

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

WRIT PETITION NO. 6111 OF 2024

Sanjay Shivaji Patil Jharekar

... Petitioner

Versus

The State of Maharashtra

Thr. Secretary & Ors.

... Respondents

Mr. Abhijeet A. Desai *a/w Mr. Omkar Ganganmale, Mr. Karan Gajva a/w Ms. Sanchita Sontakke, Mr. Vijay Singh, Ms. Mohini Rehpade, Ms. Daksha Purghera & Mr. Digvijay Kachare for the Petitioner.*

Ms. Dhruti Kapadia, *AGP for Respondent Nos. 1 to 3 / State.*

Mr. Anilkumar Patil *a/w Mr. Sachin M. Bhavar, Ms. Zeel Jain & Mr. Digvijay A. Patil for Respondent No.5.*

Ms. Priyanka Chavan, *for Respondent No.4.*

CORAM : SANDEEP V. MARNE, J.

DATE : 28 JANUARY 2025.

ORAL JUDGMENT :-

1) The Petition challenges order dated 28 February 2024 passed by the Additional Divisional Commissioner, Pune dismissing Appeal preferred by the Petitioner and confirming the order dated 22 September 2023 passed by the Collector, Solapur thereby disqualifying him from acting as member of Gram Panchayat of Village Mahud, Taluka Sangola, District Solapur under provisions of Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959 (**Village Panchayats Act**).

2) Petitioner was elected as a Member of Gram Panchayat Mahud, Taluka Sangola, District Solapur in the election held on 18 January 2021. A complaint was filed against him seeking his disqualification by Respondent No.5 alleging that Petitioner has encroached upon government land and attracted disqualification under provisions of Section 14(1)(j-3) of the Village Panchayats Act. In support of his defence, Petitioner relied upon resolution adopted by the Village Panchayat on 26 June 2019 and contended that the land in question was allotted to him by the Panchayat. He also relied upon Rent Agreement dated 1 July 2019 executed in his favour by the Village Panchayat. He also relied upon assessment receipts issued by the Gram Panchayat as well as Form No. 9 recording his name as possessor of the land and the structure. The Collector however passed order dated 22 September 2023 disqualifying the Petitioner from acting as a member of Village Panchayat by holding that he has encroached upon government land under Section 14(1)(j-3) of the Act. Petitioner's Appeal has been dismissed by the Additional Divisional Commissioner by order dated 28 February 2024 and accordingly he has filed the present Petition challenging the orders dated 22 September 2023 and 28 February 2024.

3) Mr. Desai, the learned counsel appearing for the Petitioner would submit that since the Petitioner is an allottee of land in question allotted in his name by the Gram Panchayat, he cannot be termed as an encroacher within the meaning of Section 14(1)(j-3) of the Act. He would submit that the Gram Panchayat adopted a resolution in meeting held on 19 June 2019 thereby allotting the land in his name. That the said resolution was given effect by entering the name of the Petitioner in Form No.9 in relation to House Property No. 3513 by referring to the resolution dated 26 June 2019 and by incorporating his name in the 'occupier'

column. He would submit that additionally, Gram Panchayat also executed Rent Agreement in favour of Petitioner on 1 July 2019. He would submit that in pursuance of the resolution so adopted and the agreement so executed, Petitioner has duly paid the assessment to the Gram Panchayat from time to time. That therefore occupation of the land and structure by him is with the active consent of the Gram Panchayat and that therefore Petitioner cannot be termed as an encroacher within the meaning of Section 14(1)(j-3) of the Act. In support of his contention, Mr. Desai would rely upon order passed by this Court, Bench at Aurangabad in ***Harku S/o. Kisan Magar Vs. The Divisional Commissioner Nashik Division Nashik & Ors.***¹ In support of his contention that a person remaining in possession on expiry of lease remains in juridical possession and therefore cannot be branded as an encroacher, Mr. Desai would rely upon judgment of this Court, Bench at Aurangabad in ***Gram Panchayat, Aurala & Anr. Vs. Kailas Rangnath Vare***².

