



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1239 OF 2023

Nitirajsingh s/o Ramsingh Rajput,
Age about 50 years, Occ. Agriculturist,
R/o Nipana, Ta. Motala, Dist. Buldana

PETITIONER

VERSUS

- 1 Smt. Chhaya W/o Vinod Tayde,
Aged about 50 years, Occ. Household,
R/o Nipana, Ta. Motala, Dist. Buldana
- 2 The Additional Commissioner,
Amravati Division, Amravati
- 3 The Additional Collector,
Buldana, Dist. Amravati
- 4 Gram Panchayat Nipana,
through its Secretary,
Tah. Motala, Dist. Buldana

RESPONDENTS

Mr. A.A. Choube, Advocate for petitioner
Mr. P.P. Pendke, AGP for Respondent Nos.2 and 3

CORAM : BHARAT P. DESHPANDE, J.

DATE : 14 MARCH, 2024

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard both the parties finally with consent.

2. The petitioner is the original complainant, wherein an order for disqualification of respondent No.1 was passed by

the Additional Collector, Buldhana dated 27/09/2022. The respondent No.1 filed an appeal against such order before the Additional Commissioner, Amravati. By order dated 09/12/2022, the Additional Commissioner, Amravati allowed the said appeal and quashed and set aside the order of the Additional Collector, Buldhana.

3. The learned counsel appearing for the petitioner would submit that the complaint was lodged against the respondent no.1 under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act. The petitioner contended that the respondent No.3 being an elected Member of the Grampanchayat through her husband has encroached on the Government land and illegally erected hut. Similarly, it is claimed that there is no facility of toilet available at the said house and, therefore, the respondent No.1 be disqualified from the post.

4. After conducting an enquiry, the Additional Collector, Buldhana passed an order of disqualification of respondent no.1 on the ground that the name of the husband of the respondent no.1 appears as the occupant in Gav Namuna 8, wherein owner is shown as State of Maharashtra, however, the name of the

occupant is shown as Vinod Tayde, being the husband of respondent No.1. Further, it is recorded that there is one hut / structure of mud having 20 X 25 sq.ft.

5. The first appellate Authority by ignoring this material and the fact that the person who was found actually occupying the said premises is the brother of the respondent No.1, allowed the said appeal.

6. Section 14 of the Act deals with disqualification and it starts with the words “no person shall be a member of the Panchayat continue as such”. The category under which the disqualification is provided are found therein. In the present matter, the disqualification which is alleged against the respondent No.1 is found in Sub-section (1)(j-3) (j-5)(i) and (iii) of the said Act.

7. The first contention raised by the learned counsel for the petitioner is that the respondent No.1 encroached upon the Government land or public property and for this purpose, reliance is placed on the copy of Gav Namuna 8, which is the record maintained by the Grampanchayat, wherein Gat No. 405

is recorded in the name of the Government of Maharashtra, wherein name of Vinod Ratan Tayde is shown as occupant of the structure admeasuring 500 sq.ft. Thus it is clear that the husband of respondent No.1 by name Vinod is shown as occupant of the structure existing on the Government land. There is no material to show that the husband of the respondent no.1 was any time allowed by the Government to carry out any construction on the said land. This shows that such structure existing on the Government land is unauthorized and by way of encroachment.

8. The report submitted by the Committee of three officers, which is dated 22/03/2021, would go to show that the spot inspection was carried out, wherein it is recorded that the respondent No.1 is residing along with her father by name Ashok Sugdeo Thate, wherein the toilet exists, which is operational. The report specifically show that the husband of the respondent No.1 by name Vinod is shown in the Gav Namuna 8, record of property No.405 as occupant, wherein such land is recorded in the name of the Government of Maharashtra. It further records that when the Committee went to the spot to find out the situation at the site, one person by name Siddhodhan Ashok

Thate is found occupying the said premises from last 3 to 4 years. This report itself shows that the person by name Siddhodhan Ashok Thate is the son of Ashok Sukhdeo Thate. The respondent is admittedly the daughter of Ashok Sukhdeo Thate. This shows that Siddodhan Thate is the real brother of the respondent No.1. This fact has been completely ignored by the learned first appellate authority while deciding and allowing the appeal.

9. In the case of **Devidas s/o Matiramji Surwade Vs. Additional Commissioner, Amravati and others** reported in **2017(1) Mh.L.J. 102**, the learned Division Bench of this Court observed in para 6 as under :

“6. We find that there is a definite object in making the said amendment to the provisions of disqualification and the object is that one, who encroaches upon the Government land or the Government property, cannot make any claim to represent the people by becoming an elected member of the Gram Panchayat. The term "person" in the said amended provision has to be interpreted to mean the legal heirs of such person, who has encroached and continues to occupy the Government land or the Government property, his agent, assignee or transferee or as the case may be. If such an interpretation is not made in the said provision, the result would be absurd in the sense that the Government land would continue to remain encroached and the legal heirs or the assignees or the transferees

remaining on such encroached Government land shall claim the right to get elected as a member of democratically elected body. In no case our conscious permits such type of interpretation to defeat the very object of the Bombay Village Panchayats (Amendment) Act, 2006.”

10. In the case of **Janabai Vs. Additional Commissioner and others reported in (2018) 18 SCC 196**, the Hon’ble Apex Court observed in para Nos.29 and 30 as under :

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

11. Considering the above observations of the Hon’ble Apex Court and the learned Division Bench of this Court, it is clear that a word “person” mentioned in Section 14 of the said Act includes the relatives and more specifically the brother of the respondent No.1. Since the name of the husband of the respondent No.1 is found recorded in Gav Namuna 8 as occupant, including the structure therein, there is sufficient material to show that the husband of the respondent No.1 is in fact the encroacher on the Government land. Only because of some statements made by the neighbours or villagers, such entry cannot be disbelieved. In this matter, the person occupying the said premises is the real brother of respondent No.1. The learned first appellate authority has completely lost sight of the above fact, including the report of the spot inspection.

12. The affidavit filed by some of the neighbours along with the present petition further prove this aspect. It is their contention that their thumb impressions were taken on same statement, the contents of which were not explained to them.

13. Considering the above material placed on record and the reasons given by the Additional Collector, Buldhana, the order passed by the Divisional Commissioner, Amravati is found to be perverse and by ignoring the material placed before it. Accordingly, the order of the Divisional Commissioner, needs to be quashed and set aside and the order of the Additional Commissioner, Buldhana needs to be restored.

14. Having said so, the impugned order is quashed and set aside. Order dated 27/09/2022 passed by the Additional Collector, Buldhana is restored. The petition is allowed in the above terms. No costs.

15. Rule is made absolute in the above terms.

(BHARAT P. DESHPANDE, J.)

MP Deshpande