



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 12514 OF 2023**

**Shri. Aakash Babaso Shinge**  
Age – 29 yrs, Occu.- Agriculturist  
R/o – Nej, Tal-Hatkanangale,  
Dist. Kolhapur.

.....Petitioner

Vs.

**1) Additional Commissioner,**  
Pune Division, Pune.

**2) Collector, Kolhapur.**

**3) Gramsevak Officer,**  
Grampanchayat, Nej,  
Tal.-Hatkanangale, Dist. Kolhapur

**4) Shri. Anil Jindas Upadhye**  
Age – 37 yrs, Occu. - Agriculturist,  
R/o – Nej, Tal – Hatkanangale,  
Dist. Kolhapur.

.....Respondents

Mr. Sandeep Koregave a/w Ms. Pallavi A. Karanjkar for the petitioner  
Mr. Manoj Patil a/w Kalyani Mangave a/w Akash Murudkar for  
respondent no. 3  
Mr. Chetan Patil for respondent no. 4  
Smt. M. S. Kajle AGP for the State

**CORAM : GAURI GODSE, J.**

**DATE : 17<sup>th</sup> APRIL 2024**

**ORAL JUDGMENT:**

1. Heard. Rule. Rule made returnable forthwith.
2. Learned AGP waives service for respondent no. 2. Mr. Manoj Patil waives service for respondent no. 3, Mr. Chetan Patil waives service for respondent no. 4. Petition is taken up for final disposal by consent of the parties.
3. This petition filed under Article 227 of the Constitution of India takes an exception to the order dated 2<sup>nd</sup> August 2023 passed by the Additional Divisional Commissioner dismissing petitioner's appeal under section 16(2) of The Maharashtra Village Panchayat Act, 1958 ("the said Act"). The said appeal was filed by the petitioner challenging the order passed by the learned Collector under section 14(1) (j-3) read with section 16 of the said Act, disqualifying the petitioner on the ground of carrying out encroachment on government land.

4. Learned counsel for the petitioner submitted that the allegation made against the petitioner regarding encroachment is with regard to the construction carried out on Gram Panchayat property bearing no. 993. He submits that the allegation is that the encroachment is carried out by his father. The complaint refers to the allegation that the petitioner's father has carried out an encroachment on the government land and is carrying out business in the name of "Vishal Hair Dressers". The said allegation is accepted by the authorities by ignoring the contentions raised by the petitioner that the petitioner is residing separately from his father, and hence, on the said ground, the petitioner could not have been disqualified. In support of his submissions, he relied upon a copy of a ration card issued on 8<sup>th</sup> November 2018. The said ration card indicates that it has been issued in the name of the petitioner, his wife and his two minor children. He relies upon the partition deed to indicate that he is residing separately from his father. The said partition deed is executed between his father, his brother and the petitioner. He relied upon the relevant paragraphs of the partition deed and submitted that the petitioner along with his

family is residing in two rooms constructed on city survey no. 188. Hence, it is submitted that the issuance of a separation ration card and the partition deed indicates that he is residing separately from his father.

5. Apart from submitting that the petitioner is residing separately from his father, learned counsel for the petitioner submitted that the allegation regarding encroachment is not available as the encroachment made by his father has been regularised by accepting his application on 27<sup>th</sup> August 2019. In support of his submissions, he relied upon a payment receipt, which is annexed to the petition. According to him, the said receipt has been produced before the Additional Commissioner by Gram Vikas Adhikari of the village Panchayat, indicating that the encroachment on the government land has been regularised. He thus submitted that once the encroachment has been regularised, the ground of encroachment by the family member of the petitioner is not available.

6. With reference to the reasons recorded by the learned Collector, he submitted that the ground of disqualification is based only on

encroachment made by his father on government property no. 993. Though there is a reference made to the voters list, showing the address of the petitioner as well as his father as house no. 8, he submits that the ration card issued separately in the name of the petitioner clearly indicates that he is residing separately from his father even before the date of election. The reference made by the learned Collector to an application made for the separate ration card on 6<sup>th</sup> February 2021 is misconceived, as according to the learned counsel for the petitioner, the said application was made for making an online entry based on separate ration card already issued on 8<sup>th</sup> November 2018. He thus submits that since the petitioner is residing separately from his father, he could not have been disqualified on the ground of encroachment made by his father.

