
(2012) 09 BOM CK 0021
In the Bombay High Court
Case No : Writ Petition No. 88 of 2012

Dnyaneshwar M. Satav

APPELLANT

Vs

Jalindhar Dgondiba Kharabi and Others

RESPONDENT

Date of Decision : 18-09-2012

Acts Referred:

Bombay Police Act, 1951 — Section 57
Bombay Village Panchayats Act, 1958 — Section 10, 10(3), 10A, 11, 12
Companies Act, 1956 — Section 630
Constitution of India, 1950 — Article 102, 102(1), 103, 103(1)(a), 190(3)(a)
Criminal Procedure Code, 1973 (CrPC) — Section 428
Limitation Act, 1963 — Section 5

Citation : (2013) 2 BomCR 789

Hon'ble Judges : Dharmadhikari S.C., J

Bench : Single Bench

Advocate : P.S. Dani instructed by Sumit Khaire, for the Appellant; Uday Warunjikar for Respondent No. 1, Ganesh H. Shikhare instructed by . S.D. Shinde for Respondent No. 3 and R.M. Patne, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

Dharmadhikari S.C., J.—Rule. The contesting respondent waives service. By consent, Rule is made returnable forthwith. Since the office report is that service is complete, with the consent of parties appearing through Advocates, the writ petition is disposed of finally by this judgment. By this writ petition under Article 226 and Article 227 of the Constitution of India, the petitioner challenges the order passed by the Additional Commissioner, Pune Division, Pune in Gram Panchayat Appeal No. 68 of 2011 dated 20th December 2011, confirming the view and order of the Collector dated 15th June 2011 in Application No. 14 of 2011.

2. The proceedings are under the Bombay Village Panchayats Act, 1958 (for short "the Act").

3. The petitioner states that the elections to Gram Panchayat, Kharabwadi,

Taluka Khed, District Pune were held and the petitioner was elected. This was a general election of the Gram Panchayat, which was notified on 30th June 2010. The seat in question, namely, Ward No. 4 was unreserved. One Lata Vitthal Birdavade filed her nomination for a reserved seat for Other Backward Class ladies. The petitioner also filed nomination for a general seat. Both, the lady candidate and the petitioner were nominated as candidates from Ward No. 4. It is alleged that at the time of scrutiny of nominations, an objection was raised that there was an encroachment on Property Nos. 396, 595 and 694. Therefore, the objections were raised by the contesting respondent No. 1 before me to the nominations of these two candidates. However, the objection with regard to the nomination of the petitioner was rejected and his form was declared to be valid. The objection with regard to the nomination of Mrs. Lata Vitthal Birdavade, which was raised on the same ground of encroachment, was upheld and her nomination form came to be rejected. Thereafter, the polling was held and the petitioner was declared as elected.

4. It is true that the Village Panchayat has eleven elected members. The tenure of the petitioner is five years. No Election Petition was filed by any voter or candidate within the prescribed time but the 1st respondent who was one of the contesting candidates made an application being Application No. 14 of 2011. That application was filed in the office of the Additional Collector, Pune, District Pune. In that application what has been alleged is that the petitioner is disabled from continuing as a Member on the ground that he has encroached on public land. He was disqualified in terms of section 14(1)(j-3) of the Bombay Village Panchayats Act, 1958. It is alleged that he had encroached upon the Government land or public property and hence he could not have been Member of the Panchayat nor can he continue in office.

5. The allegation is that the property is Gairan land and there is a house constructed on Survey Nos. 396, 595 and 694.

6. A copy of the application was served on the petitioner and the petitioner pointed out that this is not a bona fide grievance at all. It is raised by a person who has lost the elections and out of political enmity and loss in the elections, he has filed a complaint.

7. The petitioner clarified that the survey number which is subject matter of the complaint, is No. 618/A. That is located after mauje Chakan. The said survey number is within Kharabwadi village but although in the records it has been shown as gairan and belonging to Gram Panchayat Chakan, yet, what has been stated in the Kabjedar Column (Possession Column) in the revenue record is that from 1965, the land is in possession of one Vishnu Bala Satav and another. The said Vishnu Bala Satav is the uncle of the petitioner before me. This land, Survey No. 618/A, was in his possession and cultivation. The family of the petitioner's father and Vishnu Bala Satav was a joint one. The land in question was, therefore, jointly held as tenant by the petitioner's father and his cousin Vishnu Bala Satav. In such circumstances, there is no question of any encroachment

thereon. In this land from 1965 onwards, the petitioner No. 3's father and his cousin has constructed houses and cowsheds. There is no question of therefore any encroachment being committed and construction made as alleged by respondent No. 1. The petitioner annexed to his reply, a copy of the village extracts in that behalf. Thus, it was specifically denied that there was any encroachment in Government or gairan land.

8. The petitioner has also referred to the report which has been forwarded by the Chief Executive Officer, Zilla Parishad, Pune. That report has been received in the office of the Collector, Pune District. In that what has been stated is that the election to Gram Panchayat Kharabwadi was held in 2010 and from Ward No. 4 the petitioner has been elected and the respondent No. 1 came to be defeated. The 1st respondent has alleged that there are lands bearing Nos. 396, 595 and 694 within the Kharabwadi village limits. These lands are standing in the name of the petitioner. However, in the Government gairan land, the petitioner has encroached and there is an entry with regard to this encroachment. The construction that is referred to as encroachment is existing for last fifteen to twenty years. This construction is in Gairan land. However, the petitioner relied upon the village extracts and contended that they are prior in point of time and, therefore, there is no question of any encroachment on gairan land as alleged. The petitioner has clarified that the construction has not been made by him but by his father and existing from fifteen to twenty years. Prior to that also the petitioner's father and the petitioner's uncle were both having their houses on the said property/land. The house property has been assessed in the name of the petitioner and his father in the Gram Panchayat records. In these circumstances, it cannot be said that there is any encroachment on gairan land by construction of a house.

9. Upon said allegations and denials, the matter proceeded before the Collector, Pune who held that on Survey Nos. 396, 595 and 694, the names of the petitioner have been inserted in the Gram Panchayat records and as far as the relevant column in the said records is concerned, the entry is "Government gairan Land on which there is an encroachment by construction of a house, ota, lavatory and gobar-gas plant". On this conclusion, the Collector held that the petitioner is disqualified and, therefore, disabled to continue as a Member of the Gram Panchayat, Kharabwadi.

10. This order of the Collector dated 15th June 2011 was challenged before the Additional Commissioner, Pune in Gram Panchayat appeal and initially, the same was stayed by an order dated 11th July 2011. Subsequently, that appeal was heard and decided on 20th December 2011. The Additional Commissioner dismissed the appeal filed by the petitioner and that is how challenging both orders, this writ petition has been filed.

11. Mr. Dani, learned counsel appearing for the petitioner submits that the impugned orders are contrary to the provisions of the Act. The Act provides for disqualification. The disqualifications are enlisted in section 14, one of which is

that the person who has encroached upon Government land or public property is not eligible for contesting the election and continuing as a Member of Panchayat. However, Mr. Dani submits that the dispute as to whether the petitioner was eligible to contest the elections on account of the disqualification incurred vide section 14(1)(j-3) of the Act, is a question which could be raised only at the time of scrutiny of nomination papers and thereafter if the election results are declared and the voter or the defeated candidate is aggrieved, by resorting to filing of election petition u/s 15 of the said Act. If the nomination papers are objected to at the time of scrutiny and that objection is duly noted and considered and further opportunity by way of filing an election petition is not availed of, then, the complaint u/s 16 cannot be made and if made, cannot be entertained. That would mean that a duly elected Member of Panchayat must go on contesting and dealing with complaints and grievances with regard to his qualifications and eligibility. That would be an endless exercise. The legislature does not envisage that a duly elected representative of the people should be asked to defend his election or appointment throughout his term. Ultimately, a Member duly elected is a representative of the entire ward and not only of those who have voted for him but all those who have not voted so also residing in the ward. He is representative of the people. A peoples' representative chosen by the people should not be embarrassed and harassed by such process, that the Court should hold that if a dispute of the present nature is raised at the time of filing of nomination or its scrutiny or thereafter by filing an election petition, then, the same cannot be raised again and again or if raised, should not be considered by the authorities. Equally, what would have made subject-matter of the election petition, should not be allowed to be urged or raised by filing a complaint of present nature and on this ground alone, the writ petition should be allowed by quashing and setting aside the impugned orders.

12. Alternatively and without prejudice, it is submitted that the wording of the section, namely, section 14(1)(j-3) must not be lost sight of that a person has encroached upon Government land or public property. The words used are "has encroached upon". Therefore, what is covered is an act of encroachment on the Government land. Section 16(1)(a) deals with a situation when a person duly elected or appointed as a Member of the Panchayat was subjected to any of the disqualifications mentioned in section 14 at the time of his election or appointment. In the instant case, at the time of the election the petitioner was not disqualified. There was no finding that the petitioner has encroached upon the Government land or public property. There has to be a finding that the petitioner has encroached upon Government land or public property at the time of filing of the nomination papers or earlier. Therefore, it would not be permissible now to find out as to when the encroachment was committed because that would mean that an allegation of a sweeping nature can be made and the Member can be subjected to disability on the said allegation. Therefore, this is a case where the Collector and the Commissioner should satisfy themselves as to what is the nature of the allegation, when the alleged

encroachment had taken place and by whom and further whether that encroachment was at the time of his election or appointment. In the instant case all this relevant because the complaint is that the petitioner was disqualified as there was an encroachment on the Government land. That objection was raised at the time of scrutiny of nominations but was rejected. The complaint as filed would reveal that it is in the nature of an election petition or dispute. Therefore, once the election is over and even the period for filing an election petition is over, then, in the garb of entertaining a complaint alleging disability u/s 16(1)(a), the petitioner or an elected Member like him cannot be forced to undergo the same scrutiny or test which he would have had to undergo in case an election petition was filed. In these circumstances, such belated grievances and complaints should not have been permitted to be entertained and considered at all but thrown out at threshold.

