

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14802 OF 2023.

Anita Ganpati Rathod and Anr.

...Petitioners.

Versus

Umabai Dhondappa Birajdar and Ors.

...Respondents.

Mr. Anant Vadgaonkar for the petitioners.

Mr. Abhijit Kulkarni a/w. Mr. Chinmay Patil for respondent Nos.1 to 3.

Ms. P. J. Gavhane, AGP for respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : 19th June, 2024.

P. C. :

1. Heard.

2. By this petition the challenge is to the order dated 21st November 2023 passed by the respondent No.5-Divisional Commissioner dismissing Appeal No.12 of 2023 thereby confirming the order dated 17th July 2023 filed by the District Collector disqualifying the petitioners.

3. The facts of the case are that the general elections of Vadakbal Gram Panchayat were conducted in the year 2021 and the petitioner

No.1 was elected as member from Ward No.2 for the seats reserved for female candidate and petitioner No.2 was elected from Ward No.1 from the seat reserved for the female candidate from open category. The post of Sarpanch was reserved for female from open category and the Petitioner No.2 was duly elected as Sarpanch for the Gram Panchayat Vadakbal.

4. Gram Panchayat Dispute No 59/2022 came to be filed by the Respondent No 1 alleging that the petitioner No.1 along with her husband was residing on Gairan land Gat No 125 i.e. land reserved for grazing and has encroached upon government land to the extent of 25 x 25 ft. by raising an RCC construction and that in the Gram Panchayat record the same is recorded as Property No.307 in the name of petitioner No.1 and her husband. It was alleged that as the Petitioner No 1 has encroached upon gairan land, she should be disqualified.

5. As regards Petitioner No 2, it was alleged that Petitioner No 2 has also encroached upon Gairan land to the extent of 25 x 25 feet. In the Gram Panchayat record the same is shown as property No.354 reflecting the name of husband of petitioner No. 2 as occupant thereof. It was alleged that the land on which the Petitioner No 1 and

2 are residing are recorded in the revenue records as Gat No 125 which belongs to government. The Respondent No 1 to 3 sought disqualification of the Petitioners under Section 14 (1) (j-3) of The Maharashtra Village Panchayats Act , 1959 (Panchayats Act).

6. Subsequent to the complaint received on 22nd November 2022, the District Collector directed the Block Development Officer to submit a report. The Block Development Officer vide report dated 2nd February 2022 submitted that the officer had conducted a site visit and Village Form No.8 shows Gram Panchayat as owner of property No.307 and the occupant column reflects the joint names of Petitioner No 1 and her husband. It was stated that upon site inspection it is seen that the said property is on Gairan land Gat No.125 and on the said land there is RCC construction. As regards petitioner No.2 the report states that as per the Village Form No 8, the property No.354 is owned by Gram Panchayat and in the occupation column, the name of the husband of Petitioner No 2 is shown. It was further reported that the said property is in Gat No.125 which during the site visit was seen to be an open land.

7. The application was resisted by the Petitioners by filing a joint reply dated 7th April, 2023. It was contended that the petitioners have

not committed any encroachment on government land and the Petitioners have not carried out any construction in their name on government land and there is no proof submitted by the applicants. It was further contended that the petitioners are staying separately from their joint family and their in-laws and have no concern with the hut standing in the name of their father in law which is constructed on Gairan land.

8. The Respondent 4 considered the contentions and noted the report of the Block Development Officer and Village Form No 8. Upon consideration of the submissions as well as Village Form No 8 and report of the Block Development Officer disqualified the petitioners. As against this the Petitioners preferred an Appeal before the Divisional Commissioner which was dismissed by the impugned order dated 21st November, 2023.

9. Learned counsel appearing for the petitioners would submit that there is no evidence on record to show encroachment by the petitioners. Pointing out to the report of the Block Development Officer he would contend that it is only on visual inspection that the Block Development Officer has come to a conclusion that there is an encroachment upon Gairan land Gat No.125. He submits that even if

Village Form No.8 is considered there is no mention therein of Gairan land bearing Gat No.125. He would further submit that as far as petitioner No.2 is concerned the Block Development Officer's report itself shows that the Property No 354 is open land which is also reflected in Village form No. 8. He submits that there is no independent application of mind by respondent No.4 and 5 who have relied upon the Block Development Officer's report and has passed the impugned order.

10. Learned AGP would submit that there was proper report which has been called for from the Block Development Officer which report concludes that there is an encroachment by conducting site visit. He would further submit that the government records, which are public documents are also considered before passing of the order by respondent No.4 and 5.

