
(2018) 12 BOM CK 0096
In the Bombay High Court
Case No : Writ Petition No. 1572 Of 2018

Bhagwat S/O Ganpat Gawali

APPELLANT

Vs

Divisional Commissioner, Amravati And Others

RESPONDENT

Date of Decision : 03-12-2018

Acts Referred:

Maharashtra Village Panchayats Act, 1958 — Section 14(1)(j3), 16(2), 41(1)(j3)

Citation : (2018) 12 BOM CK 0096

Hon'ble Judges : Z. A. Haq, J

Bench : Single Bench

Advocate : R.N. Ghuge, T.A. Mirza, V. N. Patre, V. B. Gawali

Final Decision : Dismissed

Judgement

Z.A.Haq, J.

[1] Heard.

[2] RULE. Rule made returnable forthwith.

[3] The petitioner is an elected Member and Sarpanch of the Gram

Panchayat. The respondent no. 5 had filed an application before the District Collector contending that the petitioner is disqualified to be a member and Sarpanch of the Gram Panchayat in view of the provisions of Section 14 (1) (j-3) of the Maharashtra Village Panchayats Act, 1958 (for short "the Act of 1958") as he is an encroacher over the Government land. By the order dated 16/12/2017, the learned Collector upheld the claim of the respondent no. 5 and declared that the petitioner is disqualified to be the Member and Sarpanch of the Gram Panchayat. The petitioner had challenged this order before the Divisional Commissioner in appeal under Section 16 (2) of the Act of 1958 which is dismissed by the impugned order.

[4] The contention of the petitioner is two-fold:-

(a) that the alleged encroachment is on the land situated in different village i.e. Bhokarkheda and the petitioner is resident of Village Morgavhan and is elected as the Member and Sarpanch of the Gram Panchayat, Morgavhan and therefore the encroachment on the Government land of some other village, as alleged, cannot be ground to disqualify the petitioner.

(b) that the encroachment, if any, is by the father of the petitioner and not by the petitioner, and the petitioner is residing separately and is not residing jointly with his father.

[5] According to the petitioner, as per the proposition laid down in the judgment given in the case of Janabai Vs. Additional Commissioner and others reported in 2018 (5) Mh.L.J. at page 921, an elected member can be disqualified under Section 41 (1) (j-3) of the Act of 1958 if it is proved that the encroachment on the Government land by the elected member continues. The petitioner contends that he is residing at Village Morgavhan and not at Bhokarkheda and therefore, it cannot be said that the encroachment on the Government land by him, if any, continues. The petitioner contends that he has produced the documentary evidence on record of the subordinate authorities to show that he is residing at Village Morgavhan since prior to the elections, however, the subordinate authorities have not considered the documentary evidence in the right perspective because of which erroneous orders are passed.

[6] The learned advocate for the respondent no. 5 has pointed out that the petitioner obtained a "resident certificate" from the Sarpanch of the Gram Panchayat, Morgavhan on 21/09/2017, and on the basis of this certificate he obtained the other documents i.e. the Aadhar Card and the Election Identity Card. It is submitted that on the basis of the resident certificate dated 21/09/2017, the petitioner got his name included in the electoral roll of Village Morgavhan. The petitioner is elected as the member of Village Panchayat in the elections held on 09/10/2017 i.e. just about 18 days after the petitioner obtained the resident certificate from the Sarpanch of the Gram Panchayat, Morgavhan.

[7] The subordinate authorities have relied on the report which was called from the Police Station Risod which shows that the parents of the petitioner have encroached on Gat No. 102 (Government Land) and they are staying there with the family members. The subordinate authorities have further recorded that the petitioner has not produced on record sufficient evidence to substantiate that he is not residing alongwith his parents on the encroached land or that he is residing at Village Morgavhan.

[8] I find that the subordinate authorities have not committed any illegality or error in appreciating the evidence on record. Though the petitioner produced an agreement of lease to show that he is residing in the rented premises at Village Morgavhan, the petitioner has not examined his alleged landlord because of which the respondent no. 5 is deprived of cross- examining him.

[9] Considering the facts on record, I concur with the findings recorded by the

subordinate authorities that the petitioner has failed to establish that he is not residing alongwith his parents on the encroached land at Village Bhokarkheda and that he is residing at Village Morgavhan.

[10] The other submission made on behalf of the petitioner that as the alleged encroachment is on the Government land in a different village, the provisions of Section 14 (1) (j-3) of the Act of 1958 will not be attracted, also cannot be accepted.

Section 14 (1) (j-3) of the Act of 1958 reads as follows:-

"14. (1). No person shall be a member of a panchayat continue as such, who -

(a) -----

(i) -----

(ii) -----

(a-1) -----

(b) -----

(c) -----

(c-1) -----

(d) -----

(e) -----

(f) -----

(g) -----

(h) -----

(h-1) -----

(i) -----

(j) -----

(j-1) -----

(j-2) -----

(j-3) has encroached upon the Government land or public property;"

The above provisions lay down disqualification of a member of the Gram Panchayat who has encroached upon the Government land or public property. It does not lay down that the elected member would incur disqualification if he encroaches on the land of the village concerned or the land vested in the village Panchayat. The provisions of Section 14 (1) (j-3) of the Act of 1958 cannot be given a restricted meaning.

[11] As I find that the parents of the petitioner have encroached on the Government land, may be of different/adjoining village and the petitioner is residing with them, there is no reason to interfere with the impugned orders disqualifying the petitioner from continuing as the member and Sarpanch of the Gram Panchayat.

[12] In view of the above conclusions, the submission made on behalf of the petitioner, relying on the judgment given in the case of Janabai (supra), cannot be accepted. On the contrary, in my view, the impugned orders are in consonance with the proposition laid down in the above referred judgment.

[13] Hence, I see no reason to interfere with the impugned orders.

The writ petition is dismissed. In the circumstances, the parties to bear their own costs.

CIVIL APPLICATION (CAW) NO. 934/2018

In view of dismissal of the writ petition, this application praying for grant of interim order does not survive. It is disposed accordingly.