

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9316 OF 2024

Ramdas Maruti Dhage,)
 Age : 38 years, Occu.: Agriculturist,)
 R/at Bhawadi, Tal. Haveli,)
 District Pune.) ...Petitioner

versus

- 1 The State of Maharashtra)
 (Summons to be served on the Learned Pleader)
 appearing for the State of Maharashtra under)
 the provisions of Order 27, Rule 4 of Civil)
 Procedure Code, 1908))
- 2 Divisional Commissioner, Pune)
 (Summons to be served on the Learned Pleader)
 appearing for the State of Maharashtra under)
 the provisions of Order 27, Rule 4 of Civil)
 Procedure Code, 1908))
- 3 Collector Pune,)
 (Summons to be served on the Learned Pleader)
 appearing for the State of Maharashtra under)
 the provisions of Order 27, Rule 4 of Civil)
 Procedure Code, 1908))
- 4 Tehsildar Haveli,)
 (Summons to be served on the Learned Pleader)
 appearing for the State of Maharashtra under)
 the provisions of Order 27, Rule 4 of Civil)
 Procedure Code, 1908))

5 Shri Sandeep Gulab Tambe,)
Age : Adult, Occu.:)
R/at Bhawadi, Tal. Haveli,)
District Pune.) ...Respondents

Mr. Prathamesh Bhargude along with Mr. Sharad R. Dhore and Mr. Sumit Sonare, Advocate for the Petitioner.

Mr. Ketan Joshi, B Panel Advocate for Respondent Nos.1 to 4.

Mr. Nitin Gaware Patil, Advocate for Respondent No.5.

Ms. Trupti Patil, Tahsildar Haveli, present.

CORAM : R. M. JOSHI, J.

DATE : 21st AUGUST, 2024.

Judgment :

1. This petition takes exception to the order dated 12th July 2024 passed by the Additional Divisional Commissioner, Pune Division, in Appeal No.26 of 2023, whereby the order passed by the Collector of disqualifying the petitioner as a member of the grampanchayat for carrying encroachment on the government land/public property as contemplated under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act (for short “Act”), stood confirmed.

2. The petitioner is the elected member of Grampanchayat-Bhawadi. It is respondent No.5 who has lost said election, lodged complaint against the petitioner invoking provisions of Section 14(1)(j-3) of the Act seeking disqualification of the petitioner on the allegation that he

has made encroachment on the gairan (grazing)land. The Collector called upon the Circle Officer and Tahsildar to submit report and accordingly reports were submitted to the Collector. On the basis of the said reports, order came to be passed by the Collector disqualifying the petitioner from membership of the grampanchayat. It was held by the Collector that the petitioner has carried encroachment on grazing land bearing Gat No.267. This order was challenged in appeal No. 26 of 2023 before the Additional Divisional Commissioner, Pune Division, Pune, unsuccessfully.

3. Learned counsel for the petitioner submits that in order to attract disqualification there must be specific case made out with regard to the encroachment carried out by the petitioner on the government land / public property. In order to support his submission that there is no substance in the finding recorded by Collector about encroachment on grazing land, he sought reliance on village map which indicates that grazing and gaathan are two different lands and the structure / house of petitioner is situated on gaathan land, which is different than Gat No. 267, which is a grazing land. As such, there is no evidence to indicate that there is any encroachment being carried out on the said land by the petitioner. It is his specific contention on the basis of documents placed on record that the house wherein he is residing is in gaathan land has been allotted under Indira Aawas Gharkul Yojana. To support his submission that the said construction has been done at the instance of the

authority concerned, documentary evidence is placed on record before this Court. It is his submission that the Circle Officer as well as Tahsildar were expected to visit the site and then to submit a report to the Collector in order to assist him in arriving at the conclusion as to the encroachment being done or otherwise. By referring to the said report, it is pointed out that it cannot be said that the authorities concerned ever visited the site to ascertain the exact position of the construction. It is his submission that though it is stated in the report by the Circle Officer that written submissions were made before him, a statement is made to the effect that no such written submissions were made ever before the said authority and that such authority had no reason to accept such written submissions. He relied upon the judgment of the **Hon'ble Supreme Court in Ravi Yashwant Bhoir versus District Collector, Raigad and ors (2012) 4 SCC 407** to contend that the order of disqualification has drastic consequences and unless there is evidence to indicate encroachment being made by the petitioner over the government land or over public property, the order of disqualification cannot sustain. He also placed reliance on the **judgment of this Court in Archana w/o. Vilas Jambhulkar 2023 DGLS(Bom.) 1887, Sagar s/o. Mohan Kamble versus Additional Divisional Commissioner and ors. 2023 DGLS(Bom.) 2669, Dhanraj Bhaidas Patil (Jadhav) versus Divisional Commissioner, Nasik Div., Nasik and ors. 2016 SCC Online Bom.16101, Gajanan Hariba Susar versus Additional Commissioner**

& Ors. 2011 SCC Online Bom 753 and Sunil Dinkar Jagdale versus State of Maharashtra 2020 DGLS(Bom.) 1550 of the Co-ordinate Bench passed in similar set of facts, wherein the authorities without visiting the site had submitted a report to the Collector. According to him, in those proceedings, this Court was pleased to set-aside the order and relegate the matter back to the Collector for decision afresh.

