IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5098 OF 2022

Vimalbai Manusingh Thakur
Age: 58 years, Occu: Agriculture and Sarpanch
of Village Panchayat,
R/o: Kalambar (Bu), Tq.: Loha,
Dist: Nanded.

.....**PETITIONER**

VERSUS

1. The Additional Commissioner,
   Aurangabad

2. The Collector, Nanded
   Collector Office, Nanded.

3. Block Development Officer,
   Panchayat Samiti Loha
   Tq. Loha, Dist: Nanded.

4. Village Development Officer,
   Village Panchayat office, Kalambar (Bu),
   Tq. Loha, Dist: Nanded.

5. Sunil Govindappa Mukkanwar
   Age: Major, Occu: Agriculture & Member
   of Village Panchayat, Kalambar (Bu)
   R/o. Kalambar (Bu) Tq: Loha,
   Dist: Nanded.

.....**RESPONDENTS**

Mr. M. V. Salunke h/f Mr. V. D. Salunke, Advocate for the Petitioner
Mr. N. D. Raje, AGP for Respondents-State
Mr. S. B. Pulkundwar, Advocate for Respondent no.3
Mr. V. B. Kulkarni, Advocate for Respondent no.5

WITH
WRIT PETITION NO. 5100 OF 2022

Manusingh Sardarsingh Thakur
Age: 62 years, Occu: Agriculture and Member
of Village Panchayat,
R/o: Kalambar (Bu), Tq.: Loha,
Dist: Nanded.

.....**PETITIONER**

VERSUS

1. The Additional Commissioner,
   Aurangabad

2. The Collector, Nanded
   Collector Office, Nanded.

3. Block Development Officer,
   Panchayat Samiti Loha
   Tq. Loha, Dist: Nanded.

4. Village Development Officer,
   Village Panchayat office, Kalambar (Bu),
   Tq. Loha, Dist: Nanded.

5. Sunil Govindappa Mukkanwar
   Age: Major, Occu: Agriculture & Member
   of Village Panchayat, Kalambar (Bu)
   R/o. Kalambar (Bu) Tq: Loha,
   Dist: Nanded.

.....**RESPONDENTS**

Mr. M. V. Salunke h/f Mr. V. D. Salunke, Advocate for the Petitioner
Mr. N. D. Raje, AGP for Respondents-State
Mr. S. B. Pulkundwar, Advocate for Respondent no.3
Mr. V. B. Kulkarni, Advocate for Respondent no.5

CORAM : ROHIT W. JOSHI, J.
DATED : 07TH JULY, 2025

ORAL JUDGMENT :-

. The petitioner in the Writ Petition No.5098 of 2022 is wife of petitioner in Writ Petition No.5100 of 2022. Both the petitioners were initially elected as Members of Gram Panchayat, Kalambar, (Bu) Tq. Loha Dist. Nanded. Thereafter, the petitioner in Writ Petition No.5098 of 2022 was elected as Sarpanch of the Gram Panchayat. The respondent no.5 in both the petitions had made an application seeking disqualification of the petitioners on the ground that they had made encroachment over public properties. The allegation against petitioner in Writ Petition No.5098 of 2022 is that she has made encroachment over property nos.596 and 759. The allegation against the petitioner in Writ Petition No.5100 of 2022 is that he had encroachment over the property nos.376, 377 and 378 of (Gaothan) and Survey No.595, Namuna No.103 i.e. property no.103 recorded in form no.8A in the record maintained by the concerned Gram Panchayat. On being noticed in the matter, the petitioner in Writ Petition No.5098 of 2022 filed reply denying the fact of

encroachment it is stated in paragraph no.2 of the reply as under:

> २. हे की, विवाद मेमोच्या परिच्छेद क्र.३ मधील मजकुर धांदात खोटा असून प्रतिवादीला मान्य नाही. कारण प्रतिवादीने ग्रामपंचायतच्या मिळकत क्र. 596 वर व त्याच प्रमाणे मिळकत क्र 759 हया जागेवर कोणत्याही प्रकारचे अनाधिकृत अतिक्रमण केलेले नाही. सदर जागेची मालकी ही प्रतिवादीच्या नावाने आहे. प्रतिवादी हा सदर मिळकती बाबत ग्रामपंचायत कार्यालयात दरवर्षी कराचा भरणा करतो. म्हणजेच सदरील मिळकत ही प्रतिवादीची नियमानुकुल व कायदेशीर हक्काची मिळकत आहे. त्यामुळे प्रतिवादीने वरील पैकी कोणत्याही मिळकतीवर अनाधिकृत अतिक्रमाण केलेले नाही. त्यामुळे विवादीचा विवाद अर्ज खोटा, चुकीचा, व बेकायदेशीर असल्यामुळे फेटाळण्यात यावा.

Similarly, the petitioner in Writ Petition No.5100 of 2022, has filed reply wherein, in paragraph nos.2 and 4, it is stated as under:

> २. हे की, विवाद मेमोच्या परिच्छेद क्र.३ मधील मजकुर धांदात खोटा असून प्रतिवादीला मान्य नाही. कारण प्रतिवादीने ग्रामपंचायतच्या मिळकत क्र.376, 377, 378 त्याच प्रमाणे शेत जमीन सर्वे नं.595 गाव नमुना नं 103 हया जागेवर कोणत्याही प्रकारचे अनाधिकृत अतिक्रमाण केलेले नाही. सदर जागेची मालकी ही प्रतिवादीच्या नावाने आहे. प्रतिवादी हा सदर

मिळकती बाबत ग्रामपंचायत कार्यालयात दरवर्षी कराचा भरणा करतो. म्हणजेच सदरील मिळकत ही प्रतिवादीची नियमानुकुल व कायदेशिर हक्काची मिळकत आहे. त्यामुळे प्रतिवादीने वरील पैकी कोणत्याही मिळकतीवर अनाधिकृत अतिक्रमण केलेले नाही.

