

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

WRIT PETITION NO. 1409 OF 2018

MANISHA SATISH THORAT
VERSUS
THE ADDITIONAL COMMISSIONER NASHIK AND OTHERS

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Advocate for the Petitioner : Shri Gaware Niteen V.
AGP for Respondents 1 and 2 : Shri S.K.Tambe.
Advocate for Respondent 3 : Shri More Abhijit S..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th March, 2018

Per Court:

1 While considering this matter pertaining to the disqualification of the Petitioner under Section 14-1(j-3) of the Maharashtra Village Panchayats Act for having caused encroachment, this Court had passed an order on 22.02.2018, which reads as under :-

- "1. *Since it is apparent that the husband of the petitioner has constructed a house in a Gayran land owned by the State and the petitioner / wife, who is an elected representative continues to occupy the said house, learned counsel for the petitioner seeks time to take instructions as to whether the petitioner would come clean by declaring that she and her husband would gave up the said encroachment and handover the property / land to the Gram Panchayat.*
2. *At the request of the petitioner, S.O. to 26.2.2018 for passing orders."*

2 On 26.02.2018, the Petitioner and her husband were present in the Court and the Petitioner had made a statement which was recorded in the said order, which reads as under :-

- "1. *Leave to correct.*
2. *Pursuant to the order dated 6.2.2018 and 22.2.2018, learned counsel for the petitioner makes a statement on instructions from the petitioner who is present in the Court, that within five days, the petitioner and her husband would handover the property house at issue to the Gram Panchayat to indicate their bonafides that they do not wish to continue to occupy the house property which is alleged to be constructed on an encroached land.*
3. *Learned Advocate for respondent No.3 / complainant submits that the Gram Panchayat be directed to demolish the house property.*
4. *The statement of the petitioner is recorded as being a statement made to the Court. As such, the petitioner and her husband would hand over the vacant possession of the house property to the Gram Panchayat on/or before 8.3.2018.*
5. *Respondent No.2 - Additional Collector shall initiate appropriate enquiry to consider the factum of encroachment of the said house property keeping in view that respondent No.3 makes a request that the same should be demolished as it is an encroachment on the Government land.*
6. *S.O. to 8.3.2018 for passing orders.*
7. *The petitioner shall, in the meanwhile, serve respondent No.4 / Village Panchayat through the Gram Sevak by hand delivery as well as Speed Post A.D. and submit an affidavit of service."*

3 The learned Advocate for Respondent No.3 submits that the Petitioner has tried to obtain interim relief from this Court by creating a picture of showing her bonafides. She has actually not vacated the

encroached house property and it is apparent that she does not desire to do so and yet, claim interim protection from this Court.

4 The learned Advocate for the Petitioner has strenuously criticized the impugned order and contends that unless the eviction proceedings are initiated and until the Petitioner is not legally evicted on the ground of encroachment or until the encroached portion is demolished by the process of law, the Petitioner cannot be said to be an encroacher keeping in view the judgment delivered by the Honourable Supreme Court in the matter of Sagar Pandurang Dhundare vs. Keshav Aaba Patil and others, 2018 (1) Mh.L.J. 1.

5 The impugned order passed by the Competent Authority indicates that the husband of the Petitioner has encroached upon the Government land and the Petitioner, as his legally wedded wife, is enjoying the encroached property.

6 The learned AGP submits that the submissions of the Petitioner would result in an endless exercise as the Petitioner would continue to challenge various orders on encroachment and eviction and would prolong the proceedings for decades as is the experience in the litigation involving such matters. By the time it is established that the encroached portion deserves to be demolished or the Petitioner is to be evicted from the entire property as the whole property amounts to an encroachment on the Government land, it would take decades and till that

time, the Petitioner would continue to enjoy the office as an elected representative. The entire purpose, intent and object of the Legislature in introducing the provisions for facilitating disqualification on the ground of encroachment, would be defeated.

7 This Court had tried to test the bonafides of the Petitioner so as to assess as to whether, the Petitioner desired to inherit the encroached property and enjoy the said property. It appears from the conduct of the Petitioner that she and her husband who have constructed the house on the Gairan land belonging to the State Government, do not intend to give up the said house. The Gram Panchayat has already declared that the said act on the part of the Petitioner's husband amounts to an encroachment on the Government land.

8 Considering the above, I do not find that discretion can be exercised in favour of the Petitioner for grant of any protection. So also, the impugned order does not appear to be perverse or erroneous.

9 In the light of the above, this Writ Petition being devoid of merit is, therefore, dismissed.