



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1094 OF 2024

SANJAY BAJIRAO MARKAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. Shaikh Ashraf Mannulal Patel h/f Mr. A. P. Avhad, Advocate for the petitioner
Mrs. M. N. Ghanekar, AGP for respondent/State
Mr. S. B. Parnere, Advocate for respondent No.4
Mr. D. R. Markad, Advocate for respondent No.5.

CORAM : R. M. JOSHI, J.
DATE : 20th MARCH, 2025

PER COURT :-

1. This petition takes exception to the order passed by the Divisional Commissioner directing remand of the proceedings under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act (for short 'the Act') to the Collector in Grampanchayat Dispute No. 116/2021 for decision afresh.
2. Petitioner is the member of Gram Panchayat. Respondent No.6 who is the resident of village filed dispute Application No. 116/2021 before the Collector, Ahmednagar invoking provisions of Section 14(1)(j-3) of the Act. It was alleged against the petitioner that the petitioner has encroached upon gut No. 741 which is class III inam land belonging to Shree Kanifnath Devasthan, Madhi. It is alleged that the petitioner has

constructed a cow shelter home therein. The Collector, Ahmednagar by order dated 13/01/2023 dismissed the dispute. Being aggrieved by the said order appeal came to be preferred before the Divisional Commissioner, Nashik being No. 17/2023. By order dated 11/12/2023, Additional Divisional Commissioner set aside the order passed by the Collector and remanded back the matter for decision afresh with observation that the Collector has not dealt with the issue as to whether the encroachment caused on inam land would be covered by Section 14(1)(j-3) of the Act.

3. Learned counsel for the petitioner submits that the Divisional Commissioner has committed serious error in not considering the provision of Sections 14(1)(j-3) of the Act in proper perspective. It is his argument that it is only in case of the government land or public property encroachment is done, it becomes disqualification for continuity with the membership of Gram Panchyat. It is his submission that the property even if it is a inam land or the property of a trust cannot become a public property within a meaning of the said provision. He therefore submits that there is no reason or purpose for which the remand order can sustain.

4. Learned counsel for respondent No.5 opposed the said petition on the ground that the order of remand need not be interfered

with as it is open for the Collector to consider the submission of both sides and to pass appropriate order on merit. Learned AGP made submission referring relevant provisions of law and factual matrix of the matter.

5. Herein this case Section 14(1)(j-3) of the Act has been invoked against the petitioner. The said provision reads thus:

14. Disqualifications.

[(1) No person shall be a member of a panchayat continue as such, who-] [This existing section 14 was renumbered as sub section (1) by Maharashtra 34 of 2000, Section 2.]

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(j-3) has encroached upon the Government land or public property; or] [Clause (j-3) was inserted by Maharashtra 38 of 2006, Section 4 w.e.f. 21 12-2006.]

6. It is clear from this provision that when the member of grampanchayat has encroached upon any government land or public land, the disqualification gets attracted against him. The term public property has not been defined under the provisions of the Act. The said definition however is found in Prevention of Damage to Public Property Act, 1984. the said provision reads thus:

b) "public property" means any property, whether immovable or movable (including any machinery) which is owned by, or in the possession of, or under the control of—
(i) the Central Government; or
(ii) any State Government; or
(iii) any local authority; or

(iv) any corporation established by, or under, a Central, Provincial or State Act; or
(v) any company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or
(vi) any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specify in this behalf:
Provided that the Central Government shall not specify any institution, concern or undertaking under this sub-clause unless such institution, concern or undertaking is financed wholly or substantially by funds provided directly or indirectly by the Central Government or by one or more State Governments, or partly by the Central Government and partly by one or more State Governments.

7. It is clear from this definition of public property that the property belonging to the trust has not been included in the said definition. The Act of 1958 specifies encroachment on government land or public property. The encroachment means the Act is wrongful and not permissible under the law. Even in general parlance the public property would be the property wherein there is free and unobstructed access to any person. Herein this case the property is claimed to be the property of the trust. Even if the property belongs to the trust, it cannot be said that all subjects of the state are having free and unobstructed access to the said property. For all practical purposes the property belongs to the trust and it is the private property of the trust. One more criteria which can be considered for the purpose of a property being government land or public property is that in case the government desires to make use of the same, it does not require acquisition thereof. This may not be the case in case of

property belonging to the trust. Similarly, the public property can be considered as the property which is reserved for street, parks or public purposes and it precludes even the owner from transferring or selling his interest therein. When admittedly the property wherein the alleged encroachment is caused is owned by the public trust, question of this being used by the government or local authority without acquisition does not arise. Even for the sake of the argument it is accepted that the act of the petitioner is a wrongful act, the same may be dealt with under the other law, but cannot attract disqualification under Section 14(1)(j-3) of the Act. In this regard reference can be made to the judgment of the Co-ordinate bench of this Court in case of *Shantaram Narayan Raut Vs. Additional Collector, Nashik and others, 2012 (6) Mh.L.J., 790*.

8. In the above circumstances, there was no propriety/reason or justification for the Divisional Commissioner to relegate the matter back for conducting inquiry. In view of the admitted facts themselves, the dismissal of the dispute by the Collector ought to have been confirmed by the said authority. Hence, petition has made out a case to cause interference in the impugned order. Hence, petition stands allowed. Impugned order is set aside.

(R. M. JOSHI, J.)

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