7. Learned counsel appearing for respondent no. 4 i.e. original complainant submitted that there is no dispute that there is an encroachment made on the government land by the petitioner's father. However, the documents produced before the authority indicates that the petitioner is also part and parcel of his father's family and is not

residing separately. Voters list relied upon by the authorities categorically indicates that address of the petitioner as well as his father is shown as house no. 8. Petitioner has nowhere disputed the voters list. The separate ration card relied upon by the petitioner allegedly issued in 2018 is disbelieved by the authority on the ground that the online application made for a separate ration card showed the date of application as 6<sup>th</sup> February 2021, i.e. after the date of election. Learned counsel further submitted that regularisation of encroachment made on the government land is based on payment receipt, which is produced by the Gram Panchayat before the Divisional Commissioner. The said receipt of regularisation indicates that the payment is made on 28<sup>th</sup> December 2022. Hence, there is no substance in the argument of the petitioner that the regularisation was made on 27<sup>th</sup> August 2019 i.e. prior to the date of election. He thus submitted that the very fact that the documents of regularisation have been relied upon, there is no dispute that there was an encroachment on the government land on the date of the election.

8. The learned counsel for respondent no. 4 further submitted that once the petitioner is unable to point out that he has no concern with the business carried out by the petitioner's father on the encroached land, the mere submission that the petitioner is residing separately is of no support to the petitioner's argument that he cannot be disqualified on the ground of encroachment made by his father. In support of his submissions, learned counsel has relied upon the decision of the Hon'ble Supreme Court in the case of ***Janabai Vs. Additional Commissioner and Others***<sup>1</sup> followed by this court in various cases.

9. Learned counsel for respondent no. 4, in particular, relied upon the observations made by this court in the case of ***Abasaheb Anandrao Tambe Vs. Kunal Arun Bendbhar and Another***<sup>2</sup>. He submits that a similar ground was raised in the said case regarding a separate ration card to submit that the allegation of encroachment was with regard to the father of the candidate. He submitted that a similar argument in the said case was disbelieved by this Court on the ground

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<sup>1</sup> (2018) 18 Supreme Court Cases 196

<sup>2</sup> 2023 SCC OnLine Bom 1114

that the issue of encroachment on government land cannot be narrowly construed. He submitted that this Court refused to interfere with the decisions of the authorities, disqualifying the candidate on the ground that subsequently issuing separate ration cards would betray the clear intent to salvage the position by ascertaining that the candidate and his family were residing separately from his father and other family members. He thus, submitted that even in the present case, the petitioner is unable to point out that he is residing separately from his father and merely relying upon the separate ration card would be of no significance. He also relied upon the decision of this court in the case of *Shahaji Bajirao Jadhav Vs. Uttam Bajirao Patil and Ors*<sup>3</sup> and the observations made by this court with regard to the documents relied upon of a separate residence. He submits that this Court, after relying upon paragraph 29 of the decision of the Hon'ble Supreme Court in the case of *Janabai*, held that the Apex Court has warned that the provisions of Section 14(1) (j-3) of the said Act are not to be narrowly construed so as to make the basic issue of encroachment redundant.

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<sup>3</sup> Civil Writ Petition No. 452 of 2019 Dt. 23/06/2022

10. Thus, by relying upon the well-settled principles of law regarding disqualification on the ground of encroachment, learned counsel for respondent no. 4 submitted that it is not the case of the petitioner that he is separate from the business carried out by the petitioner's father more particularly when the allegation regarding encroachment is on the government land for the purpose of carrying out business. Even otherwise, in the present petition also, the petitioner has not stated any particulars regarding his separate residence by specifically pointing out any address of the separate residence. He thus submitted that no fault can be found in the reasons recorded by both the authorities warranting any interference by invoking powers under Article 227 of the Constitution of India.

