REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6832 OF 2018
(Arising out of S.L.P. (Civil) No. 24212 of 2017)

Janabai **…Appellant**

VERSUS

Additional Commissioner and Others **…Respondent(s)**

J U D G M E N T

Dipak Misra, CJI

The singular question that emanates for consideration in this appeal is whether the forums below as well as the High Court is justified in disqualifying the appellant for continuing as a member of the Gram Panchayat Kalamba (Mahali) on the ground that there has been encroachment upon the government land since 1981 by her father-in-law and husband and she is using the said land. There are concurrent findings of fact that the father-in-law and the husband of the appellant have encroached upon the government land and despite

notice, they have not vacated the same on one pretext or the other. As far as these findings are concerned, we are not inclined to interfere with the same as we are of the considered opinion that it is based on apposite analysis of the materials on record.

2. The pivotal issue that we have to address is whether the appellant incurs disqualification under the Maharashtra Village Panchayat Act, 1958 (for short, 'the Act'). Section 14 of the Act deals with the said disqualification. The relevant part of Sections 14(1) and 14(1)(j-3) reads as under:-

> "14. **Disqualifications.**- (1) No person shall be a member of a Panchayat continue as such, who-
>
> (a) to (j-2) xxx xxx xxx
>
> (j-3) has encroached upon the Government land or public property."

3. The High Court, by the impugned order, has ruled:-

> "The learned Additional Commissioner has independently examined the material on record and has found that Gram Panchayat had issued notice in 2012 to father-in-law of the petitioner to remove the encroachment. However, it was not complied with and then again Gram Panchayat had sent another communication asking for removal of encroachment to which Shri Kashiram Gaikwad-husband of the petitioner gave reply on 29th June, 2012, accepting that there was an encroachment and justified. The petitioner has not been able to point out any perversity in the findings of fact recorded by the subordinate authorities. I see no reason to interfere with the impugned order".

4. The order passed by the High Court is seriously criticised by the learned counsel for the appellant on two counts, namely, it is absolutely laconic and further, on a proper interpretation of the provisions, by no stretch of imagination, it can be concluded that the appellant, as a person, has encroached upon the government land or public property.

5. Learned counsel for the appellant has placed heavy reliance on a two-Judge Bench decision in ***Sagar Pandurang Dhundare v. Keshav Aaba Patil and others***[1]. In the said case, there was no allegation that the appellants were encroachers, inasmuch as their father/grand father had encroached the property and they were only the beneficiaries of the encroachment and the beneficiary of an encroachment was treated as an encroacher by the authorities. The Division Bench of this Court referred to the decisions of the High Court of Bombay. We think it appropriate to refer to the same to appreciate the scenario in entirety.

6. In ***Ganesh Arun Chavan v. State of Maharashtra***[2], decided on 24.09.2012, the petitioner therein had taken the stand that the encroachment was by his father and the house was constructed with the income of his father. The High Court, in the said factual matrix, held as follows:-

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1 (2018) 1 SCC 340
2 2012 SCC OnLine Bom 1393

“10. There is nothing in the Act by which the concept of family or joint residence could be imported as far as the subject of disqualification is concerned. The said provision contemplates encroachment upon the Government land or public property by a person, as in this case, who is a Member of the Panchayat.

x x x x x

12. The Legislature has taken care and wherever the concept of family or joint residence has to be applied, specific provision in that behalf has been made either substantively or by way of an Explanation. For illustration, if the disqualification is under section 14(1)(h) for failure to pay any tax or fee due to the panchayat or the Zilla Parishad, then, by virtue of Explanation 2, what the Legislature has done is to provide that failure to pay any tax or fee due to the panchayat or Zilla Parishad by a member of HUF or by person belonging to a group, then, that shall be deemed to disqualify all members of such family or as the case may be of the group or unit. Equally in case of clause 14(1)(g) where a person is said to be disqualified for having any interest either by himself directly or indirectly through or his partner, any share or interest in any work done by order of the panchayat or in any contract with by or on behalf of or employment with or under the panchayat, the Legislature by Explanation IA has clarified that a person shall not be disqualified under clause (g) by reason of only such person having a share or interest in any newspaper in which any advertisement relating to the affairs of the panchayat is inserted; or having a share or interest in the occasional sale to the panchayat of any article in which he regularly trades and having an occasional share or interest in the letting out or on hire to the panchayat of any article and equally having any share, interest in any lease for a period not exceeding ten years of any immovable property. Therefore, once the Legislature itself has clarified that an act of the member alone incurs or invites disqualification, then, by interpretative process it will not be possible to include in section 14(1)(j-3), the act of encroachment by members of his family and for that purpose, disqualify the elected

> representative. It is the act of the person seeking to contest election or functioning as a member which alone will attract the provision in question."