4) Mr. Desai would further submit that all the authorities have construed the resolution dated 26 June 2019 as allotting the land in favour of the Petitioner. In this regard he would rely upon the report of Deputy Superintendent Land Records, Sangola reflecting allotment land by virtue of Resolution dated 26 June 2019. He would rely upon provisions of Section 37 of the Village Panchayat Act in support of his contention that the Panchayat did not adopt a resolution rescinding the Resolution dated 26 June 2019 and that therefore allotment in the land in the name of the Petitioner remains valid. Lastly, Mr. Desai would contend that disqualification under provisions of Section 14(1)(j-3) results in unseating of democratically elected candidate and therefore such disqualification cannot be resorted to unless a conclusive finding is recorded that the

1 Writ Petition No. 1340 of 2023 decided on 13 February 2024

2 Civil Revision Application No. 186 of 2015 decided on 8 August 2023

Member has actually encroached upon government land. That in the present case, since Gram Panchayat has consented to occupation of the land by the Petitioner, he cannot be treated as an encroacher within the meaning of Section 14(1)(j-3) of the Act. He would therefore pray for setting aside the orders passed by the Collector and the Divisional Commissioner.

5) The Petition is opposed by Ms. Kapadia, the learned AGP appearing for Respondent – State. She would submit that the Collector has rightly interpreted the Resolution dated 26 June 2019 to mean mere mutation of name of the Petitioner in the records of Gram Panchayat as occupier and that the said resolution does not mean that the land has actually been allotted in his name. She would refer to the affidavit filed on behalf of the Respondent-State to buttress her contention that the Petitioner is ultimately held to be an encroacher on government land.

6) Mr. Patil, the learned counsel appearing for Respondent No. 5-Complainant would also oppose the Petition. He would submit that under provisions of Section 56 of the Village Panchayat Act, prior sanction of Chief Executive Officer is necessary for disposal of any property of Panchayat in any manner. That the Gram Panchayat has neither resolved nor could have resolved to allot land in favour of Petitioner in absence of previous sanction of the Chief Executive Officer. He would submit that concurrent findings recorded by the Collector and the Divisional Commissioner do not warrant interference in extraordinary jurisdiction of this Court under Article 227 of the Constitution of India. He would pray for dismissal of the Petition.

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

8) There is no dispute to the position that the Petitioner actually possesses and occupies the land together with structure standing thereon, which has been numbered as House Property No. 3513 in the records of Gram Panchayat. There is also no dispute to the position that the concerned land where the structure (*patra shed*) is erected, belongs to the Gram Panchayat. When the Petitioner was accused of encroaching upon the land belonging to Gram Panchayat, he relied upon resolution adopted in the meeting of the Gram Panchayat held on 26 June 2019. In that meeting, the Gram Panchayat adopted Resolution No. 254(2) as under:

विषय नं ६ (२) :- भोगवटा सदरी नोंदी करणेबाबत ठराव नं २५४(२) :- मौजे म्हूद बु" येथील पशुवैद्यकिय दवाखाना समोरील जागेमध्ये (१) विक्रम विलास पाटील यांचे नाव भोगवटा सदरी १७ +४० पत्राशेड (२) विलास नारायण पाटील यांचे मौजे १७ +४० पत्राशेड(३) देविदास भगवान गोपूने यांचे मौजे १७ +४० पत्राशेड व म्हूद बु" चौकालगत संजय शिवाजी पाटील यांचे मौजे ३०+६० पत्राशेड नोंदणी करीता वरीलप्रमाणे १ ते ८ अर्ज प्राप्त झालेले असून सदर अर्जावर चर्चा केली असता सदर अर्ज मंजूर करणेत येत असून भोगवटा सदरी नोंद करण्यात यावी असे ठरले त्यास हि मला मंजूरी देणे नसून केल्याचे ठरले.