11. Learned counsel for respondent no. 3 i.e. Gram Vikas Adhikari of the Gram Panchayat supports the impugned orders. He submits that the documents on record, as well as the initial documents submitted by the petitioner at the time of election, also indicate the address of the petitioner as that of his father. Hence, there is no substance in the ground raised on behalf of the petitioner that the petitioner is residing

separately. He submitted that the documents regarding regularisation were produced before the Divisional Commissioner, only to point out the further development with regard to the encroachment. He thus supports the impugned orders on the ground that the documents submitted by the petitioner do not indicate that the petitioner is residing separately from his father.

12. I have considered the submissions. Perused the papers. The petitioner was elected as a member of Nej Gram Panchayat on 29<sup>th</sup> January 2021. Respondent No. 4 had filed a complaint making the allegation that the petitioner's father had carried out encroachment on government land and is carrying out business from the encroached property. The response of the petitioner and the arguments made on behalf of the petitioner are basically on the point that the petitioner is residing separately from his father. The documents relied upon to show that he is residing separately from his father is mainly the ration card, which is disbelieved by the authorities. The reason for disbelieving the ration card is an application made by the petitioner on 6<sup>th</sup> February 2021 for the issuance of a separate ration card. The ration

card relied upon by the petitioner is a physical copy of the ration card separately issued in the name of the petitioner and his family in the year 2018. For the purpose of this petition, even if the validity of the ration card is not considered, there is no dispute that in the voters list, the address of the petitioner and his father is shown as house no. 8. The third document relied upon is the partition deed, which concerns the properties of the family regarding residence. The allegation against the petitioner is the encroachment made by his father on the government land and carrying out business from the government land. Even if the petitioner's case is considered on the point of separate residence, it is not the petitioner's case that he has his own source of income and separate business and is not concerned with the business carried out from the encroached property. Though there was a dispute raised that there is no encroachment, the documents clearly show that the petitioner's father had encroached upon the government land. The document of regularisation relied upon by the petitioner itself indicates that there was encroachment on the government land. I do not find any substance in the arguments of the petitioner that the application for

regularisation was accepted on 27<sup>th</sup> August 2019. The payment receipt indicates that the payment for regularisation was made on 28<sup>th</sup> December 2022, i.e. much after the elections. Thus, no fault can be found in the reasons recorded by both the authorities that on the date of the election, there was encroachment made by the petitioner's father on the government land. Subsequent regularisation would be of no consequence as on the date of election and even thereafter, the encroachment was on the government land, and subsequent regularisation would not help the petitioner to say that it was not a ground for disqualification.

13. The law with regard to disqualification on the ground of encroachment under section 14(1)(j-3) is no longer rest integra. The Hon'ble Supreme Court in the decision of ***Janabai***, held in paragraph 30 as under:

*“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***

*unauthorised 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.....”*

*emphasis applied*

14. Thus, if a member having a conflict of interest remains in occupation of an encroached property would suffer disqualification. In the present case, it is not the petitioner's case that his business and source of income are separate from his father. The allegation is regarding encroachment on government land for carrying out

business. Nothing is argued on behalf of the petitioner that he is not concerned with the business carried out on the encroached property. Encroachment on the government land is not disputed. The documents regarding separate residences, therefore, would be of no consequence. The ground for disqualification as contemplated under section 14(1)(j-3) is encroachment on the government land or public property. Thus, for disqualification, encroachment is not restricted to the residence of the candidate.

15. The reasons recorded by both the authorities disqualifying the petitioner are supported by the legal principles settled in the decisions relied upon by the learned counsel for respondent no. 4. The very purpose of the ground of disqualification is to prevent encroachment on the government land. Once it is not even the case of the petitioner that he is separate from his father with respect to his business and when the encroachment is on the government land for the purpose of carrying out business, the arguments advanced on behalf of the petitioner of separate residence is of no assistance to the petitioner.

16. The scope of interference under Article 227 of the Constitution of India is also well settled. It has to be exercised to ensure that law is followed by quasi-judicial authorities, tribunals, and courts by exercising their jurisdiction and not declining to exercise it. In the present case, the reasons recorded in the impugned orders are supported by the well-established legal principles. There is no manifest failure of justice or breach of the basic principles of natural justice. I do not see any manifest error or illegality in the reasons recorded by the authorities warranting interference under Article 227 of the Constitution of India.

17. For the reason stated above, the petition is dismissed.

**[GAURI GODSE, J.]**