

(2016) 10 BOM CK 0089
In the Bombay High Court
Case No : Writ Petition No. 11527 of 2015

Mainabai Kacharu Pacharne

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 04-10-2016

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 14(1)(j3)

Citation : (2017) 1 MhLJ 930

Hon'ble Judges : T.V. Nalawade, J.

Bench : Single Bench

Advocate : Mr. N.V. Mande, Advocate, for the Respondent No. 7; Mr. S.N. Kendre, A.G.P, for the Respondent Nos. 1 to 5; Mr. S.S. Thombre, Advocate, for the Petitioner; Mr. M.S. Deshmukh, Advocate h/f Mr. U.L. Momale, Advocate, for the Respondent No. 6

Final Decision : Dismissed

Judgement

T.V. Nalawade, J. - The petition is filed to challenge the order made of disqualification of petitioner by the learned Additional Collector, Aurangabad in Dispute No. 21 and decision given by the learned Additional Commissioner, Aurangabad in appeal filed by the present petitioner against the decision of Additional Collector, Aurangabad under Section 16(2) of the Maharashtra Village Panchayats Act, 1958 (hereinafter referred to as "the Act"). Both the sides are heard.

2. In the month of August 2015, the petitioner was elected to village panchayat Chitegaon for the term 2015-20. The applicants who had filed dispute before the Collector are also the members of this gram panchayat. They had filed the application under Section 14 read with Section 16 of the Act against the petitioner and they had contended that the petitioner had made encroachment over the government land bearing Gut No. 109 situated at Chitegaon, Tahsil Paithan and also on Gut No. 116 situated at village Pangra, Tahsil Paithan. Gut No. 116 was Gayaran land and in the year 1997 the encroachment was noticed

and the petitioner had filed application for regularisation of the encroachment in the year 2001. On 22nd September, 2011, the encroachment made by the petitioner on government land bearing Gut No. 109 of Chitegaon was noticed. The original applicants of the dispute application contended that due to the aforesaid circumstances and as the encroachment was suppressed at the time of filing of nomination, the present petitioner was not eligible to contest the election and she cannot continue as a member of the panchayat in view of the provision of Section 14 (1)(j3) of the Bombay Village Panchayats Act.

3. Notice of the dispute application was given to the petitioner by Additional Collector. The Additional Collector considered the record like panchanama prepared by revenue officers on 11th December, 1997 in respect of encroachment made on Gut No. 116. The petitioner had not only cultivated portion of land but she had constructed a house and that way she had encroached the Gayaran land of village. The Additional Collector considered the record of encroachment made on Gut No. 109 of Chitegaon also which belongs to government. The Collector considered the decision given by Nagpur Bench of this Court in Writ Petition No. 6089 of 2014 and held that the petitioner cannot continue as a member of panchayat and held that she was disqualified. Additional Commissioner has considered the aforesaid circumstances and also position of law. Additional Commissioner has held that the present petitioner had given up her possession over Gut No. 116 in the year 2004 but she made encroachment on other land i.e. Gut No. 109 at Chitegaon and the encroachment was there on 22nd September, 2011 and due to the circumstance, the petitioner cannot continue as member of village panchayat. The record of 2015, new panchnama prepared on 01st October, 2015 was also considered but the Additional Commissioner held that the said panchanama cannot help the petitioner to save her membership.

4. The learned Counsel for petitioner placed reliance on some reported cases and submitted that there is nothing with the revenue authority or the applicant who had filed disqualification proceeding to show that on the date of nomination in July, 2015 or after the date of election in August, 2015, the petitioner made encroachment and so the orders under challenge cannot sustain in law. On the other hand, learned Counsel for respondent ? original disputant submitted that the amendment to Section 14 came in force in 2006 and due to wording of the relevant provision and the interpretation of provision made by this Court, the record of the year 2011 is sufficient to hold that the petitioner was encroacher and she was disqualified due to the provision introduced in the year 2006. Learned Counsel further submitted that there is no record with the petitioner to show that after 2011 she had surrendered the portion encroached to the government or government had removed the encroachment. He submitted that even if there was such record, that record would not help the petitioner as disqualification was introduced in the year 2006 and activities of the petitioner show that she is indulging in such illegal activities.