9) Careful perusal of the above resolution would indicate that the subject of the resolution was 'recording of names against column occupier'. The agenda for the meeting was not for allotment of Gram Panchayat land in favour of any person, but the agenda was only for considering the applications preferred by the occupiers of few structures in the 'occupier column' in the Gram Panchayat records. It appears that in addition to the Petitioner, some other persons had also preferred applications for recording of their names in 'occupier column' of Gram Panchayat records. The Gram Panchayat discussed the issue and resolved to enter their names in the 'occupier column' of Gram Panchayat record. Thus, all that is done by way of Resolution No. 254(2) adopted in the

meeting held on 26 June 2019 was to merely record names of occupiers of structure in the assessment records of the Gram Panchayat. Petitioner has erroneously misconstrued the Resolution No. 254(2) to mean as if the Gram Panchayat has allotted its land in his favour for use or occupation thereof. The fact that Petitioner's application was for mutation of his name in the assessment records would itself mean that he was already occupying the land and the structure and all that he wanted was to add his name in the assessment records of Gram Panchayat as he was occupier of the structure. Thus, Petitioner was occupying the land and the structure much prior to adoption of Resolution No. 254(2). The resolution by itself did not allot any portion of land in the name of the Petitioner. It merely accepted the request for entering the name of the Petitioner in the Gram Panchayat assessment records as occupier thereof.

10) It appears that the Resolution No. 254(2) adopted on 26 June 2019 was given effect to by issuance of Form No. 9, which shows that Petitioner's name was reflected against House Property No. 3513 comprising of (*patra* shed) admeasuring 30 x 60 by showing the year of construction as 2019 and area of land as 167.22 sq.ft. The Gram Panchayat accordingly made the assessment and levied tax of Rs.1589/- from the Petitioner. Thus, adoption of Resolution No. 254(2) dated 26 June 2019 was only for the purpose of ensuring that the Gram Panchayat recovers assessment tax from the Petitioner as per his own request. The resolution can neither be read to mean either allotment of land or regularization of occupation thereof by the Petitioner. Petitioner applied to the Gram Panchayat by showing willingness to pay taxes in respect of the structure illegally adopted by him and the Gram Panchayat merely allowed him to pay taxes in respect thereof. Such an Act on the part of Gram Panchayat cannot be construed to mean as if Gram Panchayat permitted him to occupy the land in question.

11) Petitioner has relied upon Rent Agreement dated 1 July 2019 shown to have been executed by the Gram Panchayat, by which he was allowed to occupy land admeasuring 30 x 60 for 11 months for business by erection of temporary *patra* shed. The agreement refers to Resolution No. 254(2) dated 26 June 2019. Carful perusal of the said document would indicate that the same is in the nature of self-declaration made by the Petitioner and reads thus:

कारणे करारनामा लिहून देतो की, मी संजय शिवाजी पाटील रा. महुद बु।। ग्रामपंचायत महुद बु।। हददीतील गावठाण मधील खुली जागा मालमत्ता क. ३५१३ ग्रामपंचायत मासिक सभा ठराव क. २५४(२) दिनांक २६/०६/२०१९ अन्वये वर्णन ३० x ६० ही ११ महिनेच्या भाडेकर तत्वावर व्यवसायासाठी वापरण्यास घेतली आहे.

सदर जागेमध्ये मी तात्पुरत्या स्वरूपाचे पत्राशेड उभारणी करून वापर करीत आहे. यामध्ये वीज, पाणी या सुविधा मी स्वखर्चाने घेत आहे. ग्रामपंचायतीने निश्चित केलेले रेडिरेकनर दराप्रमाणे वार्षिक मुल्य/कर वेळोवेळी भरण्यास मी तयार आहे. या जागेमध्ये मी पक्के बांधकाम करणार नाही. तसेच जागेचे कसलाही गैरवापर करणार नाही. ग्रामपंचायतीस गरज भासल्यास व ग्रामपंचायतीचे लेखी पत्र आल्यास मी माझे साहित्य स्वखर्चाने काढून घेवून जागा परत करण्यास तयार आहे.

हा करारनामा लिहून दिला/घेतला असे.

