
R/o. Waghunde Kh., Tq. Parner,
Dist. Ahmednagar.

...Respondents

...
Mr. Amol K. Gawali, Advocate for Petitioner.
Mrs. M.L. Sangit, AGP for Respondent Nos.1 & 2.
Mr. Tushar M. Tandale, Advocate for Respondent No. 3.
Mr. Yuvraj Kakade h/f Mr. N.V. Gaware, Advocate for Respondent No.4.

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CORAM : S.G. MEHARE, J.
RESERVED ON : 04.01.2024
PRONOUNCED ON : 13.02.2024

JUDGMENT :-

1. Heard the respective counsels at length.

2. The petitioner has impugned the order of the Collector, Ahmednagar, passed in Grampanchayat Dispute Application No.129 of 2021 dated 24.05.2022 and the order of the Divisional Commissioner, Nashik Division, Nashik, passed in Grampanchayat Dispute Appeal No.82 of 2022 dated 15.11.2022.

3. The facts of the case in brief are that the petitioner has filed an application to the District Collector, Ahmednagar, under Section 14(g) of the Maharashtra Village Panchayats Act (for short 'Panchayats Act'). It has been averred in the application that respondent no.2 has been elected as a member of the Village Panchayat for a year period of 2021-2025. The petitioner is a resident of Village Waghunde (Khurd) and a voter of the Village Panchayat. Respondent No.2 has been a member of the panchayat continuously since 2015. He was also the Sarpanch of the Village Panchayat. The Collector had vested the land Gut No.281 to the Village Panchayat on certain terms and conditions. The said land was to be used only for cemetery, plantation and beautification. The said land could not be transferred without the permission of the Collector. Violation of any of the conditions of vesting the land, the vesting would be cancelled was the condition. Respondent No.2 was aware of the condition of vesting of the said land. However, under his power and influence as a Sarpanch, 30 R of land out of the said land was leased to Shri Bhairavnath Vidya Prasarak Sanstha. He was the

President and Trustee of the said society. He, under his influence and power as a Sarpanch, illegally leased out that land to the said society. He, being the President and Trustee of the said society, is the beneficiary of the allotment of the Government land. Hence, he is liable to be disqualified under Section 14(1)(g) of the Panchayats Act. He also mutated the said piece of land in the Village Panchayat record (Namuna 8). He has an indirect interest in the said society and has received the benefits.

4. Respondent No.2 admitted that he was the Chairman of Shri Bhairavnath Vidya Prasarak Sanstha since 2017. It is not in dispute that the piece of land from the said field was leased to the said society, of which respondent No.2 was the President as well as the Trustee. It has been explained that the said society was running a school in the rented premises. However, the society could not bear the expenses; hence, they resolved to close down the school. There was no school in the village or the nearby place. Therefore, the villagers came together and decided that respondent no.2 would run the society. Since there was no school in the village and there was great inconvenience to the children of the village for education, the said piece of land was granted to the society. A few rooms were constructed on the said land from the public funds and contributions. He submitted that he is the President and Trustee of the society to which the said piece of land was leased. So, directly or indirectly, he is

not the beneficiary. It is a public charity; therefore, he has no reason to receive any benefits from the school or from the said society. Therefore, he could not be disqualified under Section 14(1)(g) of the Panchayats Act.

5. The Collector, considering the facts, held that the applicant could not prove that respondent No.2 has directly or indirectly or through any partner getting benefit from the land leased to the said society. He rejected the petition.

6. The Additional Commissioner, Nashik Division, has reiterated the facts of the case and maintained the order of the Collector.

7. Learned counsel for the petitioner has vehemently argued that respondent No.2 has misused his post as Sarpanch. In violation of the terms of vesting the land, he, without jurisdiction, leased the said piece of land to the society of which he is the President and Trustee. The Village Panchayat had no right to lease the land for 99 years. The earlier body of the said society transferred it to the respondent in exchange for the allotment of the disputed portion of land. This way, he has gained the benefits. There are various benefits from the educational trust. Therefore, he is the beneficiary of his act to lease the land to the said society. He referred to an agreement between him and one Shashikant Mahadeo Shirke dated 30.10.2017 to support his argument that the earlier management had transferred their school to

respondent No.2. He referred to a letter dated 11.05.2022 of the Deputy Commissioner Revenue and argued that an application for regularization of the encroachment of the school was moved. So, respondent No.2 admitted that he had encroached upon the government land as a Trustee. Therefore, not entitled to continue as a member of this Village Panchayat. Respondent No.2 took another resolution regarding the said encroachment in the Village Panchayat record. Prima facie material was available before both authorities, indicating that the respondent was the indirect beneficiary of the trust to which he had illegally leased the land for 99 years. However, the Authorities ignored it conveniently. He relied on the case of Sonali Gajanan Dhepe and Another Vs. Additional Divisional Commissioner and Others, 2023 SCC Online Bom 457 and Janabai Vs. Additional Commissioner and Others, (2018) 18 SCC 196.

8. Per contra, learned counsel for respondent no.2 has vehemently argued that the application was filed under Section 14(1) (g). Therefore, it could not be considered under Section 14(1) (j-3). Respondent No.2 has acted as a Trustee. He is not directly or indirectly the beneficiary of the use or enjoyment of the said land. There was no evidence of having a share or interest. The allegations do not fall under Section 14(1)(g) of the Panchayats Act. He is not in contract or partner with anybody who is doing the work by order of the panchayat or any contract with the panchayat.