5. Provision of Section 14(1)(j3) of the Act reads as under:

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

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. .

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

6. The provision shows that the person who has made encroachment upon the government land or public property is not eligible to contest the election to village panchayat and if the election is contested and such person is elected, such person cannot be allowed to continue as member of panchayat. There is no specific reference to the date of nomination and it can be said that if encroachment was made after coming into force of amendment of 2006, the person cannot be allowed to continue as member of village panchayat.

7. The learned Counsel for petitioner placed reliance on three reported cases viz.: 2013 (1) Mh.L.J. 455 (Bombay High Court) (Kanchan Shivaji Atigre v. Mahadev Baban Ranjagane and Others), 2009(4) Mh.L.J. 436 (Ramdas Bhikaji Darade, President, Yeola Municipal Council v. The Hon'ble Minister of State, Ministry of Urban Development and Another) and 2012(5) Bom.C.R. 425 (Sumit Sanjay Jaiswal and Another v. State of Maharashtra and Others).

8. The facts of the first case show that the elected member was living in a house with encroacher but he had not made encroachment. In view of the facts of this case, this Court held that he could not be disqualified. In the second case unauthorised construction was made 25 years prior to the date of election of the Councilor and due to the circumstance it was held that such previous conduct was not misconduct and it was not possible to infer that there was misuse of the post. In the third case, this Court held that whatever the allegations were made against the member for disqualification were in fact against the father and so there was no possibility of disqualifying the member of village panchayat. Thus, in view of the facts of those cases, the members of village panchayat and Councilor could save their posts.

9. The learned Counsel for respondent ? disputant placed reliance on two cases reported as 2006 (5) Mh.L.J. 782 (Supreme Court (Vijay v. State of Maharashtra and Others) and 2014 (1) All M.R. 631 (Bombay High Court) (Dnyaneshwar M. Satav v. Jalindhar Dgondiba Kharabi and Others). In the second case, same ground of Section 14(1)(j3) of the Act was under consideration. In that case also there was concurrent finding as to the encroachment. Defence was taken that encroachment was made by the father of the member. It was held that even if such objection was available at the time of acceptance of nomination, the proceeding can be filed for disqualification under Section 16 as there is not much

scope to make enquiry regarding encroachment at the time of scrutiny of the nomination papers. With regard to the interpretation of the relevant provision, some observations are made at paragraph 65 of the said judgment and they are as under:

"65. 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 under section 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 a 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."

10. It is already observed that in the present matter also there is record of 2011 like panchanama prepared to show that present petitioner had made encroachment on government land and she had created construction for residence purpose. Though there is record of another panchnama of 2015 showing that in the month of December, 2015 she was not found on that place, this circumstance even if accepted as it is, cannot save petitioner from disqualification. There is no record with the petitioner to show that she had given back the possession before filing of the nomination or encroachment was removed prior to the date of nomination. Further, in view of wording of the provision of disqualification, it can be said that if encroachment was made after the amendment introduced in 2006 and there is no record to show that it was removed prior to date of nomination. Such conduct cannot be ignored and the member needs to be declared as disqualified. The record created in the year 2011 is believed by the authority below as there was no dispute of the present nature at that time. There was name of the petitioner in the panchanama and this record was never disputed by the petitioner. Some record is produced in present proceeding to show that in the register of encroachers, the name of petitioner is not mentioned now but this record and new panchanama cannot help the petitioner.

11. In view of the aforesaid circumstances, this Court holds that there are no merits in the petition. In the result, petition stands dismissed. Learned Counsel for petitioner requested for continuation of interim relief but it is refused.