

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

WRIT PETITION NO. 12495 OF 2024

1. Shri. Santosh Ramesh Waghela

Age: 47 years, Occupation.: Business

Residing at Dhangar Mala, Korochoi,

Taluka Hathkanangle, District Kolhapur

Pincode-416109.

2. Shri. Devanand Bapusao Kamble

Age: 38 years, Occupation.: Business

Residing at Sambhaji Nagar, Korochoi,

Taluka Hathanangle, District Kolhapur,

Pincode-416109

3. Shri. Lakhan Milind Kamble

Age: 35 years, Occupation: Business

R/o Indira Nagar, Korochoi

Tal. Hathkanangale, District Kolhapur

4. Shri. Rajendra Ramchandra Kasbe

Age: 42 years, Occupation: Business

Residing at Korochoi, Taluka,

Hathkanangle, District Kolhapur,

Pincode-416109.

... Petitioners

Versus

1. Shri. Santosh Sakahram Bhare

Residing at Korochi, Taluka Hathkanangle,
District Kolhapur, Pincode-416109.

2. The Addl. Divisional Commissioner,
Pune Division, Pune.

3. The District Collector, Kolhapur
District, Collector Office Rd, New Shahupuri,
Kolhapur, Maharashtra, Pincode-416003.

4. The Block Development Officer,
Grampanchayat Korochi, Taluka,
Hathkanangle, District Kolhapur,
Pincode-416109

5. Sachin alias Sham Shivaji Athawale
Age: 35 years, Occupation : Business
R/o. Vivekanand Nagar, Korochi
Tal. Hathkanangle, District Kolhapur

... Respondents

Mr. Drupad S. Patil with Mr. Dheeraj Patil and Mr. Prasad Ganu Keluskar, for the Petitioner.

Mr. S.R. Ganbawale with Mr. Ruturaj Pawar and Mr. Yogesh Morbale, for Respondent No.1.

Ms. A. A. Nadkarni, AGP for Respondent / State.

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 7 January 2025.

PRONOUNCED ON : 14 January 2025.

JUDGMENT :

1) Petitioners have filed the present Petition challenging the Order dated 8 August 2024 passed by Additional Divisional Commissioner, Pune allowing the appeal preferred by Respondent No.1 and setting aside the order passed by Collector, Kolhapur dated 31 January 2024 in Dispute Application No. 3 of 2023. By order dated 31 January 2024, the Collector had allowed the Dispute Application No. 3 of 2023 filed by the Petitioners and had disqualified the Respondent No.1 from acting as Sarpanch of Village Korochoi, Taluka, Hathkanangle, District Kolhapur under provisions of Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958 (**Village Panchayats Act**).

2) Brief facts leading to filing of the Petition are that election of Korochoi Grampanchayat were held in December 2022. Respondent No.1 was elected as a Member of Grampanchayat from Ward reserved for backward classes. Respondent No.1 was thereafter elected as Sarpanch of Grampanchayat Korochoi, Taluka Hathkanangle, District Kolhapur.

3) Petitioners filed Dispute Application No. 3 of 2023 under provisions of Section 14(1)(j-3) and Section 16 of the Village Panchayats Act before Collector, Kolhapur seeking disqualification of Respondent No.1 on the ground that he has encroached upon the

government land. It was alleged by them that the mother of Respondent No.1 had constructed RCC residential house on government land. Respondent No.1 appeared in the Dispute Application and filed his reply opposing the same. It appears that in pursuance of directions by the Collector, the Block Development Officer carried out panchanama dated 5 July 2023 in respect of the land in question. After hearing both the sides and after considering the documents filed on record, the Collector proceeded to pass the order dated 31 January 2024 declaring Respondent No.1 as disqualified to remain on the post of Sarpanch under provisions of Section 14(1)(j-3) of the Village Panchayats Act.

4) Respondent No.1 preferred Grampanchayat Appeal No. 6 of 2024 before the Divisional Commissioner, Pune challenging the Collector's order dated 31 January 2024. The Additional Divisional Commissioner has allowed the Appeal preferred by Respondent No.1 and has set aside Collector's order dated 31 January 2024. Petitioners are aggrieved by the order dated 8 August 2024 passed by Additional Divisional Commissioner and have accordingly filed the present Petition.