13. Mr. Dani submits that throughout the complaint, it is not the case of the 1st respondent that the petitioner incurred disqualification in terms of section 14(1) (j-3) after the elections were held. In other words, section 16(1)(b) is not attracted in this case. In these circumstances, the complaint itself was not maintainable. If it was not maintainable, the Collector had no jurisdiction to entertain and try it. Therefore, the orders under challenge suffer from serious legal infirmity and are vitiated by an error of law apparent on the face of record.

14. Further, alternatively, Mr. Dani submits that in this case there is no finding that which land can be termed as Government land, what is the nature of the construction allegedly made thereon and when. These are very crucial matters and ingredients but with regard to which there is complete silence. In the present case, what the Additional Commissioner and the Collector has held is that the petitioner has encroached upon the Government land from 1994-95 and that there are entries in relation to such encroachment in the records. Once there are such entries, then, there is no requirement of considering anything further and the petitioner must be held to be disqualified. However, a careful perusal of the orders under challenge would reveal that they are based on the contents of the report of the Chief Executive Officer, Zilla Parishad, Pune.

15. Mr. Dani, therefore, submits that this report, a copy of which is annexed to this writ petition, was never supplied but the contents of the same have been relied upon. In any event, the report dated 27th December 2010 would indicate that it refers to the report of the Block Development Officer, Panchayat Samiti, Khed dated 9th December 2010. That report indicates that the encroachment is on the property belonging to the petitioner bearing Nos. 396, 595 and 694. However, which land can be said to be gairan, has not been indicated. However, the entry in Village Form No. 8 is relied upon, which entry says that there is encroachment by making construction on Government gairan land. This construction is stated to have been made prior to the petitioner's election as a Member of Gram Panchayat, Kharabwadi. Further, that construction has been noted in the records as existing for last fifteen to twenty years.

16. Mr. Dani submits that unless it has been asserted as to which land is Government land or public property and if construction is on the petitioner's own property and Survey Nos. 396, 595 and 694 are stated to be petitioner's property, then, all the more the construction cannot be said to be unauthorised or termed as encroachment on Government land or public property. Looked at any which way, the petitioner could not have been disqualified. For all these reasons, the orders under challenge cannot be sustained and the writ petition be allowed.

17. Mr. Dani has relied on the following decisions in support of his contentions:

Dnyaneshwar Patiram @ Ratiraj Shirbhiye Vs. The Divisional Commissioner, Nagpur, Old Secretariat Building, Civil Lines, Nagpur, Additional Collector, Chandrapur and Gopichand Urkude,

(Hanumant P. Pawar Vs. State of Maharashtra),

Hanumant P. Pawar Vs. The State of Maharashtra and Others, State of Himachal Pradesh and Others Vs. Surinder Singh Banolta,

18. On the other hand, Mr. Warunjikar appearing for the contesting respondent No. 1 and Mr. Patne, learned A.G.P. appearing for respondent Nos. 5 to 7 submit that the orders under challenge do not require any interference. Mr. Warunjikar submits that if the petitioner's case is that he has not made any construction on Government land or public property, then, he was not required to furnish any explanation or clarification. He has given a clarification and that is that the encroachment is not committed on the eve of the election or immediately prior thereto. The construction in the form of a structure has been made by the petitioner's father fifteen to twenty years back. That structure is stated to be a residential house of the petitioner and his uncle. That construction in the Gram Panchayat records assessed in the name of the petitioner's father. The petitioner has no connection or nexus with the construction. At the same time, when confronted with the contents of the report of the Block Development Officer and the contents thereof that each of the lands which are referred therein belong to the petitioner and there is an entry in relation thereto as Government gairan, what the petitioner clarifies is that the construction which is in his name has been made thereon fifteen to twenty years back and is thus existing for a long time. If that is so and that the petitioner claims that he has paid the taxes to the Gram Panchayat and got the construction regularised, then, all the more this is a case of an admitted encroachment on Government land or public property requiring no evidence to be led or a factual aspect being decided. On the undisputed facts, the petitioner stands disqualified.

19. Mr. Warunjikar submits that this is not a case where any of the allegations have been raised by the respondent No. 1 as an afterthought or with political motives on being defeated in the elections to the Gram Panchayat. That he was a contestant against the petitioner and got defeated, is undisputed. However, it is not out of political enmity or that there is any other motive, that the complaint is

filed. Even otherwise, in law a complaint of this nature can be made not only on the date of filing of nominations/its scrutiny but even after the elections are over and the results are declared. The disability from continuing as a Member on account of the disqualification at the time of elections, is also a matter which can be inquired and thus is a question within the terms of section 16 of the Act. If this is so, there is no question of the proceedings being not maintainable or the authorities having no jurisdiction or power to take cognizance of the complaint against the petitioner and pass the impugned orders. Mr. Dani's contentions are based on improper and incomplete reading of the statutory provisions. In these circumstances, Mr. Warunjikar would submit that the proceedings are maintainable and the remedy of the petitioner was not only to file election petition but he could have made a complaint of the above nature. Once he could have made the complaint and that could have been taken note of, then, all the arguments to the contrary must fail.

20. Mr. Warunjikar submits that the reliance placed on the judgment of the learned Single Judge of this Court by Mr. Dani is equally misplaced. That judgment has referred to the Hon''ble Supreme Court's judgment in the case of State of Himachal Pradesh and Others Vs. Surinder Singh Banolta, and understood it as prohibiting filing of an complaint of the present nature after the elections are over and the results are declared. That judgment, with respect, has been rightly distinguished in a later judgment of this Court and, therefore, the Single Judge's judgment which is duly considering all this is binding on me, is the submission of Mr. Warunjikar.

21. Mr. Warunjikar then submits that the respondent No. 1 had at no stage opposed the nomination of the petitioner. On the other hand, what the 1st respondent had objected to was that Lata Vitthal Birdavade, another contesting candidate is disqualified because she had filed nomination for a seat reserved for Other Backward Class ladies candidate from Ward No. 4. It is the objection with regard to her candidature and that alone has been upheld. In fact, if the application containing the objections is perused in its entirety, it would be apparent that the 1st respondent alleged that the petitioner has been allowed to take part in the elections although not eligible as he has encroached on the gairan land, which is under management of Kharabwadi Gram Panchayat. Therefore, his membership deserves to be cancelled. The objection raised to the nomination of the petitioner was not considered, even if it is assumed that it was raised by the 1st respondent at the stage of scrutiny of the nominations. That does not mean that in law, the issue raised at that stage cannot be raised again by filing the instant application particularly when it is as serious as encroaching on Government land or public property. In these circumstances, there is no merit in the contentions of Mr. Dani that the application was not maintainable.

22. Thus, summing up, Mr. Warunjikar firstly urges that merely because no election petition is filed, does not mean that the continuation of the petitioner as a Member of the Gram Panchayat cannot be objected at a later stage by the 1st

respondent and secondly, the application not only raises the issue of the petitioner being disqualified at the time of election but on account of such disqualification, his continuation also is not permissible in law. For all these reasons, Mr. Warunjikar would submit that the petition would be dismissed.

23. Mr. Warunjikar has relied upon the following decisions in support of his submissions:

(1) Writ Petition No. 5544 of 2010, decided on 18th October 2011, (Shri Balwant Shankar Patil Vs. Shashikant P. Patil and others), 2011 Bom. C.R. (soft) 23.

(2) Writ Petition No. 585 of 2012 and other connected writ petitions decided on 30th January Hanumant P. Pawar Vs. The State of Maharashtra and Others,

State of Himachal Pradesh and Others Vs. Surinder Singh Banolta,

Shri Shrikrishna Wasudeo Dhage Vs. Shivcharan Kalne and Others,

24. With the assistance of the learned Counsel appearing for parties, I have perused the petition and all annexures thereto including the impugned orders. I have also perused the affidavits on record with their annexures. I have also been taken through the relevant statutory provisions and the decisions of this Court and the Hon'ble Supreme Court. For properly appreciating the rival contentions, it would be advantageous S.C. to refer firstly to the facts in this case. The facts are that the election of Gram Panchayat, Kharabwadi came to be announced and on 30th June 2010 a notification came to be published. The schedule was also published for the elections. The controversy is with regard to membership of Ward No. 4. In the application that was filed by the 1st respondent, what is alleged, is that while it is true that the petitioner was disqualified at the time of the elections for having encroached on the Government land or public property, yet, that objection was not considered and the petitioner's nomination was held to be valid. Accordingly, the petitioner contested and later on he was elected as a Member of the Kharabwadi Gram Panchayat.

25. Therefore, in para 8 of the application what is alleged is that there is no option but to challenge the continuation of the petitioner as a Member of the Gram Panchayat. That is challenged on several grounds and by highlighting and elaborating the principal allegation of his having encroached on gairan land which is under management of Kharabwadi Gram Panchayat. Thus, the encroachment is alleged to be on Government land or public property. That Gairan land falls in this category is not disputed at all.