7. Reference has been made to the decision in ***Yallubai Maruti Kamble v. State of Maharashtra***[3] wherein the petitioner was elected as the Sarpanch of the Gram Panchayat and the allegation against him was that her husband and brother-in-law had made encroachment upon gairan land and constructed a house thereon. The stand of the petitioner was that the provision was not attracted and she could not be disqualified. Placing reliance on the decision in ***Ganesh Arun Chavan*** (supra), the Court held thus:-

> "14. However, when it comes to encroachment upon Government Land or Public Property, the Legislature is aware that ordinarily and normally such act "is gaining upon the rights or possession of another". That may be an individual or a concerted act. Thus, it envisages acting either by himself or herself or jointly with others. Therefore, the extent of participation and the role of a person therein assumes importance and significance. It may amount to entering upon a land and remaining there, occupying and possessing it or construction thereon. Equally, it may mean not just possessing a land but a Structure, Building, House thereon or a part thereof. Hence, which act, when committed, by whom are all relevant matters together with the time factor, namely, prior to or after Petitioner's marriage. Hence, in its wisdom if the Legislature disqualifies a person or a member only if the act is committed by him, then, it is not for this Court to probe it further. It is for the Legislature to take remedial steps if this is providing an escape route to wrongdoers and lawbreakers. This Court cannot legislate nor can it

3 WP No. 8497 of 2012, decided on 5.10.2012 (Bom)

> step in to fill up an alleged lacuna or defect in law. It has been recognized by the Hon'ble Supreme Court that if a matter, provision for which may have been desirable, has not been really provided for by the Legislature, the omission or defect in law is of the nature which cannot be cured or supplied by a mode of construction which amounts to ironing out the creases. (See *Petron Engg. Construction (P) Ltd. v. CBDT*[4]). True it is that the character and conduct of the representative of the people should be exemplary and setting a high standard. He will not be a true representative of the people if he indulges in acts which are immoral, illegal and wrongful but the grievance should be raised before some other forum."

8. The two-Judge Bench has also dwelled upon the authority in ***Kanchan Shivaji Atigre v. Mahadev Baban Ranjagane***[5], wherein the disqualification was on the ground of encroachment. The High Court has opined that as per the provision, it is the act of the person who is elected and that alone is to be considered. The High Court, in that context, held thus:-

> "13. … Therefore, it is the act of the person contesting the poll as a candidate or the act of elected member himself as the case may be, that (sic) would disqualify them. It cannot be that somebody else commits an act of encroachment even if he is a Member of the same family but the consequences are visited on an elected representative or a person desiring to contest the election to Gram Panchayat. Even if such person is a Member of that family by marriage or otherwise, still, it will not be permissible to disqualify him or her as that would create a vacancy in the Gram Panchayat. It would not be possible to give broad based, wide and comprehensive representation of the public in a unit of local self

[4] 1989 Supp (2) SCC 7
5 2012 SCC OnLine Bom 1537

> government. The Gram Panchayat is envisaged to be a unit of local self-government in terms of Part IX of the Constitution of India. Therefore, the provisions with regard to disqualification will have to be construed in a manner so as not to create a vacuum or make it impossible for the villagers to choose their representative and constitute a Gram Panchayat. That will then create difficulties and obstacles in constituting a Panchayat. If that is equally not intended by the Statute in question, then, by interpretative process, I cannot do so and import or insert something in the provision, which is not there."