5) Mr. Patil, the learned counsel appearing for the Petitioners would submit that the presence of first Respondent's mother's house on land bearing Gat No. 1035/A is not in dispute. He would submit that the said *gairan* Gat No.1035/A is government land. That once presence of house constructed by Respondent No.1's mother on government *gairan* land is admitted, the necessary consequence of disqualification of Respondent No.1 must follow. He would submit that Respondent No.1 made erroneous entry in the

Assessment Register of Grampanchayat about his mother being beneficiary in the National Rural Employment Programme (NREP) Housing Scheme. He would invite my attention to the information secured from Block Development Officer about non-implementation of the housing scheme under NREP in Village Korochi. That Respondent No.1 did not produce any evidence about receipt of any other funding for construction of house under NREP Scheme.

6) He would submit that Respondent No.1 deliberately sought to create false evidence claiming his residence in a tenanted premises by showing execution of undated rent agreement. However, there is a joint Ration Card issued in the name of the Respondent No.1's mother reflecting joint residence of mother, Respondent No.1 and his wife in same house. That the voters list issued in respect of Indira Nagar area contains names of Respondent No.1 and his mother again showing their joint residence in Indira Nagar where the house on encroached portion of land exists. He would also invite my attention to address of Respondent No.1 at Indira Nagar in the Sale Deed executed on 31 March 2022. That, therefore, documentary evidence conclusively proves residence of Respondent No.1 in the house constructed on encroached government land. That, therefore, the Collector had rightly disqualified Respondent No.1 vide order dated 31 January 2024 and the Additional Divisional Commissioner has erred in reversing well-considered order of the Collector. In support of his contention that encroachment by mother of Respondent No.1 would attract disqualification of Respondent No.1 under provisions of Section 14(1)(j-3) of the Village Panchayats Act, Mr. Patil would rely upon the judgment of the Apex Court in Janabai Versus. Additional Commissioner and Others¹. He

¹ (2018) 18 SCC 196

would, therefore, pray for setting aside order dated 8 August 2024 passed by the Additional Divisional Commissioner and for confirmation of disqualification order passed by the Collector on 31 January 2024.

7) The Petition is opposed by Mr. Ganbawale, the learned counsel appearing for Respondent No.1. He would submit that the Additional Divisional Commissioner has rightly considered the entire documentary evidence and has rightly set aside the erroneous order passed by the Collector. He would submit that the Petitioner is a democratically elected Member and Sarpanch and cannot be unseated from the post merely based on surmises sought to be raised by Petitioners. He would submit that the mother of Respondent No.1 was landless labourer belonging to Scheduled Caste. He would invite my attention to the National Rural Housing Programme under the Indira Awas Yojana which contemplates construction of houses for landless labourer. He would submit that the fact that the scheme contemplated construction of housing for landless labourer would obviously mean that such houses were to be constructed on government land. He would take me through the assessment extract maintained by Grampanchayat in support of his contention that not just the mother of Respondent No.1, but several other individuals were permitted to construct their houses on the government land under the NREP Housing Scheme. He would take me through the map prepared by the Grampanchayat showing presence of three houses on the land in question and would contend that entries of NREP are made in respect of the other two persons as well on same lands as that of the mother of Respondent No.1. Mr. Ganbawale would rely upon report of the Circle Officer dated 22 February 2022

certifying construction of the house under NREP. He would rely on judgment of this Court in **Dattatray Sarjerao Shinde Versus. Additional Commissioner, Pune and Ors.², Sunil Dinkar Jagdale Versus. State of Maharashtra³** and **Yogesh Shriram Solanke Versus. Divisional Commissioner, Amravati Division Amravati⁴**. He would pray for dismissal of the Petition.

8) Rival contentions of the parties now fall for my consideration.