26. On such an application, the petitioner was called upon to submit his explanation. The petitioner was original opponent No. 3. He has stated in his written reply that the application is filed on account of political enmity and frustration on having failed to defeat the petitioner. If the allegation is that the petitioner has encroached on Survey No. 618/A and that land is shown as gairan land and belonging to Gram Panchayat, Chakan, still the same is in possession and occupation of Vishnu Bala Satav and another. Their name has been entered

in the records since 1965. If the land is in possession of the uncle of the present petitioner Vishnu Bala Satav and on this land the petitioner's father and Vishnu Bala Satav have constructed a residential structure in which they are all residing jointly, then, there is no question of any encroachment by the petitioner on this land or property. The land has been in possession of the petitioner's father and his uncle as tenants. In fact, the house property therein is in existence from 1965 and has been assessed as Survey No. 618/A. In these circumstances, when the 7/12 extract would reflect this position, then, the allegation that the petitioner is disqualified, has no basis and should be rejected.

27. If the contents of the report of the Chief Executive Officer, Zilla Parishad, Pune with regard to the encroachment are perused, what they state is that House Nos. 396, 595 and 694 are standing in the name of the petitioner. These structures are on a Gairan land Survey No. 618/A and assessed as above in the panchayat records for the years 2010 and 2011. The house properties are assessed and shown in the name of the petitioner herein. The further entry is that by making construction of such houses, the petitioner has encroached on gairan land which belongs to the village/Government. The construction is without permission and, therefore, an encroachment. That construction is stated to be existing from last fifteen to twenty years. The petitioner, therefore, relied upon this and stated that the construction has not been made by the petitioner but by his father and that too prior to fifteen to twenty years. The house properties do not belong to the petitioner's father alone but jointly with him even his uncle Vishnu Bala Satav, has a claim or right therein. Therefore, even if these properties are shown in the name of the petitioner in the Gram Panchayat record, that entry has been made by the petitioner's father. The petitioner has no role or connection in making such entries. For all these reasons, the construction cannot be stated to be encroachment on Government land or public property and, therefore, the relevant provision is not attracted in this case. The petitioner, therefore, prayed that the application be dismissed.

28. The petitioner also relied on the agenda in the meeting of the Gram Sabha dated 15th August 2008 and the minutes of meeting of Gram Panchayat held on 12th April 2007. He also relied upon order passed by the Collector of the District in relation to adjacent property bearing No. 797/667, Ward No. 1, wherein similar entries of encroachment have been directed to be deleted by the Collector. If such is the case in relation to a adjacent land, then, all the more, the petitioner contended that the instant objection or application deserves to be dismissed. This is how the reply dated 29th March 2011 reads.

29. Upon such an application and objection, what the Collector has ruled is that in terms of the report of the Chief Executive Officer it is apparent that the petitioner has constructed a house and lavatory on house properties bearing Nos. 396, 595 and 694. If Form No. 8 in the Gram Panchayat records is perused, these house properties are standing in the name of the petitioner and the entry is that such construction is an encroachment on Government gairan land. If such

is the nature of the report submitted by the independent high ranking Officer, then, relying on the same, the Collector proceeded to hold that the petitioner is disqualified and cannot continue as Member of Gram Panchayat on account of applicability of section 14(1)(j-3) of the Act.

30. Challenging this order of the Collector dated 15th June 2011, an appeal was preferred under the very provision by the petitioner before the Additional Commissioner, Pune. He highlighted in the memorandum of the appeal that he has not constructed the house on Government gairan land Survey No. 618/A but it was in possession of his father and uncle since 1965 and even the structures thereon are existing from that time. This is how the records indicate and the petitioner urged that he could not have been disqualified. This is the sum and substance of his complaint in the memorandum of appeal dated 21st June 2011.

31. Upon such memo of appeal being filed and application of stay also preferred therein, the Additional Commissioner, Pune Division, Pune passed an interim order on 11th July 2011 granting stay of the order of the Collector.

32. Thereafter, the appeal of the petitioner was taken up for consideration and what the Additional Commissioner has held is that on property bearing No. 396 in Gram Panchayat Kharabwadi limits, the Form No. 8 indicates, construction of 875 sq.ft. In the column of occupancy, the name of the petitioner has been appearing. What is indicated therein is that this is a Government gairan land and the construction has been made without any permission. Further, property bearing No. 595 in the village records stand in the name of the petitioner and shows a construction of 1404 sq.ft. There also the construction encroaches on the Government gairan land. The third property is 694 and there is a construction of 250 sq.ft and in the occupants column, the name of the petitioner in relation to this construction has been appearing throughout and that is also termed as encroachment on the Government gairan land.

33. At the same time, the Commissioner refers to the documents in relation to property bearing Nos. 143 and 43 so also 25, which are in the name of Vishnu Bala Satav and Mahadev Bala Satav. There is no entry of any encroachment on this land. If the report of the Chief Executive Officer, Zilla Parishad dated 27th December 2010 is carefully perused, that also would indicate that the petitioner has encroached on Government gairan land. Further, the Commissioner observes that the available records indicate that by Entry No. 1177 what has been inserted is the word "gairan". The name of the Gram Panchayat, Chakan in Possession Column, is deleted and in Other Right Column, it is stated that the land is gairan and made over for management to Gram Panchayat, Chakan. All these facts and entries are not disputed by the petitioner. Relying upon all these entries, the Additional Commissioner concluded that the petitioner is owner and in possession of properties bearing Nos. 396, 595 and 694, which are Government gairan lands. The petitioner has encroached thereon and made construction of house, ota, lavatory and gobar-gas plant.

34. Lastly, the Additional Commissioner concluded that the case of the petitioner is that the construction is made prior to his becoming a Member of the Gram Panchayat. It is made some time in 1994-95. The construction cannot be attributed to the petitioner holding office as a Member of the Gram Panchayat, Kharabwadi. He has not taken advantage of his office. It is also submitted that the amendment by which section 14(1)(j-3) was introduced is effected in 2007 and, therefore, will have no retrospective effect. However, the arguments on retrospectivity have been rejected by relying on certain decisions of this Court. Concluding thus, the petitioner's appeal came to be dismissed by the Additional Commissioner.

35. In such backdrop, if one peruses the present writ petition and the annexures thereto, what one finds is that the petitioner is relying on the records in relation to Survey No. 618/A to submit that the same is in the name of the tenants. The tenant includes the uncle of petitioner, Karta of joint family and who is residing in survey number in question from 1965. Therefore, if the house and the construction in Hindu Undivided Family property which consists of the petitioner's father and the uncle and that there is renovation thereof, then, the allegation of encroachment is not proved.

36. In this behalf, what has been indicated throughout is that the petitioner has rights in House Nos. 396, 595 and 694. They are constructed on Government gairan lands. The construction is stated to be in existence from fifteen to twenty years and, therefore, it cannot be said to be a recent one and the construction has not been made after the petitioner was elected as a Member of the Gram Panchayat. However, the petitioner has not produced any material to prove his case that the construction was made by his father and uncle. When the construction made by them is on distinct properties and is not an encroachment, then, all the more relying on the public documents, it is concurrently held that the petitioner has constructed three houses on Gairan/Government land. All three houses are assessed in his name. The construction of houses is without sanction or permission of competent Authorities. They have not condoned or regularised this construction as falsely alleged by the petitioner.

37. Mr. Dani has invited my attention to the order passed by the Additional Commissioner and the findings therein to indicate that the Additional Commissioner is confused about the encroachment, if any, but it is not stated to be by the petitioner. It is by his uncle Vishnu Bala Satav and Mahadev Bala Satav.

38. To my mind, this is nothing but an attempt to seek re-appreciation and reappraisal of the material on record. These factual aspects cannot be re-opened once the petitioner has been given full opportunity to rebut the case as set out in the application. The petitioner had full opportunity to demonstrate and prove that there is no encroachment of Government land or public property. That the encroachment alleged is not by him but by somebody else. That the entries in the records of Oram Panchayat are not conclusive and justified as the construction is made by his father and uncle jointly but shown erroneously in his

name in the records. Further, when he was confronted with a specific case based on records, that the structures on Survey Nos. 396, 595 and 694 have been put up by him, nothing prevented the petitioner from placing materials to the contrary. Once all such opportunities are not availed of, then, the complaint by Mr. Dani that the impugned orders are only based on the report of the Chief Executive Officer and which report was not allowed to be contradicted cannot be accepted. Having participated in the proceedings without any protest or demur, it is too late in the day to urge that the petitioner was denied a fair and adequate opportunity to defend himself or to rebut the allegations against him. All findings of fact which are not only based on the report but on the Gram Panchayat records cannot be brushed aside on such a vague complaint and grievance of the petitioner in writ jurisdiction. For all these reasons, the first objection and contention based thereon must fail.

39. Now what remains to be dealt with is the case that construction has been made fifteen to twenty years back, cannot now be construed and termed as encroachment on Government land or public property.

40. Mr. Dani rightly does not urge that the provision in question has no retrospective operation or the Authorities cannot take into account any act of the present nature merely because it was committed much prior to the initiation of the proceedings or the assumption of office as Member of Gram Panchayat. In any event, as far as this aspect is concerned, it is concluded by a judgment of this Court in Writ Petition No. 5544 of 2010 (Balwant Shankar Patil Vs. Shashikant P. Patil & Ors.) decided on 18th October 2011, reported in 2011 Bom. C.R. (soft) 23.

