



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

WRIT PETITION NO. 10396 OF 2025

**KAVITA PRADIP MAHAJAN
VERSUS
THE ADDITIONAL COMMISSIONER NASHIK AND OTHERS**

Mr. Mangesh G. Patil, Advocate for the Petitioner
Mr. K. N. Lokhande, AGP for Respondent/State
Mr. Paresh B. Patil (Borse), Advocate for Respondent No.4.

CORAM : : ARUN R. PEDNEKER, J.

RESERVED ON : 03/09/2025

PRONOUNCED ON : 14/11/2025

ORDER :-

1. Heard. With consent of the parties, the matter is taken up for final hearing.
2. By the present writ petition, the petitioner challenges the order dated 18/06/2025 passed by the District Collector, Jalgaon in Grampanchayat Dispute No. 28/2024 and the order dated 07/08/2025 passed by the Additional Commissioner, Nashik Division, Nashik in Gram Panchayat Appeal No. 95/2025 disqualifying the petitioner as a Sarpanch as well as a Member of the Grampanchayat Kurhad Khurd, Tq. Pachora, Dist. Jalgaon under

Section 14(j-3) of the Maharashtra Village Panchayat Act, 1959 (hereinafter referred to as the 'Act' for short) for having committed an encroachment upon the government land.

3. Brief facts, giving rise to the present writ petition, are summarised as under :-

. The petitioner was elected as a Member of the Grampanchayat in Kurhad Khurd, Tq. Pachora, Dist. Jalgaon and thereafter elected as a Sarpanch from January, 2023. The respondent No.4 filed a complaint against the petitioner under Section 14(j-3) of the Act before the District Collector contending that the husband of the petitioner, namely, Pradip Dinkar Mahajan is the owner and possessor of house bearing C.T.S. No. 565 having area of 69.70 Sq.Mtr but there is additional encroachment of 20 Sq.ft. from the front side and the back side and the encroachment is on the government land and hence the petitioner would incur disqualification under Section 14(j-3) of the Act from the post of Sarpanch and Member of the village Panchayat and accordingly, prayed for disqualification of the Petitioner.

4. The contention of the complainant was denied by the

petitioner. The petitioner filed reply contending that he has not committed encroachment on the government land. The Collector thereafter called for a report from the Tahasildar and Block Development Officer, Panchayat Samiti. In pursuance thereto a panchnama was made on 14/10/2024 and report was submitted to the Collector by the Tahasildar on 13/12/2024.

5. On the report being submitted by the Tahasildar dated 13/12/2024 that the petitioner has made encroachment, the petitioner had filed objection to the report before the Collector. As such a fresh report was called by the Collector from the Block Development Officer which was submitted on 28/04/2025. This report particularly points out that the petitioner is a owner of property Nos. 53, 54, 55 and the construction is on the area of the petitioner and there is no construction on the government land. The Collector thereafter considering the report dated 13/12/2024 disqualified the petitioner under Section 14(j-3) of the Act for having made encroachment. Appeal filed against the order of Collector before the Additional Commissioner was also dismissed. Thus, the petitioner challenges in the present Writ Petition the impugned order of the Additional Commissioner disqualifying the

petitioner.

6. The contention of the petitioner is that the husband of petitioner has made a construction on the land owned by him and not on a government land. It was a specific case of the petitioner that the husband of the petitioner is owner of three properties Nos.53, 54, 55 having an area of 14.12 sq.mtrs, 44.59 sq.mtrs and 35.77 sq.mtrs respectively with total area of 94.48 sq.mtrs. Petitioner has also filed record of Namuna No.8 of village panchayat of the property to show the area of these properties and that the construction is as per the permission granted by village panchayat. Per contra the learned counsel appearing for the respondent No.4/complainant submits that there is concurrent finding recorded by the authorities that the petitioner's husband has encroached upon the government land.

7. Having considered the rival arguments and the material produced and on perusal of the order passed by the authorities it is apparent that the petitioner is disqualified in terms of the report submitted on 13/12/2024 by the Tahasildar. The Additional Commissioner in the impugned order has specifically observed thus

under:-

“तसेच सामनेवाला क्र.१ यांनी सुनवाणी दरम्यान पुन्हा गट विकास अधिकारी यांचा अतिक्रमणाबाबत अहवाल मागविण्यात यावा. त्यानुसार दि. २८/०४/२०२५ रोजी अहवालानुसार विवादित मिळकत क्षेत्रावर बांधकाम केल्याचे निर्देशनला येते. असे नमूद केले असून मी गट विकास अधिकारी यांचे वर नमूद दोन्ही अहवालाचे अवलोकन केले असता प्रथम अहवाल दि. ११/१२/२०२४ मध्ये सामनेवाला क्र.१ यांनी अतिक्रमण केल्याबाबत नमूद असून दुस-या अहवालात विवादित मिळकत क्षेत्रावर बांधकाम केल्याचे निर्देशनला येते असे नमूद केले आहे. व्दीतीय/ फेर सदर अहवाल मोघम स्वयपाचा असून विचारार्थ घेता येवू शकत नाही.”

8. On the perusal of the order of the Additional Commissioner it is apparent that the Additional Commissioner has relied upon the earlier report of 2024 by the Tahasildar and declined to accept the subsequent report dated 28/04/2025. This Court is of the view that the Authorities ought not to have given preference to one of the report over the another and the report beneficial to the petitioner ought to have been taken into consideration more so since the alleged encroachment is of a minor nature. It can be seen from the photographs placed on record that there is a construction made on the plot which is owned by the petitioner's husband. The ground floor is at an elevated position and such there is a stair case of five steps leading to the ground floor. This alleged stair case and the passage above is stated to be

an encroachment. Total encroachment is alleged to be of 16.5 sq.mtrs. The authorities have proceeded on the basis that the petitioner owns 69.70 sq.mtrs of land although the second report of BDO mentions the land of petitioner as 94.48 sq.mtrs.

9. The disqualification of the elected Members is a serious matter as has been held by the Hon'ble Supreme Court in case of ***Ravi Yashwant Bhoir Versus District Collector, Raigad and others, (2012) 4 SCC 407***. In a summary inquiry the elected Member should not be ordinarily disqualified without there being clear evidence of encroachment on Government land.

10. So also, it is to be seen that the petitioner ownership of land of 94.48 sq.mtrs cannot be discarded and the report of the Block Development Officer, Panchayat Samiti, Pachora dated 28/04/2025 points out that the petitioner owns the land of 94.48 sq.mtrs i.e. equivalent to 1017 sq.fts and that the petitioner is paying tax on the same and the construction is in terms of the permission granted. This Court is of the view that the disqualification of an elected Member is a very serious matter and that on the face of two reports which are inconsistent with one and

other, the Authorities ought not have relied upon in the one report and discarded the subsequent report called by the Collector. There is no observation by the Additional Commissioner that such a additional construction is upon the government land. There is no finding rendering that the excess construction is upon the government land. Considering both these aspect that there is a rejection of the subsequent report without any reason, so also that there is no finding rendering that the excess construction is on government land, the orders passed by both the authorities are quashed and set aside and it is further observed that the Respondents have failed to prove that the petitioner has encroached upon the government land.

11. In view of the above discussion, the writ petition is allowed and the impugned order is quashed and set aside and the petitioner is reinstated on the elected post of Sarpanch.

(ARUN R. PEDNEKER, J.)

ssp