12) This does not appear to be a contract between two contracting parties and the document is in the nature of self-declaration made by the Petitioner. True it is that the document reflects signatures of Sarpanch and Gram Vikas Adhikari towards the end of the document, but the language employed in the document makes it a self-declaration, rather than a contract of rent/license. By that document, Petitioner has declared that he has taken over possession of vacant land bearing No. 3513 in pursuance of Resolution No. 254(2) adopted on 26 June 2019 for a period of 11 months and that he has constructed a temporary tin shed and is occupying the same. He undertook to pay Gram Panchayat assessment taxes and not to carry out any permanent construction and also to remove himself from the land as and when informed to do so by Gram Panchayat. Firstly, it is highly doubtful as to whether the said document can really be

treated as a Rent Agreement as sought to be construed by the Petitioner. Even if the said document is construed as Rent Agreement, the same could not have been executed by Gram Panchayat in view of specific provisions of Section 56 of the Village Panchayat Act, which provides thus:

56. Property of panchayat.

(1) It shall be competent for a *Zilla Parishad* from time to time to direct that any property vesting in it shall vest in a *panchayat* and on such direction being issued, the property shall, subject to rules made in that behalf, vest] in the *panchayat* notwithstanding anything contained in the Transfer of Property Act, 1882, or the Indian Registration Act, 1908:

Provided that no lease, sale or other transfer of any such immovable property by the *panchayat* shall be valid without the previous sanction of the Chief Executive Officer

(2) Every work constructed by a *panchayat* out of the village fund, or with Government assistance or peoples', participation shall vest in such *panchayat* and every work constructed by a *panchayat* with the assistance of *Zilla Parishad* or *Panchayat Samiti* shall vest in a *panchayat* in the manner provided by rules made in that behalf.

13) Thus, no transfer of any immovable property can be done by a Panchayat without previous sanction of the Chief Executive Officer. Admittedly, previous sanction of Chief Executive Officer was not obtained for execution of the document, which Petitioner believes to be a 'rent agreement'. Curiously, the document does not create any liability for Petitioner to pay rent for occupying the panchayat land and this is yet another reason why the same cannot really be treated as a contract for legal occupation of panchayat land by Petitioner.

14) Even if the infirmity of failure to obtain previous sanction of the Chief Executive Officer is to be momentarily ignored and even if the document relied upon by the Petitioner is to be treated as a Rent Agreement, the tenure thereof has admittedly come to an end on expiry of period of 11 months. Thus, as on the date of contesting the elections, the

Petitioner continued to remain in illegal possession of the Gram Panchayat land after expiry of tenure of the so-called Rent Agreement.

15) Thus, in the present case Petitioner has encroached upon the Gram Panchayat land prior to 26 June 2019 and applied to Gram Panchayat for adding his name in the assessment record. The subsequently executed document on 1 July 2019 seeks to create an impression as if the Petitioner took over possession of the land after 26 June 2019, which assertion does not match with the language employed in Resolution No. 254(2), which shows that Petitioner was already occupying the land and wanted his name to be entered in Gram Panchayat records as occupier thereof. Admittedly, Petitioner did not vacate the land after expiry of tenure of the so called rent agreement.

16) Thus, Petitioner is an encroacher prior to passing of Resolution No. 254(2) where he admittedly possessed the Gram Panchayat land in absence of any authorization. Similarly, he remained encroacher after expiry of the period of license granted vide so called Agreement dated 1 July 2019. Thus, on both the counts, he will have to be treated as encroacher in respect of the Gram Panchayat Land.

17) Reliance by Mr. Desai on judgment of this Court in ***Harku S/o. Kisan Magar*** (supra) does not cut any ice. In that case, Gram Panchayat had adopted a resolution for lease of the village panchayat land in favour of the Petitioner therein. In the present case, Resolution No. 254(2) dated 26 June 2019 did not contemplate grant of any lease in favour of the Petitioner in any manner. Thus, the facts in the case of ***Harku S/o. Kisan Magar*** are entirely at variance with the facts involved in the present case.

18) Reliance by Mr. Desai on the judgment of this Court in ***Gram Panchayat, Aurala & Anr.*** (supra) also does not assist the case of the Petitioner. The judgment in ***Gram Panchayat, Aurala & Anr.*** is rendered in the light of suit filed under provisions of Section 6 of the Specific Relief Act, 1963 and one of the issues before this Court was about possession by a tenant after termination of tenancy. In the present case, Petitioner is not a tenant and therefore there is no question of termination of his tenancy. It therefore cannot be contended that Petitioner has remained in juridical possession of the gram panchayat land.

