

2024:BHC-AUG:30629



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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2956 OF 2024

Shaikh Wahed Yakub .. Petitioner
Age. 39 years, Occ. Business,
R/o. Plot No. 55, Paithan -
Ch. Sambhajinagar Road,
At post Chitegaon, Tq. Paithan,
Dist. Ch. Sambhajinagar.

VERSUS

1. The Additional Commissioner, .. Respondents
Divisional Commissioner Office
Ch. Sambhajinagar.
2. The Collector,
Ch. Sambhajinagar.
3. The Gramsevak, Chitegaon
Tq. Paithan, Dist. Ch. Sambhajinagar.
4. Jankabai Sukhadev Gidhane
Age. 50 years, Occ. Household,
R/o. At Post. Chitegaon,
Tq. Paithan, Dist. Ch. Sambhajinagar.
5. Krushna Sukhadev Gidhane
Age. 37 years, Occ. Business,
R/o. At Post : Chitegaon,
Tq. Paithan, Dist. Ch. Sambhajinagar.

Mr.Rajendra Deshmukh, Senior Advocate i/b. Mr. Yuvraj V. Kakde,
Advocate for the petitioner.

Ms.A.S. Deshmukh, AGP for respondent Nos. 1 and 2.

Mr.V.H. Pathade, Advocate for respondent No.3.

Mr.R.V. Gore, Advocate for respondent Nos. 4 and 5.

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CORAM : KISHORE C. SANT, J.
RESERVED ON : 13.11.2024
PRONOUNCED ON : 20.12.2024

ORAL JUDGMENT :-

01. This petition arises out of the proceedings taken under the Maharashtra Village Panchayats Act (hereinafter referred to as "the said Act"), for declaration that the Sarpanch of the village has incurred disqualification under section 41(1)(h) of the said Act. The challenge is raised to an order passed by the learned Additional Divisional Commissioner, Chhatrapati Sambhajinagar dated 08.02.2024 confirming the judgment and order passed by the learned Collector, Chhatrapati Sambhajinagar. The petitioner had initiated proceedings against respondent No.4 to declare her disqualified for non-payment of the Grampanchayat taxes.

02. The allegations in the petition, in short, are that respondent No. 4 came to be elected as a Member of Grampanchayat, Chitegaon. Respondent No.5 is her son. It is alleged that both are in arrears of taxes of the Grampanchayat. When notice for taxes was tried to be served upon them, the same is not accepted. The property is a godown in Gat No. 233 standing in the name of respondent No.4.

03. The dispute was thus raised before the learned Collector bearing No. 2021/Sa.Pra/Gra.P.A./Chitegaon/Paithan/Sections 14 and 16/CR No.206.

04. It is the defence of the respondents that respondent No.4 has paid taxes for the year 2014-15 till 2020-21, as per the bill. The notice issued by the Grampanchayat is illegal. There is no property standing in the name of respondent No.5 in the limits of Grampanchayat and there is no question of his paying any taxes. An appeal is filed by the respondents under section 124(5) of the Act to the Panchayat Samiti. The employees who allegedly had been to serve notice have given statement that they have not served notice on the respondents. There is no resolution of the Grampanchayat showing that the amount to be recovered from the respondents.

05. The learned Collector considered that though there is notice issued for recovery of Rs.4,69,512/-, the respondents have preferred an appeal to the Block Development Officer. Said appeal is still not decided. It is further held that there is no sufficient proof of service of notice on respondent Nos.4 and 5. The persons whose signatures are appearing

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on the notice/panchanama have given a statement that those signatures are not their signatures and they never had been to the house of the respondents for service of notice. It is ultimately held that the tax assessment notice is not served. The tax assessment is not proper. About assessment the learned Collector considered the report of Block Development Officer. As regards respondent No.5, it is held that he does not have any property in his name and there is no question of his being defaulter. The dispute thus came to be rejected, while recording findings.

06. In an appeal filed by the petitioner, the learned Commissioner confirmed the order passed by the learned Collector.

07. Learned Sr. Counsel Mr. Deshmukh forcefully argued that the property i.e. godown is in the name of respondent No.4. Respondent No.4, elected as Member stays with respondent No.5. When the demand notice was sent it is not accepted and there is signature of peon of Grampanchayat stating that on 10.05.2021 the respondent refused to accept bill. Even the panchanama is drawn of refusal of bill signed by the persons including peon and clerk of the Grampanchayat, with the seal of the Grampanchayat. There is resolution passed by the Grampanchayat wherein it is resolved that the Member i.e. respondent No.4 to pay the

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arrears of the taxes. The learned Collector failed to appreciate this material and erroneously rejected the appeal, which was confirmed by the Commissioner without application of mind. The taxes are paid only till the year 2020-21. No tax is paid thereafter. The appeal preferred by respondent No.4 clearly shows that she has knowledge of the notice and therefore has preferred the appeal. There is sufficient record to show that the respondent No.4 has not paid tax. He thus prays for allowing the petition.