9) Disqualification of Respondent No.1 under provisions of Section 14(1)(j-3) of the Village Panchayats Act was sought by Petitioners by filing Dispute Application before the Collector alleging that Respondent No.1 has encroached upon the government land. There is no dispute about the factual position that first Respondent's mother has constructed residential house on the land bearing Gat No. 1035/A which is government *gairan* land. Respondent No.1 raised twin defences of the house being constructed by his mother under housing scheme of NERP and that he himself residing in a rental accommodation procured under the rent agreement.

10) So far as the second defence of Respondent No.1 about his residence in the rented premises is concerned, Respondent No.1 relied upon rent agreement executed with Shri. Sanjay Bhimrao Toraskar in respect of first floor premises in house constructed on City Survey No. 308 bearing Gram Panchayat House No. 384/1. The Agreement records that the said premises were given on rent in

² Writ Petition No. 2019 of 2024 decided on 25 July 2024.

³ AIR 2022 Bom 3041

⁴ AIR ONLINE 2023 Bom 1480.

favour of Respondent No.1 for the period of 11 months from 8 October 2022 to 7 August 2023. However, elections of Korochi Gram Panchayat were held in December 2022 and therefore, it is difficult to record a positive finding that Respondent No.1 was ordinary resident of house at Gram Panchayat House No. 384/1, City Survey No. 308. The rent agreement appears to have been executed on 30 November 2022 i.e. few days prior to filing of nomination by the Respondent No.1 for contesting elections. I am therefore not inclined to accept the defence of Respondent No.1 that he did not reside with his mother in the house constructed by her on land bearing Gat No. 1035/A and that therefore, he cannot be disqualified only on account of execution of the Rent Agreement dated 30 November 2022.

11) Having rejected the defence of the first Respondent about his residence in rented accommodation, he would become liable for disqualification even if it is found that his mother has encroached upon the Government land for construction of house. In this regard, reliance by Mr. Patil of the judgment of Apex Court in ***Janabai*** (supra) appears to be apposite. The Apex Court has held in paragraph Nos. 24, 25, 26, 27 and 30 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* [*Devidas v. Commr., Amravati*, 2012 SCC OnLine Bom 2126 : (2017) 1 Mah LJ 102] , 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.

25. First, we are obliged to remind ourselves that the view expressed by the Bombay High Court in *Devidas* [*Devidas v. Commr., Amravati*, 2012 SCC OnLine Bom 2126 : (2017) 1 Mah LJ 102] has been affirmed [*Parvatabai v. Commr., Nagpur*, (2018) 1 SCC 340, 348 (footnote 7)] by this Court in special leave petition. It is worth noting here that this Court, while dismissing the special leave petition, had observed that it had not found any merit in the petition. Whether such an order would tantamount to be a binding precedent or not is another matter.

26. We may hasten to add here that we do not intend to take the said route. We think it appropriate to analyse the provision, understand the purpose and the contextual relevance and also appreciate the nature of the provision in the backdrop of the democratic set-up at the grassroot level. Having said that, we shall now analyse the statutory scheme. Section 53 that occurs in Chapter III deals with obstruction and encroachment upon public streets and upon sites. It confers power on the panchayat to remove such obstruction or encroachment or to remove any unauthorisedly cultivated grazing land or any other land. That apart, it also empowers the panchayat to remove any unauthorised obstruction or encroachment of the like nature in or upon a site not being private property. The distinction has been made between private property and public property. It has also protected the property that vests with the panchayat. If the panchayat does not carry out its responsibility of removing the obstruction or encroachment after it has been brought to its notice in accordance with the procedure prescribed therein, the higher authorities, namely, the Collector and the Commissioner, have been conferred with the power to cause removal. There is a provision for imposition of fine for commission of offence.

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.

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 unauthorised 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* [*Sagar Pandurang Dhundare v. Keshav Aaba Patil*, (2018) 1 SCC 340] does not lay down the correct position of law and it is, accordingly, overruled.

12) Therefore, following the ratio of the judgment in ***Janabai***, Respondent No.1 cannot seek to completely disassociate himself with house constructed by his mother on land bearing Gat No. 1035/A.