19) Mr. Desai has relied upon provisions of Section 37 of the Village Panchayat Act, in support of his contention that the Resolution No. 254(2) dated 26 June 2019 has not been rescinded by two-thirds of the total number of members of the Panchayat and that until the resolution is cancelled, the same would continue to operate. In my view, reliance by Mr. Desai on provisions of Section 37 of the Act does not make the case of the Petitioner any better. In the first place the resolution does not allot the land in favour of the Petitioner. It merely records the name of the Petitioner as occupier of the land for the purpose of payment of taxes. The resolution is adopted on a request made by the Petitioner and readiness shown by him to pay Gram Panchayat assessment taxes on account of his possession of the Gram Panchayat land. Since the resolution does not allot the land in favour of Petitioner, there is no necessity of cancellation of the said resolution.

20) With regards to the contention of Petitioner that he has been occupying the land with the consent of the gram panchayat, I am of the view that entering name of Petitioner in the records of the panchayat for recovery of taxes would not make Petitioner an authorised occupier, in any

manner. It is inconceivable that encroachers on panchayat land can be permitted to cite recording of their names in panchayat assessment records to claim legal possession of Government land. The observations made by Single Judge of this Court (*His Lordship Justice Ravindra V. Ghuge*) in ***Sanjay Kantilal Thakre Vs. State of Maharashtra & Ors.***³ in this regard are apposite. This Court has adversely commented on the concept of regularization of possession of government lands by politicians by holding in paragraph 15 as under:

15. At times, I find it quite intriguing that when politicians cause encroachment on their own motherland, the State Government brings out a G.R. to regularize such encroachment. In the instant case, the husband of the Sarpanch has moved the State to regularize such encroachment. I hope that the State Government would ensure that a clean and fair atmosphere is maintained and all those causing encroachment be dealt with, with an iron hand. If not, I find that policies promoting regularization of encroachments would be counterproductive and would embolden such people since they would be under the impression that they could resort to encroachment and subsequently influence the policy makers to get such encroachments regularized.

21) After considering the overall conspectus of the case, I do not find that any valid case is made out by the Petitioner to interfere in concurrent findings recorded by the Collector and the Divisional Commissioner. Petitioner has admittedly encroached upon the Gram Panchayat land and has thereby attracted disqualification under provisions of Section 14(1)(j-3) of the Village Panchayat Act.

22) This Court is mindful of the fact that disqualification of the Petitioner would entail removal of a democratically elected person. However, objective behind enactment of Clause (j-3) under sub-section (1) of Section 14 of the Village Panchayat Act must be borne in mind. Any person vying to become elected representative of a Gram Panchayat should

3 2019 (3) Mh.L.J. 730

not indulge in encroachment of any Government land in any form. In the present case, Petitioner first encroached upon the Gram Panchayat land, then applied for recording his name in assessment records of the Panchayat, executed a self-declaration kind of document to show legal possession of Panchayat land for 11 months and continued occupying the land after expiry of period of 11 months. Having brazenly encroached upon the Panchayat land, he has attracted the disqualification under provisions of Section 14(1)(j-3) of the Act. Resultantly, I do not find any valid reason to interfere in the impugned orders. Writ Petition is devoid of merits and it is accordingly dismissed, without any order as to costs.

23) After the judgment is dictated, Mr. Desai would request for continuation of interim order granted by this Court on 14 November 2024 for a period of eight weeks. This Court had granted interim relief in terms of prayer Clause (b) in the Petition meaning thereby that the orders passed by the Collector and Divisional Commissioner were stayed. However, the order disqualifying the Petitioner was passed on 22 September 2023 and the said order was upheld on 28 February 2024. Petitioner has thus been disqualified way back on 22 September 2023. It is therefore highly doubtful as to whether the interim order dated 14 November 2024 would have the effect of reinstating the Petitioner as Member after passage of more than 1 year from his disqualification. The interim order would, at the highest, prevent election of new Member in place of Petitioner. Also, considering the findings recorded in the judgment, I am not inclined to continue the interim order granted by this Court any further. The request for continuation of the interim order is accordingly **rejected**.

[SANDEEP V. MARNE, J.]