

**(2011) 06 BOM CK 0048**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 1409 of 2011**

Gajanan Susar

APPELLANT

Vs

The Additional Commissioner, The Additional Collector and  
Sampat Susar

RESPONDENT

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**Date of Decision :** 22-06-2011

**Acts Referred:**

Bombay Village Panchayats Act, 1958 — Section 14(1)  
Constitution of India, 1950 — Article 226, 227

**Citation :** (2011) 6 BomCR 427

**Hon'ble Judges :** R.M. Savant, J

**Bench :** Single Bench

**Advocate :** N.B. Kalwaghe, for the Appellant; A.D. Sonak AGP for Resp. Nos. 1 and 2 and A.J. Kadu, for the Respondent

**Final Decision :** Allowed

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## Judgement

R.M. Savant, J.—Rule, with the consent of the parties, made returnable forthwith and heard.

2. The above petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 16/12/2010 passed by the Additional Collector, Buldhana, by which order the Appeal filed by the Petitioner against his disqualification u/s 14(1)(j-3) of the Bombay Village Panchayat, 1958 came to be rejected. The Petitioner further challenges the order dated 10/3/2011 passed by the Additional Commissioner, by which the revision filed by the Petitioner came to be rejected.

3. The issue before the Authorities whilst considering the application made u/s 14(1)(j-3) of the said Act was; as to whether the Petitioner can be termed as an encroacher so as to entail the disqualification under the provisions of the said Act. The land in question in respect of which the allegation was made by the Respondent No. 3 herein against the Petitioner is Gat No. 204 of village Jamb. It is the case of the Petitioner that the great grandfather of the Petitioner namely;

one Taraji Bayaji Susar had made an application to the Government and requested for allotment of 4 gunthas land from the gaathan land of the said village which now bears Gat No. 204 for the residential user. On the application of the Petitioner being granted, the concerned authority was pleased to pass an order and thereby it is the case of the Petitioner that the Plot Nos. 72, 73 and 74 came to be granted to the great grand-father of the Petitioner for residential purposes. It is further the case of the Petitioner that on 20/12/1923, on land being granted to the great grand-father of the Petitioner, he executed an agreement before the then Tahsildar, Chikhli and agreed that he will not alienate the said property and would not mis-utilize the same. It is further case of the Petitioner that it is since then that the Petitioner's family is in possession of the said plot as granted by the government.

4. In the aftermath of the elections to the Grampanchayat of the said village Jam, which took place sometime in August 2009, the Respondent No. 3 herein filed an application u/s 14(1)(j-3) of the said Act before the Respondent No. 2 and therein contended that the Petitioner has encroached on the "F" class land and constructed house thereon bearing House No. 453. The Petitioner filed his reply to the said application and also filed the documents being the application made by the great grand-father, agreement executed by the great grand-father, order of S.D.O. and Namuna - 6. It appears that in terms of the procedure prescribed while dealing with an application u/s 14(1)(j-3) of the Act, the Additional Collector directed the Talathi to conduct an enquiry. Accordingly, the Talathi, it seems, conducted an enquiry and submitted his report, which is at page 32 of the petition as Annexure "H". Thereafter, the application filed by the Respondent No. 3 came to be considered by the Additional Collector and by merely relying upon the report of the Talathi, the Additional Collector came to a conclusion that the Petitioner had encroached upon the Government "F" class land in Gat No. 204. The Additional Collector by his order dated 16/12/2010 held the Petitioner as disqualified.

5. Aggrieved by the said order dated 16/12/2010, the Petitioner filed a revision before the Additional Commissioner, in which revision also the Additional Commissioner confirmed the finding of the Additional Collector that the Petitioner has encroached upon Gat No. 204, which was "F" class government land. As indicated above, the said two orders are the subject-matter of the above petition.

