



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2217 OF 2023

Mangeshkumar s/o Shivraj Herkar

Age : 49 years, Occu. Agri.,

R/o. : Her, Tq. Udgir, Dist. Latur.

.. Petitioner

Versus

1. The District Collector,
Latur, Dist. Latur.
 2. The Block Development Officer,
Panchayat Samiti, Udgir,
Tq. Udgir, Dist. Latur.
 3. Gramsevak Grampanchayat Karyalaya Her,
Tq. Udgir, Dist. Latur.
 4. Sarika w/o Avinash Suryawanshi,
Age : 29 years, Occu. : Household and
Member of Village Panchayat Her,
R/o. : Her, Tq.Udgir, Dist. Latur.
- .. Respondents

Mr. R. K. Ashtekar, Advocate for the Petitioner.

Mr. K. S. Patil, AGP for Respondent No. 1.

Mr. P. V. Gole, Advocate h/f Mr. V. D. Gunale, Advocate for Respondent No. 3.

Mr. Mahesh Deshmukh, Advocate h/f Mr. U. L. Momale, Advocate for Respondent No. 4.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 28th January, 2025.

Date on which order pronounced : 31st January, 2025.

ORDER :-

. The present petition is by a member of Grampanchayat challenging the judgment and order passed by the learned Additional Divisional Commissioner, Aurangabad dated 06.02.2023 rejecting an appeal of the petitioner under the Maharashtra Village Panchayats Act (for short “the said Act”). By way of impugned judgment and order the learned Additional Divisional Commissioner confirmed the order passed by the learned Collector, Latur rejecting the complaint filed by the present petitioner seeking disqualification of respondent No. 4 to hold the post of Sarpanch. The respondent No. 1 is the Collector. The respondent No. 2 is the Block Development Officer, Panchayat Samiti, Udgir and respondent No. 3 is Gramsevak of Grampanchayat Her, Taluka Udgir.

2. The facts in short are that, the petitioner and respondent No. 4 came to be elected as a member of Grampanchayat ‘Her’ in general election held in the year 2021. The respondent No. 4 thereafter came to be elected as Sarpanch from amongst the members of Grampanchayat. It is the case of the petitioner that, father in law of respondent No. 4 has committed an encroachment on a Gayran land Survey No. 2 belonging to the Government. The respondent No. 4 is a member of joint family and therefore, has incurred disqualification for

being Sarpanch or member of the Grampanchayat.

3. The respondent No. 4 appeared. It is her case that, she is not residing with her father in law. There is already a partition that has taken place in the year 2019. Even their ration card is separate and prayed for rejection of the complaint.

4. The learned Collector by his order dated 28.10.2021 held that, the encroachment by the father in law of respondent No. 4 is proved. The father in law of respondent No. 4 has encroached upon Gayran land Survey No. 2. The learned Collector has held that, the respondent No. 4 has incurred disqualification. The said judgment was challenged by the respondent No. 4 by filing an appeal before the learned Additional Divisional Commissioner, Aurangabad. The learned Additional Commissioner concluded that, it was necessary to consider the record and report of the Block Development Officer, tax assessment receipts etc. He remanded the matter back to the learned Collector for fresh decision.

5. In the second round, the learned Collector concluded that, the father in law of the respondent No. 4 has committed an encroachment. However, he accepted the case of the respondent No. 4 that, on 08.07.2019 a partition has taken place in the family and thereafter, the

respondent No. 4 started residing separately. She has also applied for separate ration card. The said application is received by the Tahsildar office on 02.01.2021 and thus, the learned Collector held that the respondent No. 4 is not a member of joint family and rejected the application/complaint.

6. The petitioner being aggrieved by the order passed by the learned Collector approached the learned Additional Commissioner. The learned Additional Commissioner endorsed the view taken by the learned Collector and rejected the appeal. The original complainant – petitioner is thus before this Court.

7. The learned advocate Mr. Ashtekar for the petitioner vehemently argued the case. He pointed out that, from the nomination form it is seen that the respondent No. 4 had shown the house property of father in law in column showing as to whether there is a toilet in the house. She has not shown any property in her own name. He thus submits that, it is clear that, the respondent No. 4 is staying in the family of father in law. Along with nomination form, she has annexed no due certificate. He further points out that, this alleged partition deed is signed before the notary and is not valid. So far as separate ration card, he submits that the nomination form was filled in on 28.12.2020. The election took place thereafter. For the first time, she filed an

application for deletion of her name from the ration card of father in law after the election. It is thus clearly after thought and just to give an eye wash. He thus submits that, both the authorities have wrongly come to a conclusion that the respondent No. 4 is not a member of the joint family. The learned advocate relied upon the judgment of the Hon'ble Apex Court in the case of **Janabai Vs. Additional Commissioner and others** in **Civil Appeal No. 6832/2018**.