9. In ***Devidas Surwade v. Commissioner, Amravati***[6], a Division Bench of the High Court took a different view. It ruled that the encroachment by a member of the family of the elected person would tantamount to encroachment by the elected candidate. The reasoning of the said decision is as follows:-

> "6. We find that there is a definite object in making the said amendment to the provisions of disqualification and the object is that one, who encroaches upon the Government land or the Government property, cannot make any claim to represent the people by becoming an elected, member of the Gram Panchayat. The term person in the said amended provision has to be interpreted to mean the legal heirs of such person, who has encroached and continues to occupy the Government land or the Government property, his agent, assignee or transferee or as the case may be. If such an interpretation is not made in the said provision, the result would be absurd in the sense that the Government land would continue to remain encroached and the legal heirs or the assignees or the transferees remaining on such encroached government land shall claim the right to get elected as a member of democratically elected body. In no case our conscious permits such type of interpretation

6 2012 SCC OnLine Bom 2126

> to defeat the very object of the Bombay Village Panchayats (Amendment) Act, 2006."
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> [Emphasis added]

10. It is worthy to note here that a similar issue came up for consideration before a Division Bench in ***Parvatabai v. Commissioner, Nagpur***[7]. A contention was advanced that the house in question was standing in the name of the father of the petitioner and she could not have been disqualified under Section 14(1)(j-3) of the Act. An argument was advanced that the encroachment should have been made by the person elected so as to attract disqualification and not encroachment made by member of the family. The learned single Judge, placing reliance on the Division Bench decision in ***Devidas Surwade*** (supra), came to hold that the contention raised by the petitioner was not acceptable.

11. Be it noted, a special leave petition[8] challenging the aforesaid order was dismissed by this Court stating thus:-

> "We do not find any merit in this petition. The special leave petition is, accordingly, dismissed. Pending application, if any, stands disposed of. Stay granted by this Court on 15-10-2015, stands vacated."

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7 2015 SCC OnLine Bom 6141

8 *Parvatabai @ Shobha Kakde v. Additional Commissioner,* SLP (C) No. 29255 of 2015, order dated 4.1.2016

With the aforesaid expression of law, the controversy should have been put to rest but the fate of the proposition, as it seems, rose like a phoenix.

12. In ***Sandip Ganpatrao Bhadade v. Commissioner, Amravati***[9], the authorities below had held that the elected candidate was an encroacher being in occupation of the government land. The High Court, elaborating the scheme of the Act and the purpose of the provision, ruled thus:-

> "16. In view of the aforesaid meaning of the terminologies "to encroach", "encroachment", "encroacher" and "encroached", whoever resides in the property or any portion thereof, which is an encroachment upon the Government land or public property, can be said to have "encroached" upon it and becomes an "encroacher". Whether such an encroachment is jointly with others and/or individually, either at one time or at different times remains hardly of any significance as he becomes liable to be removed and prosecuted under Section 53 of the said Act. Whether a person has become liable to be removed and/or prosecuted under Section 53 of the said Act from the Government land or public property, becomes a real test of attracting disqualification under Section 14(1)(j-3) of the said Act. If the answer is in the affirmative, the disqualification is incurred.
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> 17. In view of the aforesaid position, the provision of Section 14(1)(j-3) of the said Act is attracted even in a case where a member of a Panchayat resides in the property or any portion thereof, which is an encroachment upon the Government land or public property. The question as to whether any other person or a member of

9 2016 SCC OnLine Bom 8991

> a family has already made an encroachment, loses its significance and as soon as a member or proposed member joins such act, he cannot escape from the clutches of disqualification under Section 14(1)(j-3) of the said Act. The question framed is answered accordingly.
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> 18. If an intention of the Legislature is to prevent an encroachment upon the Government land or public property by a person, who is deemed to be a "public servant" under Section 184 entitled to enjoy all privileges attached to it under Section 180 of the said Act, can it be said that such an intention of the Legislature be defeated by adopting circuitous way of occupying the property, which is an encroachment on the Government land or public property. The answer would obviously be in the negative, for two main reasons - (i) the act, which is prohibited directly, cannot be promoted or encouraged indirectly to defeat the object and purpose of such prohibition, and (ii) it would amount to promoting or encouraging the conflicting interest, necessarily resulting in the disqualification under Section 14(1)(j-3) of the said Act."