13) The next issue for consideration is whether construction of house by the mother of Respondent No.1 on land bearing Gat No. 1035/A, which is government *gairan* land, would necessarily attract disqualification of Respondent No.1 for acting as Member and Sarpanch under provisions of Section 14(1)(j-3) of the Village Panchayats Act. Respondent No.1 took a defence in the Dispute Application by stating that the said house has been constructed by his mother under Housing Scheme of National Rural Employment Programme and that therefore, the same cannot be construed to mean an encroachment by his mother within the meaning of

provisions of Section 14(1)(j-3) of the Village Panchayats Act. In support of his contention, Respondent No. 1 *inter alia* relied upon Grampanchayat Assessment Register in which remark 'NREP' is made against the name of the first Respondent's mother and contended that his mother is NREP Scheme beneficiary. As pointed out by Mr. Ganbawale, there are three houses on land bearing Gat No. 1035/A of Shalan Bhore (mother of Respondent No.1), Malan Sawant and Shantabai Naik. It appears that similar remark of 'NREP Housing Scheme beneficiary' is made against the names of other two individuals as well in Form-8 of the extract. It is the contention of Mr. Ganbawale that the Rural Housing Scheme contemplates encouragement of housing activity by landless labourer with priority being accorded to members of SC & ST Community. Respondent No.1 belongs to Scheduled Caste Community and it is his case that his mother, being a landless labourer, was provided necessary assistance for construction of house on land bearing Gat No. 1035/A. Petitioners seek to accuse Respondent No.1 as being the author of entry made in Gram Panchayat's Register with regard to his mother being NREP Housing Scheme beneficiary. Petitioners have relied upon letters issued by Block Development Officer certifying that the said scheme was never implemented in Korochi Village.

14) However, it appears that much before Respondent No.1 contested the election, applications were made to the Project Director, District Rural Development Office, Kolhapur with regard to recognition of the houses constructed in village Korochi under the Rural Housing Scheme. The Project Director of District Rural Development Office, Kolhapur addressed letters dated 9 January 2020 to Tahsildar, Ichalkaranji and forwarded the applications for

verification of the houses constructed under the Rural Housing Scheme at village Korochi in the 1984. The Tahsildar in turn forwarded the said applications to Circle Officer-Kabnor Hathkanangale by letter dated 29 March 2021 and directed the Circle Officer to conduct panchanama and submit report. It appears that the Circle Officer conducted the panchanama and submitted his report dated 22 February 2022, which reads thus:

"प्रति,
मे अपर तहसीलदार सो,
इचलकरंजी ता. हातकणंगले यांचे सेवेसी

विषय : एन आर इ पी अंतर्गत बांधण्यात आलेल्या घरकुलाबाबत

संदर्भ : आपले कडील क्रमांक जमावरी / वाशी / 73 दिनांक 29/03/2021 चे प्रकरण

उपरोक्त विषयास अनुसरून मौजे कोरोची येथील 1984 सालामध्ये एन आर इ पी घरकुल योजनेबाबत झाले. घरकुल बांधकाम जागेस नाव दाखल करणे संदर्भात प्रकरण ग्रा.पं. कोरोची मार्फत जिल्हाधिकारी सो कोल्हापूर यांचेकडे प्रस्ताव सादर केला आहे सदरचा प्रस्ताव चौकशी कामी संदर्भीय पत्रान्वयेकडील कार्यालयास प्राप्त असून त्याचा चौकशी अहवाल

(1) प्रस्तुत प्रकरणी ग्रामपंचायत कोरोची यांनी सदर प्रकरणी शालन सखाराम भोरे, मालन मुकुंद सावंत व शांताबाई शिवाजी नाईक या लाभार्थ्यांना सन 1984 साली एन आर इ पी योजनेतून गायरान गट नंबर 1035 या जमिनीमध्ये घरे बांधून दिलेली आहेत तथापि सदरचे रेकॉर्ड ग्रामपंचायतकडे उपलब्ध नसले सदर लाभार्थ्यांची नावे सरकारी दप्तरी घेणेकामी सा.प.द.ल 09/04 दिनांक 28/05/2019 चे गावसभेमध्ये मंजूर करून सदर ठरावाप्रमाणे पत्रव्यवहार करणे कामी झाले व ठराव प्रत व नि 9 यास आहे.