41. Mr. Dani's contention is that the encroachment has been allegedly committed by construction of a house in 1994-95 and that was to the knowledge of all, including, the respondent No. 1. That act cannot be made the basis or foundation for disqualifying the petitioner after his elections in 2010. The contention put in other words is also that if the 1st respondent-objector had opportunity to question the nomination of the petitioner and which he availed of but was unsuccessful in having it rejected then, at his instance the proceedings in question could not have been initiated. Thus, section 16 cannot be resorted to at the instance of an objector like respondent No. 1 who was a rival candidate and who objected to the nomination of the petitioner but when his objection is rejected, he maintains silence thereafter. He allows the election process to be completed. When results are also declared he does not file any election petition within the prescribed period. Now, after the period for filing an election petition is over, he has initiated such proceedings so as to disable the petitioner and prevent him from continuing as a Member. That would mean that the petitioner and persons like him can be vexed twice over. That is not permissible in law.

42. In my opinion, the above contentions of Mr. Dani are totally misconceived and untenable. A Gram Panchayat is constituted u/s 10 of the Act and it consists of such number of Members not being less than seven and not more than

seventeen, as the State Government may prescribe, who shall be elected in accordance with section 11. The elections to the Gram Panchayat have to be held by the State Election Commission in terms of section 10-A and by following the procedure and manner laid down in section 11. Thereafter, section 12 provides for the list of voters and section 13 enlists the qualifications to vote and be elected. Section 14 prescribing disqualifications commences with sub-section (1) and states that no person shall be a Member of Panchayat continue as such and then Clauses (a) to (k) together with the provisos and explanations, set out the disqualifications. One of the disqualification is, if the person has encroached upon the Government land or public property, then, he cannot be elected as a Member and if elected, cannot continue as such.

43. In the present case, it is not disputed that the construction is on Government land (Gairan). Whether it is made over for management to the Panchayat or otherwise, there appears to be no dispute raised throughout that the encroachment is on Government land or public property. The question is that if such encroachment is disqualification for an elected office, then, did the legislature envisage that the determination or adjudication with regard to this disqualification can only be by an election petition as set out in section 15 of the Act or could it be by resorting to section 16 as well.

44. Section 16 of the Act comes after section 15-A. It cannot be held that the legislature was unaware that after the constitutional amendment under which Part IX and IX-A came to be introduced in the Constitution of India setting out inter alia a bar to interference by the Court in electoral matters that section 16 will be resorted to or could be taken aid of. The legislature did not deem it fit to clarify anything but retain section 16 in the same form and once it is so retained and with an obvious purpose, then, to brush aside the plain language of the same is impermissible. Section 16 deals with disability from continuing as a Member. That disability is on account of disqualifications which are mentioned in section 14. That a person who is duly elected or appointed was subject to any of the disqualifications mentioned in section 14 at the time of his election or appointment or such Member incurs the disqualification during the term for which he has been elected or appointed, are both matters which disable him from continuing and, therefore, covered by this section. His office shall become vacant the moment he is disqualified. The question whether any vacancy has occurred under this section, if raised suo motu or on an application made by any person, has to be decided by the Collector. Therefore, it would not be possible for me to ignore this section and its language, which is plain, unambiguous and clear. There is no scope for interpretation if this plain language is taken into consideration.

45. In the case of *Vijay Vs. State of Maharashtra and Others*, while dealing with a controversy as to whether section 14(1)(j-2) of the Act is prospective in nature or whether it takes in its fold any past conduct, what the Hon'ble Supreme Court has held, is as under:

7. The said Act is a disqualifying statute. A plain reading of the amended provision clearly shows that it was intended by legislature to have retrospective effect

8. The general rule that a statute shall be construed to be prospective has two exceptions: it should be expressly so stated in the enactment or inference in relation thereto becomes evident by necessary implication.

9. In the instant case it is stated expressly that the amendment would apply also to a case where the elected candidate had been elected as a member of Panchayat earlier thereto. It not only incorporates within its purview all persons who would be members of the Panchayat in futuro, but also those who were sitting members. In other words, the bar created to hold the post of member of Panchayat would bring within its purview also those who were continuing to hold post.

10. It may be true the amendment came into effect on 8.8.2003. The legislative policy emanating from the aforesaid provision, in our opinion, is absolutely clear and unambiguous. By introducing the said provision, the legislature, inter alia, intended that for the purpose of bringing grass root democracy, a person should not be permitted to hold two posts created in terms of Constitution (73rd Amendment) Act. It is true that ordinarily a statute is construed to have prospective effect, but the same rule does not apply to a disqualifying provision. The inhibition against retrospective construction is not a rigid rule. It does not apply to a curative or a clarificatory statute. If from a perusal of the statute intendment of the legislature is clear, the Court will give effect thereto. For the said purpose, the general scope of the statute is relevant. Every law that takes away a right vested under the existing law is retrospective in nature. See *Government of India and Others Vs. Indian Tobacco Association*,

The cardinal principle is that statutes must always be interpreted prospectively, unless the language of the statutes makes them retrospective, either expressly or by necessary implication. Penal statutes which create new offences are always prospective, but penal statutes which create disabilities, though ordinarily interpreted prospectively, are sometimes interpreted retrospectively when there is a clear intendment that they are to be applied to past events. The reason why penal statutes are so construed was stated by Erle, C.J., in (*Midland Rly. Co. Vs. Pye*), (1861) 10 C.B. NS 179, at p. 191 in the following words:

Those whose duty it is to administer the law very properly guard against giving to an Act of Parliament a retrospective operation, unless the intention of the legislature that it should be so construed is expressed in clear, plain and unambiguous language; because it manifestly shocks one's sense of Justice that an act, legal at the time of doing it, should be made unlawful by some new enactment.

This principle has now been recognised by our Constitution and established as a Constitutional restriction on legislative power.

11. While construing the beneficial provisions of 428 of the Criminal Procedure Code, 1973 in *Boucher Pierre Andre Vs. Superintendent, Central Jail, Tihar, New Delhi and Another*, this Court opined:

This section, on a plain natural construction of its language, posits for its applicability a fact situation which is described by the louse "where an accused person has, on conviction, been sentenced to imprisonment for a term". There is nothing in this clause which suggests, either expressly or by necessary implication, that the conviction and sentence must be after the coming into force of the new Code of Criminal Procedure. The language of the clause is neutral. It does not refer to any particular point of time when the accused person should have been convicted and sentenced. It merely indicates a fact situation which must exist in order to attract the applicability of the section and this fact situation would be satisfied equally whether an accused person has been convicted and sentenced before or after the coming into force of the new Code of Criminal Procedure. Even where an accused person has been convicted prior to the coming into force of the new Code of Criminal Procedure but his sentence is still running, it would not be inappropriate to say that the "accused person has, on conviction, been sentenced to imprisonment for a term". Therefore, where an accused person has been convicted and he is still serving his sentence at the date when the new Code of Criminal Procedure came into force. Section 428 would apply and he would be entitled to claim that the period of detention undergone by him during the investigation, inquiry or trial of the case should be set off against the term of imprisonment imposed on him and he should be required to undergo only the remainder of the term.

12. The appellant was elected in terms of the provisions of a statute. The right to be elected was created by a statute and, thus, can be taken away by a statute. It is now well-settled that when a literal reading of the provision giving retrospective effect does not produce absurdity or anomaly, the same would not be construed to be only prospective. The negation is not a rigid rule and varies with the intention and purport of the legislature, but to apply it in such a case is a doctrine of fairness. When a law is enacted for the benefit of the community as a whole, even in the absence of a provision, the statute may be held to be retrospective in nature. The appellant does not and cannot question the competence of the legislature in this behalf.

46. It is not necessary to multiply the authorities but if any reference is still needed, one can usefully refer to the recent decision of the Hon^{ble} Supreme Court in the case of *Ishwar Nagar Co-op. Housing Building Society Vs. Parma Nand Sharma and Others*, While dealing with this aspect and following the earlier dictum, this is what the Supreme Court has held:

12. The learned Counsel for the respondent-1 further contended that the Rule 25 is not applicable to the respondent-1's case as the said rule is not retrospective and the alleged "disqualification" of purchasing the said property had incurred prior to the adoption of the Rules. We are of the considered opinion that the

aforesaid contention of the learned Counsel for the respondent-1 is misconceived. Merely because a person who had become a member of the society at a point of time when the disqualification mentioned in Rule 25 was not in existence and because of the said rule would now cease to be a member of the society does not necessarily mean that the said rule is retrospective. "A statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time precedent to its passing". (See Craise on Statute Law. 17th edition page 386). Reference may also be made to (Queen Vs. Vina), reported at (1875) 10 Q.B. 195 wherein the Statute enacted that every person convicted of felony shall be for ever disqualified from selling spirits by retail. It was held that the disqualification applied to every convicted felon irrespective of whether he was so convicted prior to or after the Act came into operation.

13. A reference may also be made to *Re (Solicitor's Clerk)*, 1957 (3) All. E.R. 617, wherein the bone of contention revolved around that Solicitor's Act of 1956 which provided that no solicitor should employ any person who is convicted of larceny without the permission of the Law Society. The clerk in that case was convicted of larceny in 1953, while the ban was imposed in 1956. It was urged that the provisions of the 1956 Act cannot be applied to him because he was convicted before that Act came into operation. To do otherwise, it was argued, would be to make its operation retrospective. In rejecting this contention, Lord Goddard, C.J. observed:

In my opinion, this Act is not in truth retrospective. It enables an order to be made disqualifying a person from acting as a solicitor's clerk in the future and what happened in the past as the cause or reason for the making of the order; but the order has no retrospective effect. It would be retrospective if the Act provided that anything done before the Act came into force or before the order was made should be void or voidable, or if a penalty were inflicted for having acted in this or any other capacity before the Act came into force or before the order was made. This Act simply enables a disqualification to be imposed for the future which in no way affects anything done by the appellant in the past. Accordingly, in our opinion the disciplinary committee had Jurisdiction to make the order complained of.