6. Heard the learned Counsel for the parties.

7. The learned Counsel for the Petitioner Shri Kalwaghe submits that both the Authorities below have failed to take into consideration the documents which were filed by the Petitioner, which were dating back to the year 1923, which inter alia comprise the grant made by the government to the great grand-father of the Petitioner. The learned Counsel further contended that without dealing with the said documents a finding has been arrived at by the authorities merely on the basis of the Talathi's report which, at best, can be said to be perfunctory. The learned Counsel further contended that in the matter of encroachment on land, it

was incumbent on the authorities to record a finding that the Petitioner had, in fact, encroached upon the government land. However, by merely relying upon the revenue record and the report of the Talathi, it has been held by the authorities that the Petitioner is an encroacher notwithstanding the material which has been produced by the Petitioner on record.

8. Per contra, it is submitted by Mr. Puri, the learned Counsel for Respondent No. 3, that as the Petitioner has failed to produce any document of title, the finding recorded by the authority on the basis of the revenue record cannot be faulted with. The learned Counsel for the Respondent No. 3 contended that it was for the Petitioner to produce the document of title and having not done so, the finding recorded by both the authorities cannot be faulted with.

9. The learned AGP sought to justify the order but not with any delay of conviction.

10. Having heard the learned Counsel for the parties and having bestowed my anxious consideration to the rival contentions, in my view a case for remand is made out. It is pertinent to note that the Petitioner had filed the documents which have been referred to in earlier part of the order dating back to the year 1923 by which, according to the Petitioner, the land of 4 gunthas in Gat No. 204 was allotted to the great grand-father of the Petitioner. It is pertinent to note that the Additional Collector, who is the first fact finding authority, has not recorded any finding as regards the said four documents produced by the Petitioner and by merely relying upon the report of the Talathi as also the revenue record in respect of the said Gat No. 204, has concluded that the Petitioner is an encroacher. The concept of encroachment stands apart from an illegal occupation. An illegal occupant can be a person who is in occupation though the authority under which he has come into occupation has expired. Whereas an encroacher is a person, who is in occupation of a property which does not belong to him. The Petitioner in the instant case, as mentioned herein above, has relied upon four documents dating back to the year 1923 on the basis of which he claims he is in occupation. It was, therefore, incumbent on the part of the Additional Collector to record a finding as to why the said documents could not be accepted and as to why the Petitioner is required to be termed as an encroacher. The Additional Collector should have dealt with each of the documents, which were filed by the Petitioner, and recorded his finding. The sole reliance placed by the Additional Collector on the report of the Talathi cannot also be sustained. A look at the report of the Talathi would show that the Talathi has merely stated that house Nos. 380 to 386 and 490 to 495, which are in Gat No. 204 (F Class) are part of the encroachment. How he has arrived at the said conclusion is not stated in the said report. The question, therefore, which begs an answer would be, whether the authority is right in relying upon a report of such a nature and the answer has to be an empathetic "no", more especially in the teeth of the four documents produced by the Petitioner. The revisional authority i.e. the Additional Commissioner thereafter, as the order discloses, has

merely accepted the findings recorded by the Additional Collector that the Petitioner has encroached upon Gat No. 204. In my view, therefore, both the impugned order dated 16/12/2010 and 10/3/2011 are required to be set aside and are accordingly set aside and the matter is required to be relegated back to the Additional Collector for a de novo consideration. Hence, allowing the above petition, the following directions are issued.

i) The impugned orders dated 16/12/2010 and 10/3/2011 are set aside and the matter is remanded back to the Additional Collector, Buldhana for a de novo consideration.

ii) The Additional Collector to record specific finding as regards the four documents produced by the Petitioner, which are dating back to the year 1923 and on the basis of which it is the claim of the Petitioner that the great grandfather of the Petitioner allotted/granted the land in question.

iii) Only after considering the said documents, the finding be recorded as regards whether the Petitioner has, in fact, committed encroachment on government land.

iv) On such remand, the Additional Collector to hear and dispose of the said application within a period of eight weeks from the date of the first appearance of the parties.

v) Parties to appear before the Additional Collector on 11/7/2011 at 11.30 a.m.

vi) The parties would be entitled to file additional affidavits or replies as the case may be, within the time that would be stipulated by the Additional Collector.

vii) Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.