9. A small question falls for consideration is whether the transfer of the Government land vested with Village Panchayat by a resolution to a public trust of which respondent No.2 is the Trustee/Chairman incurs disqualification to be a member of the Village Panchayat under Section 14 of the Panchayats Act?. The averments in the application reveal that respondent no.2 allotted the piece of land to the said society by a resolution in a monthly meeting dated 12.08.2017 and Gramsabha meeting dated 15.08.2017 for 99 years. After the resolution, he had completed his tenure. He again contested the election for a new tenure 2021-2025. There are no allegations that he has committed any act as provided under Section 14 of the said Act, which acquired disqualification during his current tenure. In the said section, there are various clauses that attract disqualification. The petitioner never had a case of encroachment on the government land. His case was simple that by allotting the said piece of land to the trust, respondent no.2 was indirectly benefited.

10. Section 14(1)(g) is reproduced for convenience as it is relevant :

[(1)] No person shall be a member of a *panchayat* and continue as such, who -

(g) has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the *panchayat* or in any contract with, by or on behalf of, or employment with or under, the *panchayat*;

11. Referring to the above provision, learned counsel for respondent no.2 has vehemently argued that he did not allot the land to the society, which was not done by the order of the panchayat. He was neither the partner nor had any share or interest in the said allotment of land. He had no contract with the panchayat in allotting the land on lease to the said society, nor the work was done for the Village panchayat. However, it appears that the Village Panchayat had passed the resolution in the meeting on 12.08.2017, of which respondent No.2 was the Chairman as a Sarpanch. For the said lease, the powers were not given to respondent No.2. Whether the Village Panchayat can lease the land for 99 years is an independent and different issue. Where any resolution is illegal, Gramsevak has to note his objections and place it before the Chief Executive Officer for a proper decision. However, in the absence of any specific denial of granting the lease for 99 years, the fact remains that the said piece of land was leased to the society of which the respondent no.2 is a Chairman.

12. The next question would be whether out of the lease agreement, which subsequently turned into a contract of lease, respondent No.2 is directly or indirectly by himself or his partner or any family member has any share or interest therein.

13. Considering the nature of the allegations, there is no dispute that the said land was leased to the society of which

respondent No.2 was the Chairman. There was nothing on record that the Government or the revenue authority has taken any action against the school for encroachment or cancelling the lease for 99 years. At the most, it can be said that the said resolution was subject to the decision of the Chief Executive Officer. In the absence of any specific denial, it could be assumed that respondent No.2, being the Sarpanch on behalf of the panchayat, leased the piece of land to the said society. However, it is not a contract of such a nature for which any return or consideration is to be paid directly to respondent No.2. If the rent is received from the lease, it would go to the Village Panchayat and not directly to the pocket of respondent no.2. Respondent No.2 is a Trustee of the said society. He may or may not be elected as a member of the Managing Committee. The acts of the trust are in the interest of the trust and not in the interest of any individual trustee. So, whatever benefits are accrued from the lease to the school would go to the trust and not to any Trustee, including respondent no.2.

14. Considering the provisions of Section 14(1)(g) in the context of the agreement of lease for 99 years, this Court is of the view that it is not a contract of a type contemplated under said clause (g). It was not a direct contract between respondent No.2 and the Village Panchayat. At the most, it may be a contract for and on behalf of the panchayat by respondent no.2 as a Sarpanch with the trust. So,

it would be very difficult to accept that he has indirectly any share or interest in the act of leasing the land vested with the Village Panchayat to the trust.

15. As far as Section 14(1)(j-3) is concerned, it is about encroaching upon the Government land or the public property. In the case of Janabai (supra), the Hon'ble Supreme Court interpreted the said section. The term person in Section 14(1) has also been interpreted. In the said case, the case of Devidas Vs. Commissioner, Amravati, 2012 SCC Online Bom 2126 has been referred to in which the term 'person' has been interpreted to mean the legal heirs of such person, who has encroached and continues to occupy the Government land or the property, his agent, assignee or transferee, or as the case may be. It indicates that the person includes a person, which means a member of the Village Panchayat. In the case of Janabai (supra), it has been held that in the case of Devidas, emphasis has been laid on the encroachment and continued encroachment. By referring to the said case, it has been alleged that respondent No.2, being a member, has in excess of his jurisdiction as a Sarpanch by illegally leasing the piece of land to the society and has encroached upon the land of the Village Panchayat. In the case at hand, the petitioner stated that the Village Panchayat land was leased to the said society by passing a resolution in a monthly meeting and Gramsabha. So, it is not an encroachment. The petitioner did not file a document showing that

the Chief Executive Officer cancelled the resolution granting lease to the society, and it has been held that it was an encroachment. The case of the petitioner that respondent No.2 has encroached upon the Village Panchayat or the government land is doubtful. The case of Janabai (supra) was referred to in the case of Sonali (supra). Hence, it needs no further discussion.

16. After having gone through the relevant provisions of law and the acts done by respondent No.2 in his last tenure, the Court is not satisfied that respondent No.2 has violated Section 14(1) (g) or (j-3) of the Panchayats Act and shall not be a member of the panchayat or to continue as a member.

17. Both impugned orders are free from infirmities and illegalities. There is no substance in the petition. Hence, the petition stands dismissed. No order as to costs.

(S.G. MEHARE, J.)