14. Same principle was applied in *The State of Maharashtra Vs. Vishnu Ramchandra*, where section 57 of the Bombay Police Act, 1951 authorised removal of a person from an area if he has been convicted of certain offences including theft. The Supreme Court held that -

18. Section 57 of the Bombay Police Act, 1951 does not create a new offence nor makes punishable that which was not an offence. It is designed to protect the public from the activities of undesirable persons who have been convicted of offences of a particular kind. The section only enables the authorities to take note of their conviction and to put them outside the area of their activities so that the Public may be protected against a repetition of such activities.....

18. An offender who has been punished may be restrained in his acts and conduct by some legislation, which takes notes of his antecedents, but so long as the action taken against him is after the Act comes into force, the statute cannot be said to be applied retrospectively.

15. The most concrete cases wherein laws are made retrospective are those in which the date of commencement is earlier than enactment, or which validate some invalid law, otherwise, every statute affects rights which would have been in existence but for the statute and a statute does not become a retrospective one because a part of the requisition for its action is drawn from a time antecedent to its passing. Applying that to the present case, the conclusion is inescapable, that Rule 25(2) is not retrospective. All that Rule 25(2) does is that it operates in future, though the basis for taking action is the factum acquiring a plot in the past. Thus when by virtue of Rule 25(2), a member is deemed to have ceased to be a member of the society, the cessation operates from April 2, 1973, when the rules came into force.

47. I had an occasion to consider the ambit and scope of the proceedings u/s 16 of the Act. In the case of (Maruti Vasant Kashid Vs. Divisional Commissioner, Pune), W.P. No. 1213/2011, dt. 11-7-2011, 2011 Bom. C.R. (soft) 24, while dealing with the ambit and scope of section 16, this is what is held by me:

22] The above observations of the Supreme Court would demonstrate that applicability of section 5 of the Limitation Act, 1963 would depend upon the answer to the crucial question as to whether the period provided by sub-section (2) could be said to be a rule of limitation or not. If it was not a rule of limitation, then, the question of applicability of section 5 of the Limitation Act is ruled out. Then, it would not be necessary to decide the controversy as to whether the proceedings before the Collector and State Government partake the character of an appeal to a Court and whether these authorities are Court within the meaning of section 5 of the Limitation Act, 1963.

23] The nature of the proceedings must be understood for arriving at any conclusion. The proceedings in the present case are to disable a member who is already elected from continuing as a member. The term of office of an elected member is provided by section 27. It states that members of Panchayat, save as otherwise provided in the Act hold office for a term of five years and commencement of the term of office of the members elected at a general election or appointed u/s 10(3) shall be deemed on the date of first meeting of the Panchayat (see section 28). Thus, upon election, during this term of five years, which is provided by the Statute, if a question arises as to whether the seat has fallen vacant for reasons of disability of a member, then, that has to be decided by the Collector. It is the decision on a question as to whether the elected member was subject to any of the disqualifications mentioned in section 14 at the time of his election or whether any appointed member was subject to any of these disqualifications at the time of his appointment. Equally, if any member during the term for which he has been elected or appointed incurs any

of the disqualifications mentioned in section 14, he shall be disabled from continuing to be a member and his office would become vacant. Sub-section (2) has been amended by Maharashtra Act 36 of 1965 (section 10) and the portion which was initially reading as "in every case where vacancy has occurred" under this section is substituted with the words "if any question". Therefore, now the question as to whether a vacancy has occurred u/s 16 is raised by the Collector suo motu or on an application made to him by any person, then, that question has to be decided as far as possible within sixty days from the date of such an application. The indication that the period of sixty days provided for decision of the Collector is not mandatory is clear from the words "as far as possible" preceding the words "within sixty days". Therefore, there is no mandate to decide the question within sixty days but the Collector should decide it as far as possible within this period. It does not mean that it can be decided at any time or that no limit is provided therefor. The decision can be taken after sixty days but it should not be postponed endlessly. Hence, the words "as far as possible" are used. The person with regard to whose office the question is raised will continue as a member till the decision of the Collector. The words used are "shall not be disabled". The word "disabled" has been defined in the Oxford Dictionary as "Disadvantage or handicap, especially one imposed or recognised by the law or limit the movements, senses, or activities of, put out of action". Therefore, the proceedings before the Collector are arising from a question whether a vacancy has occurred on account of the disability of a member to continue as such. That disability arises because of the disqualification the member is subjected to initially or incurs during his term. These disqualifications are mentioned in section 14. In these circumstances, the question of vacancy has to be decided with reference to the disqualification that the member was subject to or has incurred. Clause (a) deals with disqualifications to which he was subjected to at the time of his election or appointment whereas Clause (b) deals with disability from continuing as a member because of incurring any of these disqualifications. Thus, both situations viz., at the time of elections or appointment or post election and post appointment are dealt with and covered by these provisions. Therefore, when the question is to be decided by the Collector and he has to render his decision within sixty days as far as possible from the date of receipt of such application, then, one must see the further provisions enabling any person aggrieved by the decision of the Collector to prefer an appeal to the State Government. Once again, a careful perusal of the provision would indicate that the appeal is provided to the State Government at the instance of any person aggrieved by the decision of the Collector. Thus, it is not an appeal restricted to a member who is sought to be proceeded against and who is declared to be disabled and disqualified. The appeal can be filed by any person aggrieved by the decision of the Collector. Another crucial indication is that no rules have been framed by the State Government for deciding the question or for deciding the appeal. One would have thought that the gravity and seriousness of the proceedings would immediately persuade the Government to frame rules and particularly after the constitutional amendments. However, that has not

happened till date. It would be advisable atleast now and bearing in mind the controversy before me that proper rules are framed by the State Government enabling the Collector and State Government to decide the proceedings. It is common ground that because of the powers of delegation the appeal is decided by the Divisional Commissioner of Revenue District.

24] To my mind, an answer to this question will also depend upon the nature of the proceedings. The subject proceedings cannot be compared with determination of validity of elections. Section 15 while providing for determination of validity of elections and enquiry therein, has advisedly inserted a provision that the said question, if brought in by any candidate at such election or by any person qualified to vote at the election to which such question refers, the same may be decided by the Civil Judge, Junior Division within fifteen days from the date of declaration of the result of the election. A perusal of sections 15(1) to (5) would reveal that the same are proceedings with regard to determination of validity of elections and they are referred to a Court of Civil Judge, Junior Division. Once there is a sanctity attached to the elections and election results and that is why the Legislature deems it fit not to permit an enquiry being made into the said question, after the period prescribed therein. This is to enable a Panchayat to be constituted and the members who have been elected to Junction and work for the benefit of the public. Ultimately, even a member of a village Panchayat renders public service. He is representative of the people residing within the limits of the said Panchayat. He holds that power in trust for the voters and public. The Panchayats have now been elevated to a level where they get constitutional status. It is in such circumstances that the Legislature thought it fit that an enquiry into the validity of elections must have some early and expeditious end. It must have finality. However, at the same time, the Legislature thought it fit that it should not be that a person who is subjected to disqualification u/s 14 at the time of his election manages to scrap through by getting elected and continues in office despite being subjected to this disqualification. Therefore, to enable even such a person to be dealt with and bearing in mind that post elections the issue may still be raised and if so raised, it must be dealt with under the Act itself, that section 16 has been enacted.

25] A learned Single Judge of this Court in the case of Sou. Suvarna Prakash Patil Vs. Anil Hindurao Powar, Mahesh Balasaheb Katkar, Gautam Devappa Sorate, Sou. Shobha Jaisingh Lohar and Balwant Dattatraya Kumkhar, had an occasion to consider the difference and distinction between two proceedings viz., election petition and disqualification. While noting that distinction, it is observed thus:-

12. In my opinion, however, this argument clearly overlooks that the present proceedings are not for questioning the election of the respondents as member of the Gram Panchayat as such Whereas, the same is u/s 14(h) read with 16 of the Act, where the issue of disqualification has arisen and is required to be considered by the Collector. The proceedings obviously relates to the subsequent

disqualification incurred by the respondents. In such a case, the analogy of the principles ascribable to the trial of Election Petition cannot be applied at all. Whereas, if at all any parallel is to be drawn, the same is referable to the action under Article 102 read with 103 against the Member of Parliament or under Article 191 read with 192 against the Member of Legislative Assembly. That action or enquiry is surely not an adversarial proceedings but, *sui generis*, and more in the nature of summary and inquisitorial proceedings. It is appropriate to draw parallel to the above referred actions not only because of the purport of section 16 of the Act but more importantly because the Gram Panchayats have since been given special status after the insertion of the (Seventy fourth Amendment) Act, 1992, whereby, Part IX of the Constitution of India has been substantially altered. The Panchayats have now been given the special status and are creature of the Constitution. The members of the Gram Panchayat are obviously holding public office. The Gram Panchayat is now creature of Article 243-B of the Constitution. Article 243-F postulates disqualifications for membership of Panchayat. The present section 14(h) of the Act is the law ascribable to Clause (b) of Article 243-F(1) of the Constitution. Article 243-F(2) of the Constitution provides that if any question arises, as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in Clause (i), the question shall be referred to the decision of such authority and in such manner as the Legislature of a State may, by law, provide. Section 16 of the Act is therefore ascribable to Article 243-F(2) of the Constitution. Section 16(2) provides that if any question as to whether a vacancy has occurred under this section is raised by the Collector *suo motu* or on an application made to him by any person in that behalf, the Collector shall decide the question as far as possible within 60 days from the date of receipt of such application. Proviso to subsection (2) of section 16 provides for the manner in which the decision has to be reached by the Collector in deciding the issue of disqualification. It provides that no order shall be passed under this subsection by the Collector against any member, without giving him a reasonable opportunity of being heard. It is common ground that no rules have been framed for governing the procedure with regard to disqualification proceedings. At least, no such provision has been brought to my notice. Therefore, the Collector while adjudicating the issue of disqualification is required only to observe principles of natural justice and fair play, as the section requires that no order be passed unless reasonable opportunity of being heard is offered to the incumbent. As mentioned earlier, the proceedings for deciding the issue of subsequent disqualification are markedly different than the trial of an Election Petition, which relates to pre-election disqualification; whereas, proceedings with regard to subsequent disqualification is concerned, even in regard to the members of Parliament and the Members of Legislative Assembly, the Constitution makes almost similar provision to empower the President and Governor, as the case may be, to decide the said issue. Therefore, it will be legitimate to draw parallel from the requirements of those proceedings. The Constitution Bench of the Apex Court while considering the nature of enquiry and the obligation of the specified Authority to decide the

disqualification proceedings has observed in *Brundaban Nayak Vs. Election Commission of India and Another*, as follows:

12. What the said clause requires is that a question should arise; how it arises; by whom it is raised, in what circumstances it is raised, are not relevant for the purpose of the application of this clause. All that is relevant is that a question of the type mentioned by the clause should arise; and so, the limitation which Mr. Setalvad seeks to introduce in the construction of the first part of Art. 192(1) is plainly inconsistent with the words used in the said clause.

(emphasis supplied).

In paragraph 14 of the same decision, it has been observed as follows:-

14. It is true that Art. 192(2) requires that whenever a question arises as to the subsequent disqualification of a member of the Legislative Assembly, it has to be forwarded by the Governor to the Election Commission for its opinion. It is conceivable that in some cases, complaints made to the Governor may be frivolous or fantastic; but if they are of such a character, the Election Commission will find no difficulty in expressing its opinion that they should be rejected straightaway. The object of Art. 192 is plain. No person who has incurred any of the disqualifications specified by Art. 191(1), is entitled to continue to be a member of the Legislative Assembly of a State and since the obligation to vacate his seat as a result of his subsequent disqualification has been imposed by the Constitution itself by Art 190(3)(a), there should be no difficulty in holding that any citizen is entitled to make a complaint to the Governor alleging that any member of the Legislative Assembly has incurred one of the disqualifications mentioned in Art 191(1) and should, therefore, vacate his seat. The whole object of democratic elections is to constitute legislative chambers composed of members who are entitled to that status, and if any member forfeits that status by reason of a subsequent disqualification, it is in the interests of the constituency which such a member represents that the matter should be brought to the notice of the Governor and decided by him in accordance with the provisions of Art. 192(2). Therefore, we must reject Mr. Setalvad's argument that a question has not arisen in the present proceedings as required by Art. 192(1).

(emphasis supplied).

This decision has been adverted to in another decision of the Constitution Bench of the Supreme Court in the case of *The Election Commission of India Vs. N.G. Ranga and Others*, It will be useful to first reproduce paragraphs 5 and 10 of this decision which reads thus:-

5. Upon the presentation of a petition by respondent 2 to the President of India, alleging that respondent 1 had become subject to the disqualifications mentioned in Article 102(1) of the Constitution, a question clearly arose as to whether respondent 1 had truly become subject to any of the 52 disqualifications

mentioned in that article. By Clause (2) of Article 103, the President was bound to obtain the opinion of all the appellants before giving his decision on the question. Not only that, but the President was further bound to act according to the opinion given by the appellants. The President therefore acted both in the exercise of constitutional authority and in the discharge of his constitutional obligation in referring the question raised by respondent 2's petition for the opinion of the appellants.

10. The High Court thereafter proceeded to hold that the question whether respondent 1 had become subject to any disqualification u/s 10-A of the Act did not arise on the facts stated in the petition by respondent 2. We do not see any way to accepting this statement. Though respondent 2 was not in a position to make a categorical assertion in his petition that respondent 1 had incurred a specific disqualification, he did make allegations, generally, in regard to disqualifications said to have been incurred by respondent 1. Upon the making of those allegations a question arose as contemplated by Article 103(1)(a) of the Constitution and the President had to obtain the opinion of the Election Commission on that question. Respondent 2's petition could not have been rejected by the President without reference to the Election Commission on the ground that the allegations made by respondent 2 were unfounded or unsubstantial.

(emphasis supplied)

13. From the elucidation made by the Apex Court in para 10 referred to above, it can be plainly deduced that all that the complaint or application addressed to the appropriate authority needs to mention is that the named member has incurred disqualification, so as to initiate the action. No more and no less. It will be unnecessary to give specific disqualification or for that matter any other material facts. Once such complaint or application is received, alleging disqualification incurred by the member, a question would arise as in this case within the meaning of section 16 of the Act; And once such question arises then, it is the bounden duty of the Authority to cause such enquiry as may be deemed necessary into that issue and decide the same appropriately. At any rate, the complaint or application cannot be thrown out at the threshold on the ground that the case made out therein was vague, unfounded or unsubstantial. In my opinion, it would also mean that even if some citizen has made complaint or application, the Authority will be obliged to make enquiry on his own to record his satisfaction on the issue of disqualification. And it cannot decide the issue only on the basis of the averments in the complaint application and the material produced by such applicant.

14. As mentioned earlier, the case of *Brudaban* (supra) has been referred to in the later part of this decision by the Supreme Court in paragraph 11. What is relevant to mention for our purpose is that in this paragraph the Apex Court has observed that the Authority had power to issue notice to the person against whom the complaint was made, calling upon him to file his statement and produce evidence

in support of his case. This dictum clearly means that the respondents were not only required to appear in the proceedings, but also submit explanation taking specific stand and produce evidence in support of their case. To put it differently, in such proceedings, the question of technicalities of pleadings and inadequacy of evidence adduced by the complainant or applicant will not arise at all. But the law casts obligation on the Collector to address himself to all the materials relevant for consideration, so as to form his opinion on the question of disqualification. In such proceedings, the respondents cannot succeed by finding fault with the weakness in the pleadings or evidence of the complainant or Applicant. On the other hand, they are and were obliged to file their reply taking specific stand, and also produce evidence to substantiate their stand, so as to persuade the Authority to drop the proceedings against them, on the finding that they have not incurred disqualification at all. In the present case, the respondents have not disputed the service of demand or bill as such. That means that the factum of service of bill has gone unchallenged. Interestingly, the respondents have failed to take a specific stand that, three months period from the date of such service has not elapsed. Whereas, there is only vague denial that they have not incurred any disqualification. Moreover, no attempt has been made by the respondents to adduce any evidence to substantiate that three months period from the date of service of the demand or bill has not elapsed. Only if that fact was pleaded and proved by the respondents in the enquiry before the Collector, the Collector would have been obliged to hold that the respondents have not incurred any disqualification.

48. In these circumstances, it is not possible to accept the contentions of Mr. Dani that failure to file an election petition by the 1st respondent would result in present proceedings being *ex facie* not maintainable. If on the same allegations and facts the election petition had been filed and 1st respondent was not successful in proving the same, then, dependent upon the findings and conclusions of the Court therein, in a given case, it could be held that a Member is not disabled and can continue till the expiry of his term. Ultimately, this could be a conclusion in facts and circumstances of a given case. No general rule can be laid down. However, it would definitely be a relevant factor and if the 1st respondent had raised similar objections, at the time of scrutiny of nominations, but, a detailed verification and enquiry revealed no substance in his allegations or if he is unsuccessful in proving the allegations at the trial of a election petition, then, one could have agreed with Mr. Dani that the present proceedings being vexatious in nature and on the general principle that no person can be vexed twice on the same set of facts and allegations, the proceedings before the Collector could have been disposed off if there was no fresh or other material. However, if the application filed by the 1st respondent in this case is perused in its entirety, it does not only set out the objections that have been raised at the stage of scrutiny of the nomination papers, but equally highlights the fact that there was no enquiry into these allegations nor a detailed scrutiny and therefore the petitioner can be held to be disabled to continue as Member if the question of

his disability is gone into and decided by the Collector.

49. This is not a case of a parallel inquiry or proceeding. Nothing was pending on the date of filing the application u/s 16 much less a election petition by a third party. Equally, there is no material on record to conclude that any prior adjudication or scrutiny in the allegations of encroachment by the petitioner has been held in which the same allegations were made and same documents were relied on. Once there was no final and conclusive determination and adjudication, then, holding that the present proceedings were not maintainable, would be doing violence to the plain language of section 16.

50. Even the judgment of the Hon''ble Supreme Court in the case of State of Himachal Pradesh and Others Vs. Surinder Singh Banolta, cannot be read in this manner.

