

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

**WRIT PETITION NO.3660 OF 2019
WITH CA/3906/2019 IN WP/3660/2019**

Mathurabai W/o Balaji Bhaskare,
Age-47 years, Occu - Household,
R/o Tembhorni, Tq. Naigaon,
Dist. Nanded ... Petitioner

VERSUS

1. The State of Maharashtra
Through Secretary Rural Development
Department, Mantralaya,
Mumbai-32
2. The Additional Commissioner,
Aurangabad Division, Aurangabad
3. The Additional Collector, Nanded
Tq. & Dist. Nanded
4. The Village Development Officer,
Village Panchayat, Tembhorni,
Tq. Naigaon, Dist. Nanded ... Respondents
5. Shankar S/o Jalbaji Kamble
(dead) ... Formal respondent

Mr. A.M. Gaikwad, Advocate for petitioner
Mr. S.D. Ghayal, AGP for the respondents/State

**CORAM : P.R. BORA, J.
DATED : 18.03.2019**

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and by
consent heard learned counsel for the parties finally.

2. The petitioner has filed present writ petition taking exception to the order passed by the Collector, Nanded on 29.05.2018, in a dispute raised by one Shankar Jalbaji Kamble (now deceased) alleging that the petitioner has incurred disqualification under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1959 and therefore has no right to continue as a member of the Grampanchayat, Tembhurni. The decision of the Collector has been maintained by the learned Additional Divisional Commissioner vide his order dated 15.01.2019. The petitioner has challenged both the aforesaid orders in the present petition.

3. The petitioner was elected as a Member of Grampanchayat, Tembhurni in the elections held of the said Grampanchayat in the year 2015 and subsequently was also elected as the Sarpanch of the said Panchayat. One Shankar Kamble raised a dispute before the Collector, Nanded alleging that the husband of the petitioner has committed an encroachment on the Gairan land and has also carried out unauthorized construction thereon and as such the petitioner shall be disqualified to continue

as the Member and Sarpanch of Grampanchayat. After such a dispute was raised, Collector, Nanded called for the report from the Extension Officer, Panchayat Samitee, Naigaon. Extension Officer, namely, Shri.V.N. Mundkar submitted such report. The allegations raised by the disputant were denied and resisted by the petitioner. Learned Collector, however, after having considered the submissions made by the disputant and the petitioner and considering the report submitted by the Extension Officer, held that the petitioner has committed encroachment on the Government land and as such has incurred disqualification under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959 and resultantly disqualified the petitioner from holding the post of the Member of the Grampanchayat, in turn the post of Sarpanch of the Grampanchayat.

4. The petitioner challenged the said order passed by the Collector, Nanded by filing an appeal before the Revenue Commissioner at Aurangabad. The Commissioner, however maintained the said order vide judgment and order passed by him on 15.01.2019. As noted herein above, aggrieved by both the aforesaid decisions, the

petitioner has filed the present petition.

5. Shri. A.M. Gaikwad, learned counsel appearing for the petitioner has assailed the order passed by the authorities below on various grounds. The learned counsel taking me through the relevant provisions in the Maharashtra Village Panchayat Act and inviting my attention to the reports submitted by the Extension Officer, argued that there was no such material brought before the Collector so as to hold the present petitioner disqualified under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1959. The learned counsel pointed out that in the report submitted by the Extension Officer, all the relevant particulars are provided as about the properties in possession of the husband of the petitioner. Learned counsel submitted that in the year 1983 there was flood and around 240-250 families were permitted to occupy the spaces in the Gairan land. The learned counsel pointed out that as per the said report the persons who occupied the Gairan land at the relevant time have been consistently submitting the representations and accordingly their names have been entered in to Grampanchayat record as Bhogwatdar in

the occupancy columns. The learned counsel pointed out that as per the said report two properties are said to be in possession of the husband of the present petitioner. Learned counsel further submitted that as per the report, property registered at No.1008 is an open land and no construction has been carried out in the said land and so far as property No. 1073 is concerned the house is built in the said land and the report also further reveals that the said property is purchased by the husband of the present petitioner.

6. The learned counsel tendered across the bar the additional affidavit on behalf of the petitioner alongwith certain documents. The said documents contain the copy of the sale deed pertaining to the said land. The learned counsel submitted that the occupation of the aforesaid property by the husband of the petitioner cannot be said to be as an encroacher and in such circumstances both the authorities have erred in arriving at a conclusion that the husband of the petitioner has made encroachment because of which the disqualification is held to have incurred by the present petitioner under Section 14(1)(j-3) of the Maharashtra

Village Panchayats Act, 1959. Learned counsel in the circumstances prayed for setting aside the orders.

7. Learned AGP has supported the orders passed by the authorities below. The learned AGP submitted that no one can occupy or possess or to remain in the possession of the land which is notified as a Gairand land. Learned AGP submitted that entering his name may be in the occupancy column by the husband of the petitioner, can be held to be misuse of the power by virtue of the position of the Sarpanch held by the present petitioner. Learned AGP submitted that though no construction may have been carried out in the property No.1008, the act of entering his name in the occupancy column in the Grampanchayat record in respect of the said property shall also have to be held an act of encroachment by the husband of the present petitioner and it is sufficient to disqualify the present petitioner for holding the post of the Member of the Grampanchayat. Learned AGP in the circumstances prayed for rejecting the petition being devoid of merits.

8. I have carefully considered the submissions

made by the learned counsel appearing for the petitioner and the learned AGP. I have also perused the orders passed by the authorities below which are impugned in the present petition and the other material available on record. After having gone through the said record apparently it is revealed that both the authorities below have failed in appreciating the fact that the property which is alleged to have been encroached by the husband of the petitioner is in fact according to the report submitted by the Extension Officer is in possession of the husband of the petitioner with the permission of the State authorities. As is revealing from the report submitted by the Extension Officer in the year 1983, there was a massive flood. The report further reveals that at the relevant time around 240-250 families were permitted to occupy the Gairan land bearing Survey No.105 which was adjacent to the village and the occupants of the said land have been continuously representing for entering their names to the respective properties as the occupier of the said property. The report further reveals that in the said land, the Grampanchayat has provided all civic amenities like of electric supply, pipelines and the roads. It

further reveals that the Grampanchayat is also recovering tax from the families who are occupying the said land. The report also reveals that till date no notice has been issued to either the petitioner or her husband in respect of the said encroachment or for removal of the said encroachment.

9. The learned Collector as well the learned Commissioner both have failed in appreciating the aforesaid facts. After having considered the material on record it is difficult to agree with the conclusions recorded by the authorities that the husband of the petitioner has committed encroachment on the Government land. I reiterate that having consciously considered the material on record it is revealed that the husband of the petitioner is in permissive possession of the so called Government land/gairan land and cannot be stamped as an encroacher. As such the order passed by the learned Collector as well the learned Commissioner cannot be sustained and deserve to be set aside and are accordingly set aside. Resultantly, the petitioner is restored to the position as a member and consequently Sarpanch of the village Panchayat, Tembhurni. Writ

petition stands allowed in the aforesaid terms.

10. Rule made absolute accordingly.

[P . R . B O R A , J .]