13. In the same year, that is, 2017, the High Court in ***Anita Laxman Junghare v. Commr., Amravati***[10] ruled thus:-

> "6. … For attracting disqualification under section 14(1)(j-3), in a case like this, the crucial question to be answered is: Does the legal representative or member of the original encroacher's family continue to occupy the government land or property. If he does, he attracts the disqualification under Section 14(1)(j-3). It is not an answer then for such person that the original encroachment was by his predecessor or family member and not by himself. If that encroachment is continued by him, he attracts the disqualification. That was the case in *Devidas Surwade*. The original encroachment may have been by the petitioner's father, but after the death of his father, he continued to occupy the property and thereby

[10] 2017 SCC OnLine Bom 9102

> attracted the disqualification of section 14(1) (j-3). On the other hand, in *Kanchan's* case, it was the petitioner's father-in-law, who was the encroacher; she had nothing to do with it. It was not the case of the State that she continued to occupy the property either as a legal heir of her father-in-law or as a member of her husband's family. The emphasis is really on the continued encroachment and not so much on the original act of encroachment. Encroachment, after all, is not a one-time act. It is a continuous act. If someone's encroachment is continued by another, that other is equally an encroacher, as much as the original encroacher."

14. Analysing the concept of removal from an elected post, the two-Judge Bench of this Court in ***Sagar Pandurang Dhundare*** (supra) held thus:-

> "11. Thus, under the statutory scheme, an encroacher is liable to be evicted by the Panchayat and if the Panchayat fails, the Collector has to take action. The encroacher is also liable to be prosecuted. Encroachment is certainly to be condemned, the encroacher evicted and punished. Desirably, there should not be a member in the Panchayat with conflicting interest. But once a person is elected by the people, he can be unseated only in the manner provided under law. Even with the best of intention, if there is no statutory expression of the intention, the court cannot supply words for the sake of achieving the alleged intention of the law maker. It is entirely within the realm of the law maker to express clearly what they intend. No doubt, there is a limited extent to which the court can interpret a provision so as to achieve the legislative intent. That is in a situation where such an interpretation is permissible, otherwise feasible, when it is absolutely necessary, and where the intention is clear but the words used are either inadequate or ambiguous. That is not the situation here. In the Act, wherever the law-makers wanted to specify family, they have done so. As noted by some of the judgments of the High Court, in Explanation 2 for Section 14(1)(h), the

> failure to pay any tax or fee due to the Panchayat or Zila Parishad by a member of a Hindu Undivided Family (HUF) or by a person belonging to a group has been expressly mentioned as a disqualification on others in the family or group. It is, therefore, evident that when the intent of the legislature was to disqualify a member for the act of his family, it has specifically done so. The Court, in the process of interpretation, cannot lay down what is desirable in its own opinion, if from the words used, the legislative intention is otherwise discernible."

15. Be it noted, reference was made to ***Abhiram Singh v. C.D. Commachen***[11], wherein the Constitution Bench dealt with the interpretation of Section 123 of the Representation of the People Act, 1951 (for short, 'the 1951 Act'). The conflict that was sought to be resolved related to Section 123(3) of the 1951 Act that had been dealt with by another Constitution Bench in ***Jagdev Singh Sidhanti v. Pratap Singh Daulta***[12] wherein the Court had held thus:-

> "25. … The corrupt practice defined by clause (3) of Section 123 is committed when an appeal is made either to vote or refrain from voting on the ground of a candidate's language. It is the appeal to the electorate on a ground personal to the candidate relating to his language which attracts the ban of Section 100 read with Section 123(3). Therefore it is only when the electors are asked to vote or not to vote because of the particular language of the candidate that a corrupt practice may be deemed to be committed. Where, however for conservation of language of the electorate appeals are made to the electorate and promises are given that steps would be taken to conserve that language, it will not amount to a corrupt practice."