51. Mr. Dani has heavily relied on this decision of the Hon''ble Supreme Court.

52. A closer look at the factual background in which this judgment has been rendered would reveal that section 122 of the State Act has been quoted by the Hon''ble Supreme Court in para 4, which reads as under:

4. The State of Haryana pursuant to the constitutional mandate as noticed hereinbefore enacted the Himachal Pradesh Panchayati Raj Act, 1994 (for short "the Act"). Chapter DC of the Act lays down general provisions relating to incorporation, duration, territorial constituencies of Panchayat and qualifications, etc. of office-bearers. Section 122 of the Act provides for disqualifications, the relevant provisions whereof read as under:

122(1): A person shall be disqualified for being chosen as, and for being, an office bearer, of a Panchayat

a) if he is so disqualified by or under any law for the time being in force for the purposes of the election to the State Legislature:

Provided that no person shall be disqualified on the ground that he is less than 25 years, if he has attained the age of 21 years;

(b) * * *

(c) if he has encroached upon any land belonging to, or taken on lease or requisitioned by or on behalf of, the State Government, a Municipality, a Panchayat or a Co-operative Society unless a period of six years has elapsed since the date on which he is ejected therefrom or he ceases to be the encroacher, or

* * *

(2) The question whether a person is or has become subject to any of the disqualifications under sub-section (1), shall after giving an opportunity to the person concerned of being heard, be decided

(i) if such question arises during the process of an election, by an officer as may be authorized in this behalf by the State Government, in consultation with the Stats Election Commission;

and

(ii) if such question arises after the election process is over, by the Deputy Commissioner.

53. The Issue raised before the Hon"ble Supreme Court was when a person shall be disqualified for being chosen as and being office bearer of the Panchayat. If he has encroached upon the land belonging to or taken on lease or acquisition or on behalf of the State Government Municipality Panchayat etc., it is a ground on which he can be disqualified. It can be raised and decided, but, if it arises during the process of election it has to be decided by the State Government in consultation with the State Election Commission and if the question arises after the election process is over, it has to be decided by the Deputy Commissioner. Then, section 163 is referred to in para 6 which provides for the remedy of a election petition. The factual aspects were noted inasmuch as there the application was filed by respondent No. 2-Daulat Ram alleging that Surinder Singh Banolta was declared an encroacher and he was, therefore, disqualified to hold the elected post and thus should not be continued therein. The Deputy Commissioner took cognizance of the complaint and by his order dated 4th June 2002, declared Surinder Singh Banolta as disqualified.

54. Then, the facts in relation to the encroachment are referred to and what has been held by the Hon"ble Supreme Court is that the 1st respondent was declared to be an encroacher in the year 1998. The Notification for election was issued on 16th November 2000 and the 1st respondent before the Supreme Court was declared elected on 5th January 2001. An election petition was, therefore, maintainable for setting aside the election. The Supreme Court by agreeing with the High Court held that in terms of section 163 of the Act, an election petition, therefore, was maintainable for setting aside the election.

55. Equally, what the Hon"ble Supreme Court held is that the Deputy Commissioner could not have taken cognizance of the question of disqualification of the 1st respondent as it did not arise after the election process is over. The Deputy Commissioners jurisdiction to decide such question was restricted and he could have decided it only if it arises after the election process is over. If the respondent No. 2 before the Supreme Court was desirous of raising that question of disqualification during the process of the election, he would have to raise it before the State Government. There, issue was that the 1st respondent was disqualified for being chosen as an office bearer of the Panchayat. That question could have been determined only by the authorised officer in terms of section 122(1). In this context, paras 17 and 18 of this decision are clear enough and they read as under:

17. Once, thus, a person is declared to be an encroacher prior to the date on

which he has been declared as elector and if the said order has attained finality, the question as to whether he stood disqualified in terms of the provisions of section 122 of the Act, in our opinion, must be raised by way of an election petition alone. If the submission of Mr. Attri is to be accepted, the same may result in an anomalous position.

18. If a candidate or a voter had the knowledge that the elected candidate was disqualified in terms of section 122 of the Act, he may file an application. The order of eviction may come to the notice of some other person after the election process is over. A situation, thus, may arise where two different proceedings may lie before two different authorities at the instance of two different persons. Two parallel proceedings, it is well settled, cannot be allowed to continue at the same time. A construction of a statute which may lead to such a situation, therefore, must be avoided. It will also lead to an absurdity if two different Tribunals are allowed to come to contradictory decisions.

56. Thus, what this decision holds is that a election petition raising the same issue may be filed. Equally, somebody may not file a election petition but a application seeking to disqualify that very elected candidate. Thus, an election petition and such application may lie before two different authorities at the instance of two different persons and both may go on. Such parallel proceedings cannot be allowed to continue at the same time. To avoid contradictory and conflicting decisions that the Hon'ble Supreme Court construed the provisions in question accordingly. Beyond that, the Supreme Court judgment does not carve out a bar to the maintainability of the proceedings. Even in the Act before me, the Collector or the State Government in a given case may not proceed with the application u/s 16 if on the same allegations and facts, a election petition is pending trial. The Supreme Court decision, thus, does not assist Mr. Dani. Particularly, when the above reproduced paras are read together. While following this decision, what the learned Single Judge of this Court held in the case of Shri Shrikrishna Wasudeo Dhage Vs. Shivcharan Kalne and Others, that the question whether the nomination paper of the petitioner before the learned Single Judge can be rejected u/s 14(1)(j-3) cannot be gone into an election petition u/s 15. Election petition u/s 15 can question the validity of the elections. However, a careful reading of the judgment of the learned Single Judge would reveal that the petitioner therein was regarded as an encroacher in 2007-2008 and she has tried to get the encroachment regularised. However, these events are after her election. The contention that was raised before the learned Single Judge was that this encroachment, therefore, could have been used to challenge her election by filing election petition u/s 15 of the Act, was clearly misconceived. On that ground, the proceedings u/s 16 were questioned and it was urged that they were not maintainable. The learned Judge rejected these contentions. This is clear from a reading of paras 7 and 8 of his decision. In para 9, reference is made to the decision in the case of State of Himachal Pradesh and others Vs. Surinder Singh Banolta (supra) and it has been held thereafter that this judgment does not help the petitioner. In the case before the learned Single Judge the

encroachment was after commencement of the term and that is how the elected Member can be held to be disabled from continuing as such in terms of section 16. If the proceedings u/s 16 were held to be maintainable on account of disqualification being incurred during the term of the office, then, there is no question of any parallel proceedings. There is only one inquiry into the issue of encroachment.

57. Thus, if one carefully peruses paras 7 to 11 of the judgment of the learned Single Judge, it can be safely held that the learned Judge has not made any observations which would indicate that a past act of encroachment is not covered or that it is only when the encroachment is after the elections, that the Member can be held to be disabled and not otherwise.

58. Mr. Warunjikar is, therefore, justified in placing reliance on the judgment of another learned Single Judge of this Court in the case of Hanumant P. Pawar Vs. The State of Maharashtra and Others, The learned Judge held as under:

11 In my opinion, the above judgment is clearly distinguishable in view of the specific language used u/s 16 of the 1958 Act. Clause, (a) of sub-section (1) of section 16 even contemplates the question as to whether any member of the Panchayat who is elected, was subject to any of the disqualifications provided in section 14 at the time of the election, shall also be decided by the Collector u/s 2 of sub-section (16). In my opinion, therefore the judgment of the Supreme Court is not applicable to the facts of the present case.

12 The reliance placed by Mr. Vohra on the judgment of the teamed Single Judge (Coram: B. P. Dharmadhikari J.) in the case of Shrikrishna W. Dhawe (supra) is also not well placed. In fact, according to me, the ratio of the said judgment is contained in paragraph 8 and the same is against the petitioner. The said paragraph 8 reads thus:

Para 8: Section 14 of the 1958 Act, states that no person can be a Member of Panchayat or can continue as a member of Panchayat, if he is encroacher as stipulated in its sub-section 1(j-3). Thus bar is not only from getting elected, but also from continuing as Member. There are two forums provided for getting rid of such disqualified person. Application u/s 14 read with section 16 before respondent No. 2 Additional Collector is one such remedy. Against order passed in those proceedings Statute provides appeal u/s 16(2) to respondent No. 1 Additional Commissioner. The other forum is of filing an election petition u/s 15 before the Civil Judge, Junior Division or Civil Judge, Senior Division as the case may be. The election petition is required to be filed within 15 days after the date of declaration of result and by any candidate who has lost election or by any person qualified to vote in it. The proceedings u/s 16(2) for disqualification can be undertaken by respondent No. 2 suo motu or on an application made to him by any person.

59. It is not necessary to multiply the decisions but a same view has been taken by another learned Single Judge of this Court (R.K. Deshpande, J) in

Dnyaneshwar Patiram @ Ratiraj Shirbhiye Vs. The Divisional Commissioner, Nagpur, Old Secretariat Building, Civil Lines, Nagpur, Additional Collector, Chandrapur and Gopichand Urkude, In such circumstances, it is not a case of any parallel proceedings as urged by Mr. Dani.

60. All arguments of the petitioner are based on a misconception that a provision of disqualification for holding a elected office is penal in nature. That it is not so is clear from a reading of the following observations of the Hon"ble Supreme Court in the case of P. Prabhakaran Vs. P. Jayarajan, The Hon"ble Supreme Court holds as under:

55. Shri K.K. Venugopal, learned Senior Counsel appearing for respondent in one of the appeals, submitted that section 8 of the RPA is a penal provision and, therefore, should be construed strictly. We find it difficult to countenance the submission. Contesting an election is a statutory right and qualifications and disqualifications for holding the office can be statutorily prescribed. A provision for disqualification cannot be termed a penal provision and certainly cannot be equated with a penal provision contained in a criminal law. If any authority is needed for the proposition the same is to be found in Lalita Jalan and Another Vs. Bombay Gas Co. Ltd. and Others, which has held section 630 of the Companies Act, 1956 not to be a penal provision. The Court has gone on to say, "the principle that statute enacting an offence or imposing a penalty is to be strictly construed is not of universal application which must necessarily be observed in every case."