४. हे की, विवाद मेमोच्या परिच्छेद क्र.६ मधील मजकुर धांदात खोटा असून प्रतिवादीला मान्य नाही. कारण गावातील शेत जमीन सर्वे नं.595 हया जागेत मिळक्त क्र.103 वर प्रतिवादीने अनाधिकृत अतिक्रमण केलेले नाही. एकंदरीत प्रतिवादीने ग्रामपंचायत मिळकत क्र.376, 377, 378 तसेच मिळकत क्र.103 हया मिळकतीवर अनाधिकृतरित्या अतिक्रमण केलेले नाही. हया मिळकतीची नोंद ग्रामपंचायतच्या नमुना नं.8 मध्ये प्रतिवादीच्या नावाची नोंद असुन प्रतिवादी हा त्या जागेचा टॅक्स भरतो. त्यामुळे विवादीचा विवाद अर्ज खोटा व चुकीचा असल्यामुळे फेटाळण्यात यावा अशी विनंती आहे.

2. Perusal of the replies will demonstrate that the petitioner in Writ Petition No.5098 of 2022 claims ownership over suit property nos.596 and 759. It is categorically stated that she is paying taxes with respect to both the properties and on that basis, it is stated that in view of fact that she is paying taxes for the said properties regularly, she has rights over the said property in accordance with law. In view of this, the statement is made that she cannot be said to be an encroacher with respect to the said properties.

3. The reply by the petitioner in Writ Petition No.5100 of 2022, who is the husband of petitioner in 5098 of 2022 is also on similar lines. He too claims entitlement to the properties on the ground that he is regularly paying taxes with respect to the properties alleged to be encroached by him. Like the wife, the case of husband is also that because he is paying the taxes, he cannot be said to be an encroacher.

4. The Collector, who is the Competent Authority to rule on the issue of disqualification has held that both the husband and wife have incurred disqualification on account of unauthorized encroachment over the Government/Gram Panchayat lands.

5. The petitioners have preferred appeals against the respective orders passed against them under Section 16 of the said Act. The Appellate Authority i.e. the Additional Divisional Commissioner has dismissed both the appeals.

6. Mr. Salunke, learned Advocate for the petitioners contends that in both the matters, spot inspection was directed to be conducted by the Block Development Officer. He contends that the inspection reports by the Block

Development Officer do not indicate the exact nature of alleged encroachment. He states that there is no allegation of any construction over the alleged lands or even erection of fencing etc. to infer physical possession of the petitioners over the said lands. He attacks the findings recorded by the learned Collector contending that the Collector has not applied his mind independently and has merely passed order of disqualification placing reliance on the report by the Block Development Officer. His contention is that the order passed by the Collector does not indicate application of independent mind. The contention of the learned Advocate with respect to the appeal order passed by the Additional Divisional Commissioner is also the same. He therefore contends that both these orders are unsustainable and are liable to be quashed.

7. Per contra, the learned Advocates appearing for the respondents justify the orders. Principal contention of learned Advocate for the respondent no.5 is that in the replies filed by both the petitioners before the Collector, the fact of encroachment is expressly admitted. He has referred to the aforesaid paragraphs and the replies of both the petitioners.

8. Having heard the respective submissions as aforesaid and on perusal of the record of the case as also both the orders impugned, I am of the considered opinion that there is substance in the submission of Mr. Salunke that the learned Authorities have not recorded proper findings on the aspect of encroachment. The learned Collector has merely recorded as the Block Development Officer has stated in the report that the petitioners have made encroachment in respective lands. It is then observed by the Collector that there are entries with respect to this encroachment in the Gram Panchayat records, which have since then not been corrected by the petitioners although the petitioners hold the office of Sarpanch and Member in the Gram Panchayat. The appeals are also rejected recording similar findings.

9. Normally, the petition would have been allowed in view of such findings recorded by the authorities. However, in the present case, I am not inclined to interfere with the impugned orders in view of express statement in the reply admitting possession over lands which are not owned by the petitioners. The contention of the petitioners as is apparent from the reply is that they cannot be termed to be encroachers because they

are paying taxes with respect to the lands which are in their possession. It is now well settled that only because a person in wrongful possession of property belonging to the Government or Public Authority makes payment of taxes or fine for such possession, the possession cannot be said to be legal or authorized. Such possession despite the payment of taxes or fine shall continue to be an unauthorized possession or an encroachment.

10. Shri Salunke has contended that the petitioners are owners of properties bearing Gram Panchayat property no.596, 376, 377 and 378. However, admittedly, the petitioners are not owners of property no.759 and Survey No.595 i.e. property no.103.

11. Mr. Salunke further contends that the petitioners cannot be said to be encroachers of the subject property having regard to Section 53 of the Maharashtra Village Panchayats Act. He contends that physical possession over the property is necessary in order to hold that a person has encroached over public property. The contention must fail, having regard to the express words employed under Section 53. All the words

will imply that provision contemplates encroachment of every nature and not only encroachment by making construction activity over the property. The contention of Mr. Salunke is therefore liable to be rejected.

12. Perusal of the reply will indicate that these properties which are admittedly not owned by the petitioners are the properties of Gaothan, are in possession of the petitioners. In view of the aforesaid, since facts admitted in the replies indicate encroachment by the petitioners over Public property, this Court is not inclined to show any indulgence in favour of the petition. Both the Writ Petitions are therefore **dismissed**.

13. Civil Application, if any, stands **disposed** of.

(ROHIT W. JOSHI, J.)

Rushikesh/2025