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11 (2017) 2 SCC 629

12 (1964) 6 SCR 750 = AIR 1965 SC 183

16. Various other decisions were also referred to in ***Abhiram Singh*** (supra). Analysing certain aspects, namely, the legislative history, the provisions contained in Section 153-A IPC, amendment to sub-section (3) of Section 123 of the 1951 Act, literal versus purposive interpretation and the constitutional validity of Section 123(3) of the 1951 Act, Madan B. Lokur, J., held as under:-

> "50.1. The provisions of sub-section (3) of Section 123 of the Representation of the People Act, 1951 are required to be read and appreciated in the context of simultaneous and contemporaneous amendments inserting sub-section (3A) in Section 123 of the Act and inserting Section 153A in the Indian Penal Code.
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> 50.2. So read together, and for maintaining the purity of the electoral process and not vitiating it, sub-section (3) of Section 123 of the Representation of the People Act, 1951 must be given a broad and purposive interpretation thereby bringing within the sweep of a corrupt practice any appeal made to an elector by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate on the ground of the religion, race, caste, community or language of (i) any candidate or (ii) his agent or (iii) any other person making the appeal with the consent of the candidate or (iv) the elector."

17. T.S. Thakur, C.J., concurred with the view expressed by Madan B. Lokur, J. and did not agree with the view expressed by D.Y. Chandrachud, J. The learned Chief Justice in his concurring opinion stated:-

"There is thus ample authority for the proposition that while interpreting a legislative provision, the Courts must remain alive to the constitutional provisions and ethos and that interpretations that are in tune with such provisions and ethos ought to be preferred over others. Applying that principle to the case at hand, an interpretation that will have the effect of removing the religion or religious considerations from the secular character of the State or state activity ought to be preferred over an interpretation which may allow such considerations to enter, effect or influence such activities. Electoral processes are doubtless secular activities of the State. Religion can have no place in such activities for religion is a matter personal to the individual with which neither the State nor any other individual has anything to do. The relationship between man and God and the means which humans adopt to connect with the almighty are matters of individual preferences and choices. The State is under an obligation to allow complete freedom for practicing, professing and propagating religious faith to which a citizen belongs in terms of Article 25 of the Constitution of India but the freedom so guaranteed has nothing to do with secular activities which the State undertakes. The State can and indeed has in terms of Section 123(3) forbidden interference of religions and religious beliefs with secular activity of elections to legislative bodies."

18. S.A. Bobde, J., in his concurring opinion, expressed thus:-

"It is settled law that while interpreting statutes, wherever the language is clear, the intention of the legislature must be gathered from the language used and support from extraneous sources should be avoided. I am of the view that the language that is used in Section 123(3) of the Act intends to include the voter and the pronoun "his" refers to the voter in addition to the candidate, his election agent etc. Also because the intendment and the purpose of the statute is to prevent an appeal to votes on the ground of religion. I consider it an unreasonable shrinkage to hold that only an appeal referring to the religion of the candidate who made the appeal is prohibited and not an appeal which refers to religion of the voter. It is quite

> conceivable that a candidate makes an appeal on the ground of religion but leaves out any reference to his religion and only refers to religion of the voter. For example, where a candidate or his election agent, appeals to a voter highlighting that the opposing candidate does not belong to a particular religion, or caste or does not speak a language, thus emphasizing the distinction between the audience's (intended voters) religion, caste or language, without referring to the candidate on whose behalf the appeal is made, and who may conform to the audience's religion, caste or speak their language, the provision is attracted. The interpretation that I suggest therefore, is wholesome and leaves no scope for any sectarian caste or language based appeal and is best suited to bring out the intendment of the provision. There is no doubt that the section on textual and contextual interpretation proscribes a reference to either."

19. This being the majority opinion, we have focussed on the same. The two-Judge Bench in ***Sagar Pandurang Dhundare***'s case has distinguished the said decision by holding thus:-

> "*Abhiram Singh v. C.D. Commachen (D) By Lrs. and others* is a recent Constitution Bench judgment of this Court dealing with corrupt practices. Appeal on the grounds of religion, race, caste, community, language, etc. of the candidates and the electorate, and canvassing votes accordingly, has been held to be a corrupt practice. The Court, to hold so, adopted a purposive interpretative process declaring that the Representation of the People Act, 1951 should be interpreted in that context to be electorate centric rather than candidate centric. That is not the situation in the present case. The appellants were elected by the people to the Panchayat. There is no case that they are original encroachers on the public property. And this is not the case where the alleged act of encroachment has influenced the will of the people in which case, going by Abhiram Singh (supra), the court

> would have been justified in attempting a purposive interpretation to achieve a laudable object."

