IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16283 OF 2024

Mahavir Balaso Chougule ...*Petitioner*

V/s.

1. Neminath Bhauso Chougule

2. The Village Development Officer, Village Panchayat, Haroli, Dist. Kolhapur.

3. The District Collector, Kolhapur

4. The Additional Divisional Commissioner, Pune Division, Pune.

5. The State of Maharashtra ...*Respondents*

Mr. Gajanan M. Savagave *for the Petitioner.*
Mr. Manoj A. Patil *for Respondent No.1.*
Mr. Bapusaheb B. Dahiphale, AGP for Respondent Nos. 3 to 5 -State.

CORAM : SANDEEP V. MARNE, J.

Judgment reserved on : 21 January 2025.

Judgment pronounced on : 28 January 2025

Judgment:

1. Petitioner has filed this Petition challenging the order dated 26 September 2024 passed by the Additional Divisional Commissioner, Pune Division, Pune, in dismissing Gram Panchayat Appeal No.37 of 2024 and confirming order dated 15 May 2024 passed by the Collector, Kolhapur disqualifying him from being as a Member

of Gram Panchayat under the provisions of Section 14(1)(h) of the Maharashtra Village Panchayats Act, 1958 (**the Village Panchayats Act**).

2. Briefly stated, facts of the case are that Petitioner came to be elected as a Member of Gram Panchayat -Haroli, Taluka -Shirol, District -Kolhapur for the term of 2022 to 2027. The first Respondent filed Gram Panchayat Dispute No.16 of 2023 before the Collector, Kolahpur seeking disqualification of Petitioner under the provisions of Section 14(1)(h) of the Act on the ground that he was in arrears of taxes levied by the Gram Panchayat in respect of House Property Nos. 177 and 735. Petitioner appeared in the Dispute and filed his reply opposing the same. The Gram Panchayat also filed its reply to the Dispute. The Collector, Kolhapur passed order dated 15 May 2024 allowing the Dispute Application No.16 of 2023 and disqualifying the Petitioner from being a Member of Gram Panchayat, Haroli under the provisions of 14(1)(h) of the Village Panchayats Act. Petitioner preferred Appeal No.37 of 2024 before the Divisional Commissioner, Pune. However, Petitioner's Appeal has been dismissed by order dated 26 September 2024.

3. Mr. Savagave, the learned counsel appearing for the Petitioner would submit that the Collector and the Divisional Commissioner have failed to appreciate that for passing order of disqualification under the provisions of Section 14(1)(h) of the Village Panchayats Act, the person whose disqualification is sought, must be served with the Bill and in absence of service of Bill, disqualification action under Section 14(1)(h) of the Village Panchayats Act cannot be resorted to. He would submit that the Bills in respect of the House Property Nos.177 and 735 were issued in the name of Petitioner's

father Balaso A. Chougule and Petitioner was therefore not under obligation to pay the said Bills. The Bill in respect of the House Property No.1214 in which Petitioner claims interest, was raised in the name of the Petitioner, which has been duly cleared by him. That therefore Petitioner cannot be held responsible for non-payment of property taxes on House Property Nos. 177 and 735. In support of his contention about impermissibility to disqualify member without raising demand in his name, Mr. Savagave would rely upon judgment of this Court in ***Shaukat Ali Mohd. Hussain V/s. Shaikh Ayub s/o. SK. Haji SK. Ahmed & Ors.***[1]

4. Mr. Savagave would otherwise contend that the property tax bills prepared unauthorisedly by the concerned Clerk were full of errors as is clear from the report of the Block Development Officer (**BDO**). That the Petitioner cannot be held disqualified for failure to pay such erroneous Bills. He would further submit that the Bills were deliberately sought to be raised only for the purpose of taking action of disqualification on the Petitioner. He would highlight the position as per the information received under the Right to Information Act, 2005, wherein the Gram Panchayat has informed the Petitioner that not even a single Bill was raised by the Gram Panchayat during 2019-2020 to 2023-2024. That therefore raising alleged Bills of property tax for House Property Nos.177 and 735 is highly doubtful. He would submit that though Petitioner had applied to the Gram Panchayat for transfer of both the houses in the names of members of the family after death of his father, Gram Panchayat deliberately did not take any action and deliberately issued Bills in the name of his father with a view to ensure that the Bills would remain unpaid and the Petitioner is made to face disqualification proceedings. He would

