

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2019 OF 2024

Dattatray Sarjerao Shinde ...Petitioner
Versus
Additional Commissioner, Pune. And Ors. ...Respondents

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Mr. Sandeep Koregave a/w Ms. Pallavi A. Karanjikar, for the
Petitioner.

Mr. P. G. Sawant, A.G.P for the Respondent Nos.1 & 2 – State.

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CORAM : AVINASH G. GHAROTE, J.
DATE : 25th JULY, 2024

P.C.:

1. Heard Mr. Sandeep Koregave, learned counsel for the
Petitioner and learned A.G.P for Respondent Nos.1 & 2. None
appears for respondent No.4, though served. Respondent No.3 is
a formal party.

2. The petition questions the order dated 10.05.2023 passed
by the Collector (Page- 101) whereby the petitioner, who is
elected as counsellor for Grampanchayat Shiye, Tahsil Karveer,
Dist. Kolhapur has been disqualified under Section 14 (1)(j-3) of
the Maharashtra Village Panchayat Act, 1958 (MVP Act) on the

ground that his father has committed encroachment on government land to the extent of 12 X 8 Feet.

3. The petition also questions the order in appeal by the Additional Commissioner dated 31.10.2023 which confirms the order of the Collector.

4. learned counsel for the petitioner submits that though there is a noting, that the father of the petitioner, has encroached upon the government land to the above extent, there is no finding by the authorities below that during his father's lifetime or consequent to his demise, the petitioner was residing along with his father in the encroached property, which was necessary, in view of the fact that all throughout it is the contention of the petitioner, that this was not so, and the petitioner was independently residing at House No.2057, constructed in a portion of Gat No.103 to substantiate which, reliance is placed upon the address in the Aadhaar Card (Page-35), the Ration Card (Page-36), the Tax Receipts (Page-44), the Electricity Bill (Pages-45-46). It is contended that in spite of the fact that all these documents, indicate the residence of the petitioner and his family in property No.2057, whereas the encroachment which is claimed

by the father of the petitioner during the lifetime in the property Nos. 1166 and 2036 to the extent as indicated in Form 8 (Pages- 40 & 41), the petitioner has been disqualified. It is therefore contended that in absence of such an inquiry and findings, the impugned orders cannot be sustained.

5. Learned A.G.P for respondent Nos.1 & 2 while supporting the impugned orders contends, that the factum of encroachment by the father of the petitioner, is demonstrated, by the Village Form-8, which records encroachment made by him on government land which is property Nos.1166 and 2036 (Pages-40 & 41) on account of which the burden was upon the petitioner to establish that he was not residing jointly with his father. It is also contended that the Sale Deed in respect of land upon which property No.2057 has been constructed, in which the petitioner claims to reside is of 10.11.2017 (Page-49) which would indicate that prior thereto the petitioner was residing with his father in the house constructed on the encroached area.

6. The mandate of Section 14 (1)(j-3), of the MVP Act, directs disqualification of a person, who has encroached on government land or public property. This had come for consideration before

this Court in *Devidas Vs. Commissioner, Amravati, 2012 SCC Online Bom 2126*, in which it was held that the term ‘person’ has to include the legal heirs, if any, of the encroacher, who continued to occupy the government land, emphasis having been laid on encroachment and continued encroachment. In *Janabai Vs. Additional Commissioner and Ors. 2018 (18) SCC 196*, the Hon’ble Apex Court after considering *Devidas* (supra) has held as under :

“24. As we understand from the above paragraph, the two-Judge Bench has been guided by the word “person” as used in Section 14(1) and further influenced by the language employed in Section 53. That apart, the analysis made by the two-Judge Bench, as we notice, has given a restricted meaning to the word “person” who has encroached upon the government land or public land. It has also ruled that such a person is one who has actually for the first time encroached upon the government or public land. In *Devidas*, (supra) the Division Bench of the Bombay High Court, placing reliance on the Statement of Objects and Reasons and laying stress on the word “person”, noted that the legal heirs of an encroacher who continue to occupy the government land or government property are to be treated as encroachers. It has been held that if such an interpretation is not adopted, the result would be absurd, for the government land would continue to remain encroached and the legal heirs or the assignees or the transferees remaining on the encroached government land shall claim the right to get elected as a member of a democratically elected body. According to the Division Bench of the Bombay High Court, such an interpretation would defeat the very object of the Bombay Village Panchayat (Amendment) Act, 2006.”

29. In *Devidas* (supra), it has been clearly stated, as noticed earlier, that the term “person” has to include the legal heirs, if any, of the encroacher who continue to occupy the government land. Emphasis has been laid on encroachment and continued encroachment. After the said Division Bench judgment, number of learned Single Judges have adopted a different approach without noticing the judgment which is against judicial discipline.

30. 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 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 subverts the real warrant of the provision. Thus analysed, we are of the view that the decision in *Sagar Pandurang Dhundare*¹ (supra) does not lay down the correct position of law and it is, accordingly, overruled.”

7. It is therefore necessary, to bring home the disqualification under Section 14(1) (j-3) of MVP Act to the elected counsellor that the Authority to record a finding, that the elected member remains in occupation on the encroached property, for that would

¹ (2018) 1 SCC 340

entail a conflict of interest, between his duties as duly elected member and the factum of encroachment committed by him, of which he continues to remain in occupation thereby disqualifying him. The impugned order in the instant matter, though records that the father of the petitioner has committed encroachment upon government land, which are numbered as Property Nos.1166 and 2036, it equally remains a fact that the petitioner has contented, that since 2018 he is not residing with his parents, and is residing separately in property No.2057. The Aadhaar Card, Ration Card, Tax Receipts and the Electricity Bill, in fact substantiate this position, of a separate residence by the petitioner, from his father at least since-2018 and therefore the factum of continued encroachment as contemplated in *Janabai* (supra) is absent. Since both the impugned orders do not render a finding that the petitioner continues to occupy property Nos.1166 and 2036, the factum of absence of continued encroachment will have to be answered in his favour. That being the position, the impugned orders cannot be sustained and are hereby quashed and set aside and the complaint is dismissed.

8. It is however made clear, that this does not mean, that the petitioner is absolved of a statutory duty under the MVP Act to ensure that encroachment is removed.

(AVINASH G. GHAROTE, J.)