20. It also distinguished the decision in ***Hari Ram v. Jyoti Prasad and another***[13]. In the said decision, the issue that arose for consideration was whether the defendants had made illegal/unauthorized construction over the public street by way of illegal encroachment. The Court addressed the issue relating to limitation and referred to Section 22 of the Limitation Act, 1963, that deals with continuing breaches and torts. In this context, the Court, placing reliance on ***Sankar Dastidar v. Banjula Dastidar***[14], held that the suit was not barred by limitation and, ultimately, did not find any substance in the appeal and dismissed the same with costs and directed the appellant to remove the unauthorized encroachment within sixty days from the date of the judgment. The two-Judge Bench, while distinguishing the said decision, opined that it did not relate to interpretation of a statute pertaining to disqualification. Frankly speaking, the said judgment has nothing to do with interpretation.

21. Proceeding further, the Court in ***Sagar Pandurang Dhundare*** opined that:-

> "14. As we have already noted above, the duty of the court is not to lay down what is desirable in its own

13 (2011) 2 SCC 682
14 (2006) 13 SCC 470

> opinion. Its duty is to state what is discernible from the expressions used in the statute. The court can also traverse to an extent to see what is decipherable but not to the extent of laying down something desirable according to the court if the legislative intent is otherwise not discernible. What is desirable is the jurisdiction of the law-maker and only what is discernible is that of the court."

And again:-

> "16. In case, the appellants suffer from any of the three situations indicated above, they shall be unseated. The rest is for the State to clarify by way of a proper amendment in case they really and truly want to achieve the laudable object of preventing persons with conflicting interest from becoming or continuing as members of the Panchayat. The extent of conflicting interest is also for the Legislature to specify."

22. If we follow the principle stated in ***Sagar Pandurang Dhundare,*** indubitably the appeal has to be allowed and the impugned judgment and order are to be set aside. It is apt to mention here that in ***Sagar Pandurang Dhundare***, there has been reference to Section 53(1), (2) and (2-A). For the sake of completeness, it is profitable to reproduce the said provision:-

> "53. **Obstructions and encroachments upon public streets and open sites.**-(1) Whoever, within the limits of the gaothan area of the village,—
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> (a) builds or sets up any wall, or any fence, rail, post, stall, verandah, platform, plinth, step or structure or thing or any other encroachment or obstruction, or
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> (b) deposits, or causes to be placed or deposited, any box, bale, package or merchandise or any other thing, or

(c) without written permission given to the owner or occupier of a building by a Panchayat, puts up, so as to protect from an upper storey thereof, any verandah, balcony, room or other structure or thing.

in or over any public street or place, or in or over upon any open drains, gutter, sewer or aqueduct in such street or place, or contravences any conditions, subject to which any permission as aforesaid is given or the provisions of any byelaw made in relation to any such projections or cultivates or makes any unauthorised use of any grazing land, not being private property, shall, on conviction, be punished with fine, which may extend to fifty rupees and with further fine which may extend to five rupees for every day on which such obstruction, deposit, projection, cultivation or unauthorised use continues after the date of first conviction for such offence.

(2) The Panchayat shall have power to remove any such obstruction or encroachment and to remove any crop unauthorisedly cultivated on grazing land or any other land, not being private property, and shall have the like power to remove any unauthorised obstruction or encroachment of the like nature in any open site not being private property, whether such site is vested in the Panchayat or not, provided that if the site be vested in Government the permission of the Collector or any officer authorised by him in this behalf shall have been first obtained. The expense of such removal shall be paid by the person who has caused the said obstruction or encroachment and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter IX.

It shall be the duty of the panchayat to remove such obstruction or encroachment immediately after it is noticed or brought to its notice, by following the procedure mentioned above.

(2-A) If any Panchayat fails to take action under sub-section (2), the Collector suo motu or on an application

made in this behalf, may take action as provided in that sub-section, and submit the report thereof to the Commissioner. The expense of such removal shall be paid by the person who has caused the said obstruction or encroachment or unauthorised cultivation of the crop and shall be recoverable from such person as an arrear of land revenue.