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further submit that there has been oral partition between the family members, under which Petitioner has received House No. 1214, property tax of which has been cleared by him. That in such oral partition, Petitioner does not have any interest in House Property Nos. 177 and 735. He would submit that the Collector, Kolhapur and Additional Divisional Commissioner, Pune have failed to appreciate this position while erroneously ordering Petitioner's disqualification. He would submit that Petitioner is a democratically elected member and he cannot be unseated merely on the basis of surmise that he has defaulted in payment of property tax, though the Bills are issued in the name of his deceased father. He would accordingly pray for setting aside the impugned orders.

5. Petition is opposed by Mr. Patil, the learned counsel appearing for Respondent No.1-Complainant submitting that even if the property tax Bills are drawn in the name of his father, after death of his father, all the members of the family are responsible for payment of property taxes and all of them become liable for being disqualified as per the provisions of Explanation-2 to Section 14 of the Village Panchayats Act. That therefore Petitioner cannot be permitted to take disadvantage of Bills being drawn in the name of his deceased father. He would further submit that Petitioner is actually residing in House Property No.177 and in this regard he would rely upon extract of Voters List reflecting his House number as 168 coupled with the certificate issued by the Gram Panchayat that House No.168 reflected in the Voters List is actually House No.177. That the contention of Petitioner about non-issuance of Bills by Gram Panchayat to any person in the village or Clerk of the Gram Panchayat misusing his power to create fake Bills is clearly disproved by receipt of property tax Bill in respect of House No. 1214 and payment thereof by the

Petitioner. He would submit that Petitioner was party to the hearing conducted by the Gram Panchayat in respect of payment of property taxes on 2 February 2019, under which it was agreed to levy taxes at old rates upto 2018-2019 and to levy higher rate from 2015-2016 onwards. That Petitioner still took a calculated chance by not paying paltry sum towards property tax and the least that he must suffer for such conduct is his disqualification as Member of Gram Panchayat. He would accordingly pray for dismissal of the Petition.

6. Mr. Dahiphale, the learned AGP appearing on behalf of Respondent Nos.3 to 5 would support the orders passed by the Collector and Divisional Commissioner. He would pray for dismissal of the Petition.

7. Rival contentions of the parties now fall for my consideration.

8. Petitioner's disqualification has been effected under the provisions of Section 14(1)(h) of the Village Panchayats Act, which provides thus:-

> **Section 14. Disqualifications.- (1) No person shall be a member of a Panchayat continue as such, who -**
> (a to g)……………………
>
> (h) fails to pay any tax or fee due to the panchayat (or the Zilla parishad within three months from the date on which the amount of such tax or fee is demanded, and a bill for the purpose is duly served on him; or
>
> (h-1 to k)………………
>
> Explanation 2.-For the purpose of clause (h)(i) a person shall not be deemed to be disqualified if he has paid the amount of any tax fee due, prior to the day prescribed for the nomination of a candidates.

> (ii) failure to pay any tax or fee due to the Panchayat by a member of an undivided Hindu family, or by a person belonging to a group or unit the members of which are by custom joint in estate or residence, shall be deemed to disqualify all members of such undivided Hindu family or as the case may be all the members of such group or unit.