08. Learned Advocate Mr. Gore for respondent Nos.4 and 5 vehemently opposes the petition. It is submitted that there are no dues on respondent Nos. 4 and 5. There is no service of notice for recovery of bill/taxes. To prove the default it is necessary to prove the arrears that remained to be paid and secondly the bill is served upon a person. It is only after service of notice, if the party fails to pay the bill within 90 days, the person can be said to be defaulter. As per section 129 (3)(a-2) (d), it is required that the panchanama of refusal of notice should be signed at least by two panchas. In this case, it is not signed by the panchas. The alleged notice is signed only by peon and clerk of the Grampanchayat. There is no case that the notice was fixed on conspicuous place of the house. The panchanama is thus under doubt.

On panchanama there are no signatures of two independent persons. The statement of peon and clerk would show that they have denied their signature. The learned Collector has rightly considered this aspect that there is no proper service of notice. When there is concurrent finding of fact, this Court need not go into the factual aspect. Some of the documents which were not before the learned Collector were produced only before the learned Commissioner. He further submits that the findings recorded by the learned Collector are based upon a report submitted by the Block Development Officer. The finding does not require any interference. He relies upon judgment in the case of **Mandabai Bhausahab Zinjurde Vs. Additional Divisional Commissioner and Ors., 2021 (1) Bom.C.R. 17**, in support of his submission that no ingredients of section 14(1) (h) of the Maharashtra Village Panchayats Act are made out. He further relies upon judgment in the case of **Shaukat Ali Mohammad Hussain Vs. Shaikh Ayub and Others., 2014 (4) Mh.L.J.658**, in support of his submission that there is no strict compliance of service of notice and prays for dismissal of the writ petition.

09. Learned AGP Ms.Deshmukh supports the impugned order. Learned Advocate for respondent No.3-Grampanchayat prays for passing

appropriate orders.

10. In rejoinder, the learned Senior Advocate submits that a representation against the notice preferred by respondent No.4 clearly shows that the notice was served. He relies on the judgment reported in the case of **Arun Vaman Kane Vs. The State of Maharashtra and Anr., AIR 1997 Bom. 374.**

11. The question therefore arises in the writ petition as to whether respondent No.4 was served with a notice of recovery of taxes, where it is directly proved that notice is served upon respondent Nos. 4 and 5 as per section 129 of the Act. Second question whether respondent No.4 and 5 can be said to be in arrears of taxes. Thirdly, whether both the Authorities have rightly considered these aspects.

12. In the case of **Mandabai (supra)** this Court had held that section 14 (1)(h) of the Act requires failure to pay the tax and fees due to the Panchayat within three months on the date of which the demand is raised by presenting bill duly served on Member. This Court further held that it is necessary since failure to pay tax results in penal consequence and for this reason strict compliance has to be there of requirement. In

the case of **Shaukat Ali (supra)** also it is held that for want of strict compliance of service of bill, a person cannot be held to be disqualified.

13. This matter relates to disqualification proceeding of elected Member of Grampanchayat. It, therefore, needs to be seen carefully as to whether really a case is made out showing that respondent Nos. 4 and 5 have deliberately not paid taxes of Grampanchayat and are in arrears. Merely because a person has not paid taxes is not sufficient to disqualify such Member. It needs to be shown that inspite of notice, there is no payment of taxes within 90 days from the date of issuance of notice. What therefore required to be proved is that the notice is duly served upon such person and 90 days have passed thereafter. In the present case, service of notice itself is disputed by the Member. It was necessary in view of this to see as to whether there is really service of notice. As has come on record that though panchanama was prepared, it is not signed in presence of panchas. There is also no evidence that notice was affixed on the conspicuous part of the house of the respondents. Even the employees, who allegedly sent to serve the notice have given statement that the signatures appearing on the alleged panchanama are not their signatures.

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14. Section 129 of the Act provides for manner and mode of service of bill or writ. Section 129(3)(d) of the Act reads as below:-

"129. Recovery of taxes and other dues.

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(3) The presentation of every bill under sub-section (1) and the service of every writ of demand under sub-section (2) shall be effected by an officer or servant of the panchayat in this behalf, -

xxxxxx

(d) if none of the means aforesaid be available then by causing the bill or writ to be affixed on some conspicuous part of the building or land, if any, to which the bill or writ relates in the presence of at least two panchas.

xxxxx"

. By considering above provision, it is clear that in the present case there is nothing to show that bill or writ was properly served upon the respondents.

15. In view of this, it was all the more necessary for the petitioner to prove this fact strictly. The petitioner has failed to do so. Both the Authorities have concurrently held against the petitioner. This finding being finding of fact, this Court is not expected to disturb the

same, unless found to be perverse. This Court does not find any perversity in the findings recorded by both the Authorities. In view of the case of **Mandabai (supra)**, it was necessary for the petitioner to prove this fact.

16. Filing of appeal against assessment of taxes by itself cannot be a factor to come to conclusion that there was notice of demand of taxes. In the case of **Shaukat Ali (supra)**, also this Court has held that strict proof of service of notice is required. Thus, on both these counts, this Court finds that no case is made out calling for interference at the hands of this Court. The writ petition, therefore, stands dismissed with no order as to costs.

[KISHORE C. SANT, J.]