(3) The power under sub-section (2) or sub-section (2A) may be exercised in respect of any obstruction, encroachment or unathorised cultivation of any crop referred to therein whether or not such obstruction, encroachment or unauthorised cultivation of any crop has been made before or after the village is declared as such under this Act, or before or after the property is vested in the Panchayat.

(3-A) Any person aggrieved by the exercise of the powers by the panchayat under sub-section (2) or (3) may, within thirty days from the date of exercise of such powers, appeal to the Commissioner and the Commissioner, after making such enquiry as he thinks necessary shall pass such orders as he deems necessary after giving such person a reasonable opportunity of being heard.

(3-B) Any order made by the Collector in exercise of powers conferred on him under sub-section (2A) or (3) shall be subject to appeal and revision in accordance with the provisions of the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1960).

(4) Whoever, not being duly authorised in that behalf removes earth, sand or other material from, or makes any encroachment in or upon an open site which is not private property, shall, on conviction, be punished with fine which may extend to fifty rupees, and in the case of an encroachment, with further fine, which may extend to five rupees for every day on which the encroachment continues after the date of first conviction."

23. Interpreting the said provision, the two-Judge Bench has opined that:-

> "15. From the Statements of Objects and Reasons for the amendment introduced in 2006, it is seen that the purpose was "to disqualify the person who has encroached upon the Government land or public property, from becoming member of the Panchayat or to continue as such". The person, who has encroached upon the Government land or public property, as the law now stands, for the purpose of disqualification, can only be the person, who has actually, for the first time, made the encroachment. However, in view of Section 53(1) of the Act, in case a member has been punished for encroachment, he shall be dismissed. Similarly, a member against whom there is a final order of eviction under Section 53(2) or (2A), shall also not be entitled to continue as a member."

24. As we understand from the above paragraph, the two-Judge Bench has been guided by the word 'person' as used in Section 14(1) and further influenced by the language employed in Section 53. That apart, the analysis made by the two-Judge Bench, as we notice, has given a restricted meaning to the word 'person' who has encroached upon the government land or public land. It has also ruled that such a person is one who has actually for the first time encroached upon the government or public land. In ***Devidas Surwade*** (supra), the Division Bench of the Bombay High Court, placing reliance on the Statement of Objects and Reasons and laying stress on the word 'person', noted that the legal heirs of an encroacher who continue to occupy the government

land or government property are to be treated as encroachers. It has been held that if such an interpretation is not adopted, the result would be absurd, for the government land would continue to remain encroached and the legal heirs or the assignees or the transferees remaining on the encroached government land shall claim the right to get elected as a member of a democratically elected body. According to the Division Bench of the Bombay High Court, such an interpretation would defeat the very object of the Bombay Village Panchayat (Amendment) Act, 2006.

25. First, we are obliged to remind ourselves that the view expressed by the Bombay High Court in ***Devidas Surwade*** (supra) has been affirmed by this Court in Special Leave Petition. It is worth noting here that this Court, while dismissing the special leave petition, had observed that it had not found any merit in the petition. Whether such an order would tantamount to be a binding precedent or not is another matter.

26. We may hasten to add here that we do not intend to take the said route. We think it appropriate to analyse the provision, understand the purpose and the contextual relevance and also appreciate the nature of the provision in the backdrop of the democratic set-up at the grass root level. Having said that, we shall now analyse the statutory scheme. Section 53 that occurs in Chapter III deals with obstruction and

encroachment upon public streets and upon sites. It confers power on the Panchayat to remove such obstruction or encroachment or to remove any unauthorizedly cultivated grazing land or any other land. That apart, it also empowers the Panchayat to remove any unauthorized obstruction or encroachment of the like nature in or upon a site not being private property. The distinction has been made between private property and public property. It has also protected the property that vests with the Panchayat. If the Panchayat does not carry out its responsibility of removing the obstruction or encroachment after it has been brought to its notice in accordance with the procedure prescribed therein, the higher authorities, namely, the Collector and the Commissioner, have been conferred with the power to cause removal. There is a provision for imposition of fine for commission of offence.