9. Thus, for disqualification of a Member of a Panchayat what needs to be proved is failure on his part to pay any tax or fee due to the Panchayat or a Zilla Parishad within a period of three months from the date on which amount of such tax or fee is demanded and the bill for that purpose is duly served on him. There is no dispute to the position that the Bill in respect of House Property No.1214 was raised in the name of Petitioner and the same has been paid by him on 13 September 2022. The whole dispute is about property tax Bills in respect of House property Nos. 177 and 735. It is the case of Gram Panchayat that Bill for House Property No.177 for Rs.2144 as well as Bill for House Property No.735 for Rs.4028 were prepared on 3 August 2022 and Shri. Arjun Mane, Clerk employed by the Gram Panchayat, attempted to serve the two Bills at the residence of the Petitioner. The said employee has made specific endorsement on the reverse of the Bills that he had approached the house of the Petitioner for service of Bills, but none of the family members of the Petitioner chose to accept the Bills. Therefore, the act of non-acceptance of Bills was recorded by a witness, whose statements are also reflected on the reverse side of the Bills.

10. Petitioner has raised multiple grievances *qua* Bills dated 3 August 2022 regarding House Property Nos. 177 and 735. The Bills were raised in the name of Balaso Chougule (Petitioner's father), who was admittedly not alive as on 3 August 2022 when the Bills were

attempted to be served. According to Petitioner since the Bills are not raised in his name, there is no responsibility on his part to pay the house tax. He has relied upon judgment of Single Judge of this Court (Justice S.S. Shinde) in ***Shaukat Ali Mohd. Hussain*** (supra) in which this Court held in paragraph 15 as under:

> 15. In the present case, from the careful perusal of entire material placed on record including the proceedings before the Additional Collector, Jalna, or Additional Commissioner, Aurangabad Division, Aurangabad, there is no single document showing that, there was demand of dues or fees from respondent No. 1, and within three months from the date on which dues or fees was demanded, respondent No. 1 has not paid the dues. Therefore, in absence of specific demand, the time limit to pay tax or fee due to the panchayat, is not possible to be reckoned. The mandate of provisions of section 14(1)(h) of the said Act is that, no person shall be a member of a panchayat continue as such who fails to pay any tax or fee [due to the panchayat or the Zilla Parishad within three months from the date of which amount of such tax or fee is demanded]. Therefore, it is crystal clear that, in absence of fulfilment of three conditions stated hereinabove, when issue of disqualification arises under section 14(1)(h) read with 16 of the said Act, it may not be possible to read only Explanation 2 to section 14 in isolation. Therefore, the Explanation 2(i) (ii) as appearing in section 14 of the said Act, will have to be read conjointly with the provisions of section 14(1)(h) of the said Act.

11. However, facts of the case in ***Shaukat Ali Mohd. Hussain*** (supra) appears to be at total variance with the facts of the present case. In ***Shaukat Ali Mohd. Hussain*** (supra) no document was produced demanding the property taxes. It is in the light of those unique facts this Court has rendered the judgment in ***Shaukat Ali Mohd. Hussain*** (supra). In the present case, two Bills demanding property taxes in respect of House Property Nos.177 and 735 are placed on record. The case therefore does not involve total absence of document for invoking the disqualification proceedings.

12. So far as Petitioner's defence about the Bills not being raised in his name is concerned, this eventuality is clearly covered by

provisions of Explanation-2 under Section 14 of the Village Panchayats Act, which is already reproduced above. Explanation-2 deals with disqualification under clause (h) of Section 14 and sub-clause (ii) of Explanation-2 provides thus:

> Explanation-2
>
> (i)
>
> (ii) failure to pay any tax or fee due to the Panchayat by a member of an undivided Hindu family, or by a person belonging to a group or unit the members of which are by custom joint in estate or residence, shall be deemed to disqualify all members of such undivided Hindu family or as the case may be all the members of such group or unit.

13. Thus, where the property is owned by an undivided Hindu family or a person belonging to a group or unit in joint residence, all the members of the family attract the consequences of disqualification for failure to pay tax or fees due to Panchayat. The provision under Explanation -2 (ii) appears to have been incorporated with a view to prevent the mischief of a defaulter member seeking to distance himself by citing a specious pretext of ownership of the property by undivided family. There is nothing on record to prove that there has been partition between the family members after father's death. Therefore, even though the Bills may not have been drawn in the name of Petitioner, he still becomes liable under Section 14(1)(h) of the Village Panchayats Act.