.....

59. In Shibu Soren Vs. Dayanand Sahay and Others, a three Judge Bench of this Court was seized of the question of examining a disqualification on account of the person at that time holding an office of profit. The Court held that such a provision is required to be interpreted in a realistic manner having regard to the facts and circumstances of each case and the relevant statutory provisions. While "a strict and narrow construction" may not be adopted which may have the effect of "shutting of many prominent and other eligible persons to contest elections" but at the same time "in dealing with a statutory provision which imposes a disqualification on a citizen, it would not be unreasonable to take merely a broad and general view and ignore the essential points". A balance has to be struck between strict construction and what is at stake is the right to contest an election and hold office. "A practical view, not pedantic basket of tests" must, therefore, guide courts to arrive at appropriate conclusion. The disqualification provision must have a substantial and reasonable nexus with the object sought to be achieved and the provision should be interpreted with the flavour of reality bearing in mind the object for enactment.

61. Equally in a recent decision the Hon"ble Supreme Court in the context of a identical provision, namely, section 16 of the Bombay Act, held that there is no period of limitation provided for filing any application to invoke such provision.

The Supreme Court in the case of Dhirendra Pandua Vs. State of Orissa and Others, held as under:

9. Section 16 of the Act provides for disqualification of candidates for election as a Councilor of a Municipality. It enumerates the grounds on which a person shall be regarded as disqualified for election. Clause (iv) of sub-section (1) of section 16 of the Act envisages that no person shall be qualified for election as a Councilor of a Municipality if he has been adjudged by a Competent Court to be of unsound mind or is a leprosy or a tuberculosis patient. Similarly, like section 16, section 17 enumerates certain grounds on which a Councilor would become disqualified to hold office but the said provision has been made subject to the provisions of section 38 of the Act. Section 17(1)(b) lays down that a Councilor shall cease to hold his office if he becomes of unsound mind, a leprosy or a tuberculosis patient. Section 18 stipulates that the validity of election of any person as a Councilor may be questioned by a petition on the ground enumerated therein, one of them being that he was disqualified for election under the provisions of sections 15, 16 and 29. Section 19 lays down the procedure for the presentation of the Election Petition before the District Judge, The Election Petition is required to be filed within 15 days after the date on which the result of the elections was announced. It can be presented either by a rival candidate in the same ward, who claims to be declared elected in place of the person whose election is questioned or by a group of 25 or more electors of the ward, which means that unless a candidate was a contestant against the person whose election as a Councilor had been challenged, he cannot present the petition singularly. Section 38 of the Act, which is the pivotal provision, vests jurisdiction in the District Judge to decide the question whether the Councilor has incurred disqualification on any of the grounds mentioned in sections 16 or 17 of the Act. But u/s 38, issue regarding disqualification of a Councilor can be raised only by a Councilor and by no other person.

10. A conjoint reading of the aforementioned provisions of the Act makes it clear that sections 18 and 38 operate in two independent fields. The scope of section 18 is limited as compared to section 38. An election dispute u/s 18 of the Act can be raised only by a candidate who was contesting against the Councilor whose election had been challenged or by a minimum of 25 electors of the same ward, within 15 days from the date of declaration of the result of the election whereas u/s 38 any elected Councilor of the Municipality, irrespective of his constituency or the Chairperson, at the request of the Municipality can present a petition to the District Judge of the District to determine the question whether or not the person complained against has incurred disqualification on any of the grounds enumerated in sections 16 or 17 of the Act. From a bare reading of section 38, it is clear that the section is wider in scope inasmuch as the issue of disqualification of a Councilor can be raised not only on the grounds mentioned in section 17 i.e. on the grounds which come into existence after the person is elected as a Councilor, but also on the grounds mentioned in section 16 i.e. on the grounds which had made him ineligible for election while he was a candidate i.e. before

he came to be elected as a Councilor. It is, therefore, manifest that when a question with regard to the validity of election of a Councilor arises, it has to be dealt with in accordance with the procedure prescribed u/s 19 of the Act. However, when the question raised is as to whether or not the Councilor has incurred any disqualification and thereby ceased to hold the office, it has to be referred and determined as per the procedure laid down in section 38 of the Act. It is axiomatic that the question of disqualification to hold an office would arise at the stage posterior to the election i.e. after a person is elected as a Councilor. The provision appears to have been made to ensure that no Councilor, who has incurred disqualification on any of the grounds, mentioned in sections 16 and 17 of the Act, either prior to the election or after the election at any time during the tenure for which he is elected should be allowed to hold the office. Precisely for this reason, unlike in section 19, no period of limitation has been prescribed for presentation of a petition u/s 38 of the Act to the District Judge.

62. Hence, it is clear that the encroachment is of 1995-96 and, therefore, cannot be taken note or cognizance of is an argument in desperation as it is not in public interest that a wrongdoer or law breaker derives any benefit or advantage of his illegal or wrongful act and continues as a elected representative of an unit of local self Government. That would be a wrong or bad precedent before the people.

63. Hon"ble Mr. Justice G.P. Singh in his book "Principles of Statutory Interpretation" 13th Edition 2012, has stated at page 561 as under:

(g) Statutes prescribing posterior disqualification on past conduct

.....

The last three cases (1875) 10 QB 195 *Queen Vs. vine*; (1957) 3 All. E.R. 617 *Re, A Solicitor's Clerk and The State of Maharashtra Vs. Vishnu Ramchandra*, may be compared with the case of (*Re, Pulborough Parish School Board Election, Bourke Vs. Nutt*), (1894) 1 QB 725., where the Court of Appeal (Lord Esher, M.R. Dissenting) held that the provisions of the Bankruptcy Act, 1883, which impose certain disqualifications "where a debtor is adjudged bankrupt", did not apply to past adjudications by virtue of the presumption against retrospection. The comparison only illustrates that the word "retrospective" is used in more senses than one causing a certain amount of confusion and that the real issue in each case is as to the scope of the particular enactment having regard to its language and the object discernible from the statute read as a whole.

(h) Statues conferring prospective benefit on antecedent facts: Remedial statutes

Just as the fact that a prospective disqualification under a statute results from anterior misconduct, is not always taken as sufficient to make the statute retrospective, so also the fact that a prospective benefit under a statutory provision is in certain cases to be measured by or depends on antecedent facts does not necessarily make the provision retrospective. Cases under these heads

illustrate that the rule against retrospective construction is not always applicable to a statute merely "because a part of the requisites for its action is drawn from time antecedent to its passing".

In *Boucher Pierre Andre Vs. Superintendent, Central Jail, Tihar, New Delhi and Another*, the Supreme Court held that the benefit to set off pre-conviction detention period against the term of imprisonment conferred by section 428 of the Criminal Procedure Code, 1974 "where an accused person, has, on conviction been sentenced to imprisonment for a term" is also available where the sentence was imposed before the commencement of the code to reduce the unserved portion of the sentence and that in so construing the section it was not given any retrospective effect for it did not affect the sentence already undergone but affected only that part of the sentence which remained to be served in future. It was further held that words "has been sentenced" were neutral and could take in the convictions prior to coming into force of the Code.

In (*R. Vs. Mary Whitechappel St.*), (1848) 12 QB., the question related to the construction of section 2 of the Poor Removal Act, 1846, which provided that "no woman residing in any parish with her husband at the time of his death shall be residing from such parish, for twelve calendar months next after his death, if she so long continues a widow". In that case it was sought to remove a widow within twelve months from the date of the death of her husband who had died prior to the Act came into force; and it was argued that to apply the Act to such a case was to construe it retrospectively. In rejecting the contention, LORD DENMAN, C.J. Observed: "It was said that the operation of the statute was confined to persons who had become widows after the Act was passed, and that the presumption against a retrospective statute being intended supported this construction; but we have shown before that the statute is in its direct operation prospective, as it relates to future removals only, and that it is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing". In this case the words "shall be removed" were thus found appropriate to cover all cases of future removals irrespective of whether the husband had died prior to the Act but they were not found wide enough to nullify completed removals prior to the Act, even if the widow was removed within twelve months of her husband's death.

64. To my mind, when the language of section 16 is plain, clear and unambiguous in terms, then, there is no warrant for interpreting it or reading it down. There is nothing in the said provision which indicates that prior act of encroachment is out of the purview of an inquiry into the question of disability and vacancy arising u/s 16 of the Act. Equally when the object and purpose is to discourage and prohibit all such persons who have indulged in illegal and wrongful acts from holding an elected office in a unit of local self Government such as a Village Panchayat, then, accepting Mr. Dani's arguments would defeat the same. The provisions are enacted in public interest and to protect them from the activities of undesirable persons. It is to protect and safeguard against a evil or

wrongful and immoral act. Hence, it is for public good that their elected representatives are not tainted or immoral or wrongdoers.

65. As a result of the above discussion, I find that both contentions of Mr. Dani cannot be accepted and deserve to be rejected. For the reasons aforesaid, there is no merit in this writ petition and it fails. Rule is discharged but without any order as to costs. After the judgment was pronounced, it is prayed that the ad interim order passed be continued for a period of eight weeks from today to enable the petitioner to challenge this order in higher Court. The request is opposed. After hearing both sides on this point. I am of the opinion that once the Collector and Commissioner, both have found that the petitioner is disqualified from being elected and as such disabled to continue as a Member of subject Gram Panchayat resulting in vacancy which requires to be filled in, all that can be directed that for a period of eight weeks from today the Authorities shall not take steps to fill in the vacancy. This order is passed without prejudice to the rights and contentions of parties.