27. On a schematic appreciation of the Act including Sections 10, 11 and 53, it is quite vivid that the Members elected in Panchayat are duty bound to see to it that the obstruction or encroachment upon any land, which is not a private property but Government land or a public property, should be removed and prosecution should be levied against the person creating such obstruction or encroachment.

28. Section 184 of the Act provides that every Member of the Panchayat and every officer and servant maintained by or being

employed under the Panchayat shall be deemed to be a public servant for the purpose of Section 21 of the Indian Penal Code. Analysing the various provisions, the learned Single Judge in ***Sandip Ganpatrao Bhadade*** (supra) has opined:-

> "11. It is in the background of the aforesaid provisions of law, that the provisions of qualifications and disqualifications to vote, contest the election and being continued as a member of Panchayat, are required to be considered. Section 13 of the said Act deals with the persons qualified to vote and be elected. The persons incurring any disqualification under the provisions of the said Act are neither qualified to vote nor to be elected as a member of a Panchayat. Section 14 deals with different kinds of disqualifications, as stipulated in clauses (a) to (k) under sub-section (1), which operate against two kinds of persons – (i) who proposes to become a member of a Panchayat, and (ii) who has become a member of a Panchayat. If a person has incurred any one or more disqualifications, then he is prohibited from becoming a member of a Panchayat, and if becomes a member of a Panchayat, then his is not entitled to continue as such. The disqualification under Section 14 is in respect of the acts, events, deeds, misdeeds, transactions, etc, which have not been done, happened or occurred before entering into the office as a member of a Panchayat as well as those which take place during continuance as a member of a Panchayat."

And again:-

> "13. The very object of introducing the provision of disqualification under Section 14 (1) (j-3) of the said Act is to avoid the conflict of interest by prohibiting the persons, who are the encroachers upon the Government land or public property to get elected or continued as a member of the Panchayat, which is democratically elected body of the villagers. It is beyond comprehension to assume that a person under statutory obligation or a duty to protect the

> Government land or public property from encroachment, commits an act of such encroachment. To permit person, who proposes to become a member or becomes a member of the Panchayat to be the encroacher upon the Government land to public property, would be anathematic, acting in breach of statutory duty, exposing himself to prosecution under sub-sections (1) and (4) of Section 53, resulting ultimately in losing the protection under Section 180 read with Section 184 of the said Act. It is in this context that the text of disqualification under Section 14(1)(j-3) of the said Act is required to be analyzed and interpreted."

In the case of ***Devidas Surwade*** (supra), it has been clearly stated, as noticed earlier, that the term 'person' has to include the legal heirs, if any, of the encroacher who continue to occupy the government land. Emphasis has been laid on encroachment and continued encroachment. After the said Division Bench judgment, number of learned Single Judges have adopted a different approach without noticing the judgment which is against judicial discipline.

29. We may note here with profit that the word 'person' as used in Section 14 (1) (j-3) is not to be so narrowly construed as a consequence of which the basic issue of "encroachment" in the context of disqualification becomes absolutely redundant. The legislative intendment, as we perceive, is that encroachment or unauthorized occupation has to viewed very strictly and Section 53, therefore, provides for imposition of daily fine. It is also to be borne in mind that it is the Panchayat that has been conferred with the power to remove the

encroachment. It is the statutory obligation on the part of the Panchayat to protect the interest of the properties belonging to it. If a member remains in occupation of an encroached property, he/she has a conflict of interest. If an interpretation is placed that it is the first encroacher or the encroachment made by the person alone who would suffer a disqualification, it would lead to an absurdity. The concept of purposive interpretation would impel us to hold that when a person shares an encroached property by residing there and there is continuance, he/she has to be treated as disqualified. Such an interpretation subserves the real warrant of the provision. Thus analysed, we are of the view that the decision in ***Sagar Pandurang Dhundare*** (supra) does not lay down the correct position of law and it is, accordingly, overruled.

30. In view of the aforesaid analysis, we do not find any substance in the appeal and the same stands dismissed accordingly. There shall be no order as to costs.

.....CJI.
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

.....J.
(Dr. D.Y. Chandrachud)

New Delhi;
September 19, 2018