4. Learned counsel for respondent No.5/original complainant submitted that this is a case wherein additional construction has been carried out by the petitioner, which is illegal. It is his further submission that the reports of the Circle Officer as well as Tahsildar clearly indicate that this is a case of encroachment having been done on the grazing land. To support his submissions further, he placed reliance on resolution passed by the grampanchayat indicating that the petitioner has encroached on a grazing land. He has drawn attention of this Court to resolution (Page 136-137) to show that in Gat No.267, the petitioner has carried out unauthorised construction. According to him, notice under Section 53 of the Act has been issued to the petitioner, however, till date neither the said notice, nor the resolution passed by the grampanchayat has been taken exception to by him. It is his submission that considering the summary nature of the enquiry contemplated under the Act, no fault can be found in the order passed by the Collector disqualifying the petitioner and the same does not call for any interference.

5. Learned AGP for Respondent Nos.1 to 4 also supports the impugned orders passed by the Collector and confirmed by the Additional Divisional Commissioner. It is his submission that admittedly Gat No.267 is grazing land and there is report indicating encroachment thereon by petitioner. It is his submission that for the first time in this petition, an objection is raised with regard to the situation/place where the construction of the petitioner stands. It is his submission that only evidence which is sought to be relied upon by the petitioner is Form 8A to indicate the presence of his structure in gaothan and not on grazing land, but this document cannot be considered as a proof of authorization of the structure.

6. Petitioner herein is an elected member of Grampanchayat. Respondent No.5 herein is an unsuccessful candidate who has lost election against the petitioner. It is at his instance that the complaint has been moved before the authority seeking disqualification of the petitioner from the membership of grampanchayat by invoking Section 14(1)(j-3) of the Act, which read thus:

“14.(1) No person shall be a member of a Panchayat continue as such, who -

...

[j-3) has encroached upon the Government land or public property; or]”

In view of above provision, it can be said that any person, who has encroached upon government land or public property cannot be

permitted to represent the people and in case such encroachment is found to have been done by him or as per judgment of **Janabai vs Additional Commissioner AIR 2018 SC 5068**, he continuous encroachment, would render himself for disqualification under this provision. While keeping in mind the intent of legislature in making this provision, the Court cannot lose sight of the fact that for invocation of the said provision, it has to be established that the member of the grampanchayat has carried out any unauthorised construction or encroachment on the government property or has continued the encroachment. Needless to emphasis that in absence of any such material on record to indicate so, the disqualification cannot be attracted. Needless to say that the disqualification of a member of the grampanchayat has a drastic consequence and, therefore, even considering the nature of the proceedings before the Collector, the authority has to satisfy itself on the basis of material on record to hold that there is encroachment done or continued by him. In any case, when disqualification is sought by a losing candidate in election, authorities will have to be more cautious and possibility of misplaced complaint needs to be ruled out.

7. Reverting back to the facts of the present case, from submission made on behalf of original complainant, it is clear that the case of complainant is that the petitioner has carried out additional construction to premises, which amounts to encroachment on the

government land/public property. It is pertinent to note that in order to ascertain the said fact as contemplated by the relevant rules, the Circle Officer and Tahsildar were called upon to submit report in this regard. Perusal of the reports indicates that these authorities never visited the spot. Nor anything is placed on record to indicate so. There is nothing found in these reports as to the exact position of the construction and the land, on which, house of petitioner stands. The respondents are seeking to place reliance upon the resolutions passed by the Grampanchayat in order to support the impugned order. Perusal of the resolution (page 136) indicates that Grampanchayat claims that amongst others, the petitioner has carried out illegal construction in grazing land bearing Gat No.267.

8. It is not in dispute that the petitioner is having one structure and the same has been allotted to his mother under Indira Aawas Gharkul Yojana. If it is so, question of the original structure being unauthorised or by way of encroachment does not arise. There is documentary evidence placed before this Court to indicate that such allotment is made against legal payments acknowledged by a receipt. It therefore becomes incumbent for the respondents to prove that other than present house, petitioner has carried out encroachment on Government land.

9. Now it is relevant to see as to whether the notice under Section 53 of the Act issued to the petitioner even contemplates so. Perusal of the said notice indicates the entire structure of the petitioner is said to be

unauthorised as the same has been constructed in grazing land i.e. Gat No.267. This notice does not claim that extension to the authorised structure is unauthorised / illegal. As against this, the documentary evidence placed on record by the petitioner i.e. Form 8A, indicates that his house is situated in gaothan land. There is further support to his contention from village map that the gaothan and grazing land Gat No.267 are different lands. Thus there is serious doubt as to whether the structure is existing on the land bearing Gat No.267, grazing land or gaothan land. In such circumstances, it was absolutely essential for the Circle Officer and Tahsildar to visit the spot and to make proper remarks with regards to the land where the structure exist.

10. It is thus clear that Collector while passing the impugned order of disqualification of the petitioner has ignored the relevant and material facts as well as has relied upon the report of the Circle Officer rendered without site visit which is confirmed by the Tahsildar. The order of disqualification can never be permitted to be passed in such casual manner. More particularly, when the complaint is by unsuccessful candidate, it was absolutely necessary for the Authorities to get satisfied that the encroachment allegedly caused by the petitioner is on government land or public property.

11. In view of above discussion, orders impugned cannot sustain and hence, stand set-aside.

12. The proceeding is relegated back to the Collector for decision afresh. It is expected that the Collector will call upon the concerned authorities to visit the site before submitting the report and only after ascertaining the encroachment, if any, appropriate order will be passed.

13. Needless to say that these observations are made for the purpose of deciding this petition by consideration on the basis of material available for limited purpose. The authority concerned not to be influenced by the same but to pass order in accordance with law.

(R. M. JOSHI, J.)

14. Learned counsel for respondent No.5 seeks stay to this order for a period of four weeks. Learned counsel for the petitioner opposed the said request. Since this Court has come to the prima facie conclusion that apparently there is no material on record to indicate any encroachment being done by the petitioner on government land/public property, it is not a fit case to stay this order. Hence, request stands rejected.

(R. M. JOSHI, J.)