(2) सदर घरकुलाचा समजूतीचा नकाशा व न 1) यास आहे.

(3) प्रश्नाधीन जमिनीचा सातबारा बस्ती पा.नं. 13 यास आहे.

(4) शा.न.न.1 इं चा उतारा पाहता सदर लाभार्थ्यांची नावे पान नंबर 7, 8 व 10 यास अतिक्रमण म्हणून नोंद दिसून येते सदरचा उतारा पान नंबर 29 यास सदर.

(5) सदर प्रकरणी लाभार्थ्यांचे जबाब नोंदविण्यात लाभार्थ्यांचे आले असून ते पा.नं. 131 ते 155 यात सामील केले आहेत

(6) प्रश्नाधीन मिळकतीमध्ये लाभार्थ्यांना घरे बांधून देण्यात आली त्या जागेचा वस्तुस्थितीचा पंचनामा करण्यात आला असून तो प्रकरणी पा.नं. 157 यास सामील केले आहे.

सबब कागदपत्रांचे अवलोकन केले असता 1) श्रीमती शालन सखाराम भोरे, 2) श्रीमती मालन मुकुंद सावंत व 3) शांताबाई शिवाजी नाईक या लाभार्थ्यांना घरे बांधून देण्यात आली आहेत त्यांच्या नोंदी गायरान ग.नं. 1035 या मिळकतीत दिसून येत नाहीत तथापि अतिक्रमण नोंदवही पाहता सदर लाभार्थ्यांची नावे नमूद असल्याचे दिसून येते सदर प्रकरणी लाभार्थ्यांना सन 1984 साली एन आर इ पी योजनेअंतर्गत घरकुले बांधून देण्यात आली आहेत ही वस्तुस्थिती खरी आहे. या लाभार्थ्यांची गट नंबर 1035 या मिळकतीस होणेकामी आपले स्तरावर निर्णय होणे वाजवी वाटते तथापि उचित कार्यवाहीसाठी प्रकरण पा.नं. 1 ते 157 सविनय सादर.”

15) Thus, in the panchanama/report of Circle Officer, Kabnur it is specifically stated that the houses were constructed under NREP Scheme in the year 1984 on *gairan* land bearing Gat No. 1035/A in the names of Shalan Bhoir, Malan Sawant and Shantabai Shivaji Naik. Due to non-availability of records, the names of the said beneficiaries were not recorded. The report of the Circle Officer refers the resolution adopted by Gram Panchayat on 28 May 2019 for recording names of the said beneficiaries in the relevant government records. Thus, the report of Circle Officer specifically records a finding of fact that house was constructed for mother of the Respondent No.1 in the year 1984 as a beneficiary under NREP Housing Scheme. The Circle Officer further recorded that though entry of the three houses at Gat No. 1035/A are made as encroachments in the encroachment book, but Construction of the said houses under NREP Scheme in the year 1984 is a matter of fact.

16) The report of Circle Officer dated 22 February 2022 is not taken into consideration for the purpose of certifying legality of houses constructed by first Respondent's mother allegedly under NREP Housing Scheme. The report, however, cannot be ignored altogether while making an inquiry for disqualification of the first Respondent, who otherwise is a democratically elected Member and Sarpanch. Though the Circle Officer's Report and entries in the

Grampanchayat Assessment records about construction of house under NREP Scheme may or may not be enough for permitting retention of the structures. However the said documents, in my view, are sufficient for quelling the allegation of encroachment for seeking disqualification of a democratically elected Member and Sarpanch under Section 14(1)(j-3) of the Village Panchayats Act. Therefore a conclusive finding about first Respondent's mother encroaching upon government land for the purpose of attracting his disqualification under provisions of Section 14(1)(j-3) of the Act, cannot be recorded in the present case. For unseating a democratically elected Member or Sarpanch, concrete material must be produced and a conclusive finding must be recorded by the Collector about encroachment by him/her or by close members of the family. There is no room for suspicion, surmises or conjectures. Since the consequences of disqualification are severe, greater care must be taken by the Collector to ensure that concrete material is produced before him for recording conclusive finding of encroachment. Seeking disqualification of an elected Member or Sarpanch is a statutory remedy and not a common law remedy or a remedy in equity. Therefore, strict adherence to the statutory provisions is mandatory. A fortiori, the allegation leading to disqualification of elected Member or Sarpanch must be proved with concrete material, as opposed to the test of preponderance of probability.

