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**(2012) 01 BOM CK 0116**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 585 of 2012**

Hanumant P. Pawar

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

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**Date of Decision :** 30-01-2012

**Acts Referred:**

Bombay Village Panchayats Act, 1958 — Section 14, 14(1), 15, 16, 16(2)  
Constitution of India, 1950 — Article 243(O)

**Citation :** (2012) 3 MhLj 697

**Hon'ble Judges :** G.S. Godbole, J

**Bench :** Single Bench

**Advocate :** Idris Vohra, for the Appellant; R. M. Patne, AGP for Respondent Nos. 1 to 3 and Mr. Prathmesh Bhargude, for the Respondent

**Final Decision :** Dismissed

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## Judgement

G.S. Godbole, J.—Heard Mr. Vohra, for the Petitioner, the learned AGP Mr. Patne, for Respondent Nos. 1 to 3 and Mr. Prathmesh Bhargude, for Respondent No.4.

2. RULE. Rule made returnable forthwith and heard by consent of the parties.

3. Since common questions of facts and law are involved in all these Writ Petitions, they are being taken up together for hearing and final disposal and are disposed off by this common Judgment.

4. In all these cases, proceeding u/s 14 (j-3) of the Bombay Village Panchayats Act, 1958 were initiated against Petitioners on the ground that they have encroached on government land and are thus disqualified and cannot continue to be members of Gram Panchayat of Khanota, Taluka Daund, District Pune. Enquiry was conducted through the CEO ZP and the Block Development Officer. In all these matters, the District Collector, Pune has passed the order on 15th June, 2011 and the Petitioners have been held to be disqualified. Aggrieved by these orders, the Petitioners have filed Appeals u/s 16(2) of the said Act before the Additional Commissioner, Pune Division, Pune and by impugned Orders dated

19th December, 2011, all the Appeals have been

5. Mr. Vohra submitted that assuming without admitting that since encroachment is made, since the encroachment is found to have been made several years ago i.e. from the year 1972 onwards on different dates, filing of the Election Petition u/s 15 of the said Act was the only remedy available to the Respondents and proceedings u/s 16 could not have been filed. In support of his submission, Mr. Vohra has relied upon the Judgment of the Supreme Court in the case of State of Himachal Pradesh and Others Vs. Surinder Singh Banolta, Mr. Vohra also relied upon the Judgment of the learned Single Judge ( Coram: B. P. Dharmadhikari J.) in the case of Shri Shrikrishna Wasudeo Dhage Vs. Shivcharan Kalne and Others,

6. On the other hand, the learned Advocate for the Respondents relied upon wordings of Clause (j-3) of Sub-Section 1 of Section 14 of the Act. They also pointed out that proceedings u/s 15 can determine validity of elections and the questions which can be gone into by the Judge are regarding the wrongful acceptance or rejection of nomination papers and corrupt practice during the course of elections. They submitted that the question under Clause (j-3) of Sub-Section 1 of Section 14 can be decided only by the machinery provided u/s 16 of the said Act.

7. I have considered the rival submissions. Section 14 (1) (j-3) reads thus:-

Section 14- Disqualifications:- (1) No person shall be a member of a Panchayat continue as such, who-

(j-3):- has encroached upon the Government land or public property; or )  
Provided that, a person having more than two children on the date of commencement of the Bombay Village Panchayats, and the Maharashtra Zilla Parishads, and Panchayat Samitis (Amendment) Act, 1995 (hereinafter in this clause referred to as "the date of such commencement"), shall not be disqualified under this clause so long as the number of children he had on the date of such commencement does not increase:

Provided further that, a child or more than one child born in a single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause; or)

8. Section 16 of the said Act reads thus:-

16 Disability from continuing as member:-(1)If any member of a Panchayat

(a) who is elected or appointed as such, was subject to any of the disqualification mentioned in Section 14 at the time of his election or appointment, or

(b) 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 shall become vacant.

(2) (If any question 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 sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under sub-section (1) from continuing to be member.) Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the State Government, and the orders passed by the State Government in such appeal shall be final:

Provided that no order shall be passed under this sub- section by the Collector against any member without giving him a reasonable opportunity of being heard.

9. Section 15 of the said Act provides for determination of validity of elections, enquiry by Judge and the procedure.

10. Judgment of the Supreme Court in the case of Himachal Pradesh (supra) relied upon interprets the provisions of Section 162 and Section 163 of the Himachal Pradesh Panchayat Raj Act, 1994. Provisions of the said Sections are some what different and distinct than Section 16 of the Bombay Village Panchayats Act, 1958 with which we are concerned. In this context, it is necessary to note the following observations made in paragraphs 14 to 17 of the aforesaid Judgment of the Supreme Court which read thus:-

Para-14:- Section 163 of the Act provides for filing of an election petition on one or more grounds specified in sub-section (1) of Section 175 thereof. Clause (a) of sub-section (1) of Section 175 of the Act inter alia lays down a ground for setting aside of an election if on the date of the election the elected person was not qualified or disqualified to be elected under the Act.

Para-15:- It is no doubt true that Section 122 contemplates both the situations viz., where a person shall be disqualified for being chosen as also for being an office-bearer of panchayat inter alia if he has encroached upon any land belonging to any authority mentioned therein. In view of the language of the said provision, we are of the view that whereas an issue falling under Clause (1) of sub-section (2) of Section 122 of the Act must be determined before the Authorized Officer, any order of encroachment passed after the election process is over would be determined by the Deputy Commissioner.

Para-16:- The provisions of the Act, as noticed hereinbefore, have been enacted pursuant to or in furtherance of the constitutional mandate contained in Part IX of the Constitution of India. The provisions of the Act, therefore, are required to be construed strictly in terms thereof. Clause (b) of Article 243O of the Constitution of India mandates that no election shall be set aside save and except by an order passed by the Authorized Officer. In our considered opinion, Section 122 of the Act must be read in the light thereof. Section 162 of the Act expressly provides for the exclusive jurisdiction of the Authorized Officer to determine the existence or otherwise of any ground enumerated in Section 175

of the Act.

Para-17:- Once, thus, a person is declared to be an encroacher prior to the date on which he has been declared ad elector and if the said order has been 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.

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 learned 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 under section 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 under taken by respondent No.2 suo motu or on an application made to him by any person.

13. The out come of the aforesaid discussions is that there is no merit in the Writ Petitions and all the four Writ Petitions are dismissed.

14. At this stage, on the oral request of Mr. Vohra, the impugned orders of disqualification are stayed for a period of five weeks from today, despite opposition by Mr. Bhargude and Mr. Patne. However, Petitioners will be able to take part in the meeting of the Gram Panchayat but will not vote during this period of stay.