8. The learned advocate Mr. Deshmukh for respondent No. 4 strenuously opposes the petition. He submits that, the fact of encroachment by the father in law of the respondent No. 4 is not seriously disputed. Both the authorities have rightly considered that the respondent No. 4 is residing separately and is not part of family of father in law. The ration card is separate. The partition deed has taken place long back in the year 2019 which clearly shows that she was residing separate with her husband. He submits that the judgment in the case of **Janabai** (*supra*) has no application to the facts of the present case.

9. Having heard the parties, this Court has seen both the judgments. Both the authorities have clearly held that, there is an encroachment on property Survey No. 2 by the father in law of

respondent No. 4. The only observation recorded is that, the respondent No. 4 is residing separately. On going through the annexures to the nomination form it is clearly seen that, in declaration of having toilet to the house, the respondent No. 4 has given description of the property as House No. 2, Survey No. 2 which shows that the said house is of father in law. In the nomination form she has not given any other property showing her own property.

10. The Hon'ble Apex Court in the case of **Janabai** (*supra*) has clearly held in paragraph Nos. 27, 28 and 29 which reads as below :

“27. On a schematic appreciation of the Act including Sections 10, 11 and 53, it is quite vivid that the Members elected in Panchayat are duty bound to see to it that the obstruction or encroachment upon any land, which is not a private property but Government land or a public property, should be removed and prosecution should be levied against the person creating such obstruction or encroachment.

28. Section 184 of the Act provides that every Member of the Panchayat and every officer and servant maintained by or being employed under the Panchayat shall be deemed to be a public servant for the purpose of Section 21 of the Indian Penal Code. Analysing the various provisions, the learned Single Judge in **Sandip Ganpatrao Bhadade** (*supra*) has opined :-

“11. It is in the background of the aforesaid provisions of law, that the provisions of qualifications and disqualifications to

vote, contest the election and being continued as a member of Panchayat, are required to be considered. Section 13 of the said Act deals with the persons qualified to vote and be elected. The persons incurring any disqualification under the provisions of the said Act are neither qualified to vote nor to be elected as a member of a Panchayat. Section 14 deals with different kinds of disqualifications, as stipulated in clauses (a) to (k) under sub-section (1), which operate against two kinds of persons – (i) who proposes to become a member of a Panchayat, and (ii) who has become a member of a Panchayat. If a person has incurred any one or more disqualifications, then he is prohibited from becoming a member of a Panchayat, and if becomes a member of a Panchayat, then his is not entitled to continue as such. The disqualification under Section 14 is in respect of the acts, events, deeds, misdeeds, transactions, etc, which have not been done, happened or occurred before entering into the office as a member of a Panchayat as well as those which take place during continuance as a member of a Panchayat.”

And again :-

“13. The very object of introducing the provision of disqualification under Section 14 (1) (j-3) of the said Act is to avoid the conflict of interest by prohibiting the persons, who are the encroachers upon the Government land or public property to get elected or continued as a member of the Panchayat, which is democratically elected body of the villagers. It is beyond comprehension to assume that a person under statutory obligation or a duty to protect the Government land or public property from encroachment, commits an act of such encroachment. To permit person, who proposes to become

a member or becomes a member of the Panchayat to be the encroacher upon the Government land to public property, would be anathematic, acting in breach of statutory duty, exposing himself to prosecution under sub-sections (1) and (4) of Section 53, resulting ultimately in losing the protection under Section 180 read with Section 184 of the said Act. It is in this context that the text of disqualification under Section 14(1)(j-3) of the said Act is required to be analyzed and interpreted.

In the case of *Devidas Surwade* (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.

29. 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. This Court finds substance in the submissions of the petitioner. Both the authorities have failed to appreciate the provisions of Section 14 (1) (j-3) of the said Act. The respondent No. 4 ought to have been held incurred disqualification to become a member of the Grampanchayat.

12. In view of the same, the writ petition is allowed in terms of prayer clause (B). The impugned judgment and order is set aside.

13. The writ petition stands disposed of. No order as to costs.

(KISHORE C. SANT, J.)

. At this stage, the learned advocate for respondent No. 4 submits that, since the respondent No. 4 is still holding the post of Sarpanch,

the effect of the order is stayed for a period of four (04) weeks from today.

2. Record and proceedings be sent back.

(KISHORE C. SANT, J.)

PS.B.