

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

67 WRIT PETITION NO. 3346 OF 2018

YAMUNABAI DEVIDAS RATHOD

VERSUS

THE STATE OF MAHARASHTRA & ORS.

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Mr. A.B.Chalak, Advocate for Petitioner.

Mr. V.S.Badakh, A.G.P. for R – 1 to 4.

Mr. V.D.Sapkal, h/f Mr. R.V.Gore,
Advocate for R – 5.

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CORAM : V.L.ACHLIYA, J.

DATE : 23rd APRIL, 2018

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ORAL ORDER :

1. By consent the petition is heard at the stage of admission.
2. Heard learned counsel for the petitioner and respondents. Perused the order.
3. The petitioner has preferred this petition challenging the Order dated 23/03/2018 passed by respondent No. 2 i.e. Additional District Commissioner, Aurangabad. By the impugned order, respondent No. 2 has rejected the application moved in Appeal to stay the order passed by

the Collector, Aurangabad. The petitioner has been declared as disqualified to continue as member of village panchayat on account of committing an act of encroachment. The application seeking stay to the order passed by the Collector was rejected by the impugned order dated 23/03/2018. Immediately after the rejection of application for stay, the programme was declared to fill in the vacancy of Sarpanch occurred on account of disqualification of the petitioner. Therefore, the petitioner approached this Court challenging the order dated 23/03/2018. The order was challenged mainly on the ground that if the order passed by the Collector is not stayed, the very purpose of filing of Appeal would be frustrated and the Appeal preferred by the petitioner becomes infructuous. It is pointed out that the order passed by the Collector is unsustainable in law in view of the decision in the case of **Parvatibai Vs. Additional Commissioner, Nagpur** which in-fact overruled by subsequent decision of the Apex Court in the case of **Sagar Pandurang Dhundare Vs. Keshav Aaba Patil and Ors. reported in (2018) 1 SCC 340**. In view of the interim order dated 02/04/2018, the meeting convened to elect the Sarpanch came to be postponed. Vide order dated 13/03/2018 the interim order operating has been extended with clarification that pendency of the petition shall not act as an impediment for respondent No. 2 to decide the Appeal on merit.

4. In view of the challenge raised in the petition confines to rejection of application seeking interim stay during the pendency of Appeal, no cause survives to

prosecute the petition as the Appeal itself is heard and reserved for order by respondent No. 2.

5. In this view, the petition stands disposed of with direction to respondent No. 2 to decide the Appeal on merit. The interim order passed by this Court to remain in force till disposal of Appeal by respondent No. 2. In case if any order passed adverse to the interest of the petitioner, then the interim order passed by this Court dated 02/04/2018 shall operate for a further period of two weeks from the date of disposal of Appeal by respondent No. 2.

[V.L.ACHLIYA, J.]

KNP/W.P. 3346.2018