17) In **Ravi Yashwant Bhoir versus District Collector Raigad and others**⁵, the Apex Court has held as under :

⁵ (2012) 4 SCC 407

“28. In *State of Punjab v. Baldev Singh etc. etc.*, AIR 1999 SC 2378, this Court considered the issue of removal of an elected office bearer and held that where the statutory provision has a very serious repercussions, it implicitly makes it imperative and obligatory on the part of the authority to have strict adherence to the statutory provisions. All the safeguards and protections provided under the statute have to be kept in mind while exercising such a power. The Court considering its earlier judgments in *Mohinder Kumar v. State, Panaji, Goa* (1998) 8 SCC 655; and *Ali Mustafa Abdul Rehman Moosa v. State of Kerala*, AIR 1995 SC 244, held as under:

"It must be borne in mind that severer the punishment, greater has to be the care taken to see that all the safeguards provided in a statute are scrupulously followed."

32. In service jurisprudence, minor punishment is permissible to be imposed while holding the inquiry as per the procedure prescribed for it but for removal, termination or reduction in rank, a full fledged inquiry is required otherwise it will be violative of the provisions of Article 311 of the Constitution of India. The case is to be understood in an entirely different context as compared to the government employees, for the reason, **that for the removal of the elected officials, a more stringent procedure and standard of proof is required.**

36. In view of the above, the law on the issue stands crystallized to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office bearer but his constituency/electoral college is also deprived of representation by the person of his choice.

37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like 'No Confidence Motion' etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period."

18) In *Sunil Dinkar Jagdale* (supra), a Single Judge of this Court (*Mangesh S. Patil J*) has held as under :

10] Needless to state that the conclusion of incurring disqualification being drastic and penal and even stigmatizes a person who has been duly elected, it 6 wp248-20 is imperative that the authorities to whom the powers are vested under Section 16 of the Act, should insist for strict proof of the circumstances which result in disqualification. The degree of proof though may not strictly be beyond reasonable doubt, but atleast which would travel beyond mere preponderance of probabilities. There has to be material which is sufficient to draw an inference about such circumstances. One can gainfully refer to and rely upon the decision of the Supreme Court in case of Ravi Yashwant Boir V/s District Collector, Raigad and other; (2012) 4 S.C.C. 407.

(emphasis and underlining added)

19) Given the position that that the first Respondent is a democratically elected Member and Sarpanch of the Village, his ouster cannot be ordered in absence of definitive material on record about encroachment by his mother on government land. Entries made in Grampanchayat Assessment Records and finding of fact recorded by the Circle Officer about construction of house by first Respondent's mother in 1984 cannot be brushed aside on the basis of a mere surmise that the first Respondent himself could be the author of entries in Grampanchayat records.

20) In ***Yogesh Shriram Solanke*** (supra) Single Judge of this Court (*Anil S. Kilor, J.*) has held that construction of house under Jawahar Rojgar Yojna and Indira Awas Yojana cannot be considered as an encroachment so as to incur disqualification under provisions of Section 14(1)(j-3) of the Village Panchayats Act. This Court held in paragraph Nos. 10 to 14 as under:

10. On perusal of the order passed by the Collector, it is evident that the Collector has recorded the submissions made by the petitioners. The Collector has recorded that it was argued before him that on a E-class land, the Integrated Rural Development

Project, Akola, constructed 96 tenements under the Jawahar Rojgar Yojna and Indira Awas Yojna and out of those 96 tenements, 2 tenements were allotted to the grandfather of the petitioners namely tenement No.579 to the grandfather of the petitioner No.1 and tenement No.721 to the grandfather of the petitioner No.2.