14. In fact, Petitioner cannot be permitted to disassociate himself in respect of the House Property Nos.177 and 735 in the light of specific affidavit sworn in by him on 27 November 2019 claiming that he alongwith his mother and two brothers are entitled to succeed to various properties, which belonged to his father including the two house properties in question. Based on the said affidavit, Petitioner

had in fact filed an application before the Revenue Authorities for mutation of joint names of four persons in respect of various properties of his father. Therefore, the plea of oral partition now sought to be raised by the Petitioner appears to be clearly an afterthought. Respondent No.1 has placed on record copy of Voters List, in which house number against the name of the Petitioner is shown as '168' and Gram Panchayat has issued certificate dated 27 November 2024 that House No. 168 reflected in the Voters List is actually House No.177. The Gram Panchayat has clarified that the house property numbers have undergone a change. Thus, Petitioner appears to be a resident of House Property No.177 and cannot disassociate himself in respect of liability to pay property taxes in respect of that house.

15. Perusal of the Bills in respect of House Property Nos.177 and 735 would indicate that the demand of taxes is not exponentially high and was only Rs. 2144 and Rs. 4028 respectively. Petitioner, who was desirous of contesting the election as Gram Panchayat member, conveniently paid only property tax in respect of House No.1214 on 13 September 2022 and participated in the election process in November-2022. Despite vying for the position as Gram Panchayat Member, he took a calculative risk of not paying property tax in respect of the House Property Nos.177 and 735. In fact, none of the members of the family even accepted the said Bills when they were sought to be served on 3 August 2022. If this is the attitude of the Petitioner in not bothering to pay the dues of Gram Panchayat towards taxes, the least that he must suffer is disqualification under the provisions of Section 14(1)(h) of the Village Panchayats Act.

16. The Collector and Divisional Commissioner have concurrently recorded findings against the Petitioner, which do not suffer from an element of perversity. Petitioner cannot be permitted to take benefit of few observations made by the BDO about possible irregularities in maintenance of Gram Panchayat records or raising of property tax Bills. The report of the BDO dated 2 June 2024 is wholly irrelevant for deciding the issue of disqualification of Petitioner under Section 14(1)(h) of the Village Panchayats Act. What is relevant is the fact that the Bills raised in respect of the House Property Nos.177 and 735 are perfectly valid. What is sought to be created on the basis of the report of the BDO is a mere surmise in absence of proof of any actual error in the demand raised in the Bills of the Gram Panchayat. Even otherwise, the surmise raised by Petitioner by placing reliance on BDO's report about irregularities in raising of Bills by the Panchayat becomes baseless since he paid the Bill in respect of House No. 1214 without any demur.

17. The objective behind incorporation of Section 14(1)(h) in the Village Panchayats Act must be borne in mind. The objective is to ensure that a resident of village, who is vying to occupy responsible post of member, *Upasarpanch* or *Sarpanch* must come clean by ensuring that there are no arrears of taxes or fees payable to Panchayat or Zilla Parishad. Keeping this broad objective in mind, the disqualification of the Petitioner in the present case, appears to have been correctly effected who has deliberately not paid property taxes in respect of the two houses while paying the same in respect of one house. Even if there are multiple heirs entitled to succeed to the said two house properties, since Petitioner desired contesting of elections, he ought to have ensured that the property tax Bills are paid within the stipulated time so as not to incur disqualification

considering the provisions of Exception-2 to Section 14(1)(h). I am unable to trace any patent error in the concurrent findings recorded by the Collector, Kolhapur and the Additional Divisional Commissioner, Pune.

18. Writ Petition is devoid of merits, and it is accordingly dismissed with no orders as to costs.

[SANDEEP V. MARNE, J.]