11. Learned counsel appearing for respondent 1 to 3 would submit that the village form No.8 is maintained under the statutory rules for the purpose of assessment of tax and being public record conclusively establishes the occupancy of the petitioners on the Gram Panchayat property. He would further submit that despite the public record showing petitioners as the occupants, no objection was taken by

petitioners at any point of time to the entries in village form No.8 and now the same cannot be disputed. He would further submit that although as regards petitioner No.2 the report of Block Development Officer states that the same is a open site, considering that Village Form No 8 shows occupancy of the petitioners on the open plot which was thereafter assessed to tax would show that there is an encroachment on the government land. He would further submit that no objection has been taken and thus public record had remained unchanged and could be relied upon by respondent No.4. He would further submit that the submissions before the respondent No.4 by the petitioners was only that there is no proof of encroachment produced by the applicants and that the petitioners are staying separately from their joint family and their in-laws who have constructed the hut on Gairan land. He submits that submissions which are now sought to be raised were not raised before respondent No.4 and cannot be raised for the first time before this Court.

12. Considered the submissions and perused the record.

13. Section 14(1)(j-3) of Panchayats Act, provides that no person shall be member of a panchayat and shall continue as such who has encroached upon government land and public property. All that is

required to incur a disqualification is encroachment upon government land or public land. In the present case, Village form No.8 which is public record shows the property i.e. Property No 307 and 354 as owned by the Gram Panchayat and in the occupation of the Petitioner No 1 and her husband and the husband of the Petitioner No 2. The Village Form No 8 has not been disputed by the Petitioners in their reply and in fact has not dealt with the same despite the report of Block Development Officer specifically referring to the Village Form No 8. If the reply of the Petitioners is perused, the contention is that the Petitioners are residing separately from their in laws and the encroachment is by their father in law. There is thus an admission about encroachment on Gairan land *albeit* by their father in law. If this admission is read alongwith Village Form No 8, it is clear that the Petitioners have encroached upon government land owned by Gram Panchayat. The requirement of Section 14(1)(j-3) of Panchayats Act is thus satisfied.

14. The report of the Block Development Officer show that site visit was conducted by the Block Development Officer and it is stated that the said property No.354 and 307 is situated on Gat No 125. Although the Village Form No 8 does not refer to Gat No 125, the names of the Petitioners and their husband is reflected in occupants column and

the ownership is shown to be that of Gram Panchayat. Coupled with the admission given by the Petitioners and the Village Form No 8 not being disputed, the Respondent No 4 has rightly accepted the report of the Block Development Officer. The Block Development Officer has further noted that there is RCC construction on Gairan land Gat No.125 and whereas in respect of property No.354 there is encroachment on Gairan Gat No.125 and during the site visit the property was seen as open plot of land which is sought to be raised as defence for Petitioner No 2 contending that there is thus no encroachment. The occupancy of the Petitioner No 2's husband on the Gram Panchayat property is sufficient to establish encroachment even if there is no construction on the same.

15. In that respect there is a conclusive evidence in the form of Village Form No.8 which shows that the property 354 and 307 are occupied by the petitioners and their husbands and the name of the owner is shown to be the Gram Panchayat. The village form No.8 is maintained under the Rules which are framed under the Maharashtra Village Panchayat Act which provides that the panchayat shall prepare list of all lands and buildings which are situated within its jurisdiction and shall accord sanction to it after which proper entries in column No.1 to 16 of the Tax Daily Register are to be made. The Rules

also provide for an objection to be raised in case there is an incorrect entry in village form 8. The government resolution dated 18th July 2016 also provides for levying of tax in accordance with the entries made in village form No.8. Admittedly, no objection was raised to the petitioner's to their names being entered into occupancy column of the village form No.8. Village form No.8 is therefore evidence of the fact that Gram Panchayat property irrespective of whether the same is Gairan Gat No.125 or not, has been encroached upon by the petitioners and their husbands.

16. In light of the above, no infirmity can be found in the impugned order of Respondent No.4 dated 17th July 2023 which has been confirmed by respondent No.5 which is the appellate authority by its order dated 21st November 2023. Petition being devoid of merits stands dismissed. In view of above, Civil/Interim Applications, if any, do not survive for consideration and stand disposed of accordingly.

17. At this stage, request is made for continuation of ad-interim relief which has been operating in favour of the petitioners since 29th November 2023 for a period of two weeks from today. Learned counsel for respondent opposes the said prayer. As the relief has been operating since 29th November, 2023, I am inclined to continue

the same for further period of two weeks from the date of uploading of the order.

[Sharmila U. Deshmukh, J.]