11. It is to be noted that after going through the reasons recorded by the Collector on consideration of reports of Village Development Officer and Tahsildar, the Collector has observed that because the land stands in the name of the government and there is no record to show that the tenements were allotted to the grandfather of the petitioners, the petitioners have encroached upon the government land.

12. From the order of the Collector, it is evident that, the Collector has not at all considered the case of the petitioners. The Collector is not denying the fact of construction of 96 tenements. The Collector is not denying the allotment of those 96 tenements to different persons. The Collector is also not denying construction of those tenements on E-class land.

13. However, the Collector is silent about the facts stated by the petitioners about E-class land or the scheme of the Integrated Rural Development Project or the construction on 96 tenements under the Jawahar Rojgar Yojna and Indira Awas Yojana.

14. It is significant because if 96 tenements were constructed by the government authorities on the government land and if this 96 tenements were allotted to different persons and the land still stands in the name of the government, it can be said that the persons who are occupying such tenements are encroachers on government land.

21) In *Shivaji Kisan Kanherkar Versus. State of Maharashtra and Others*⁶, I had an occasion to decide somewhat similar case in which also, the authority had made an order of disqualification merely on basis of surmises. It is held in paragraph Nos. 12 and 13 of the Judgment as under:

⁶ Writ Petition No. 13601 of 2022 decided on 25 October 2023.

12. The Additional Divisional Commissioner, while reversing the order of Collector, has mainly relied upon the entries made in the encroachment register. He arrived at a conclusion that there is encroachment on the part of the Petitioner. In Paragraph 5.5 of his order, the Additional Divisional Commissioner has recorded a finding that till the entries in the encroachment register are physically deleted or modified, mere removal of encroachment subsequently would not be a reason for concluding that there is no unauthorized construction/encroachment at the site. I find this finding of the Additional Divisional Commissioner to be totally perverse. The Additional Divisional Commissioner was dealing with the proceedings seeking disqualification of a democratically elected member. As held by the Apex Court in Ravi Yashwant Bhoir (supra), the standard of proof required for disqualifying an elected member is strict and more stringent procedure is required to be adopted. **In the present case, the Additional Divisional Commissioner has merely drawn surmises and conjectures only on the strength of entries in the encroachment register and has proceeded to ignore the factual position at the site as indicated in the two reports of Tahsildar and one report of the Circle Officer. Another perverse finding recorded by the Additional Divisional Commissioner in Paragraph 5.4 of his order is that the 'toilet tank' is a permanent structure. This finding factually contradicts the report of Circle Officer dated 5 April 2021 in which the Circle Officer has specifically observed that the structures were of temporary nature.** When an officer conducting a site inspection records a finding of fact that the construction is of a temporary nature, it is incomprehensible as to how the Additional Divisional Commissioner, sitting in his office, can contradict such finding of fact and hold that the structure is of permanent nature.

13. **In my view therefore, no concrete case was made out by Respondent No.5 to prove that the Petitioner indeed indulged in encroachment or unauthorized construction.** On the contrary Petitioner successfully dispelled the doubts created by Respondent No. 5 by relying upon the entries in the encroachment register. The order passed by the Additional Divisional Commissioner dated 30 September 2022 suffers from the vice of perversity and is unsustainable.

(emphasis added)

22) Considering the overall conspectus of the case, I am of the view that Petitioners have failed to make out a clear case of encroachment on government land by the mother of Respondent No.1. In absence of concrete material available on record to infer

encroachment by Respondent No.1 / his mother on government land, it would be impermissible to order disqualification of Respondent No. 1, who is a democratically elected member and thereafter Sarpanch of the Grampanchayat. The Additional Divisional Commissioner has rightly set aside the order passed by the Collector. No infirmity is noticed in the order passed by the Additional Divisional Commissioner. Writ Petition is devoid of merits and is accordingly **dismissed** without any order as to costs.

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[SANDEEP V. MARNE, J.]