

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

**REVIEW APPLICATION (CIVIL) NO. 247 OF 2019
IN
WRIT PETITION NO. 1392 OF 2018**

Meenabai Fattelal Patil

... Applicant

Versus

The Divisional Commissioner,
Nashik Division, Nashik and others

... Respondents

....

Shri V. D. Hon, Senior Advocate i/b Mr. A.V. Hon, Advocate for applicant.

Shri K. D. Mundhe, AGP for the State.

Shri P. B. Patil, Advocate for respondent No.3.

Shri M. G. Kochar, Advocate for respondent No.4.

Shri K. S. Jadhav, Advocate for respondent No.5.

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CORAM : R. G. AVACHAT, J.

DATED : 03rd DECEMBER, 2019

PER COURT :-

By this application, the applicant - original petitioner seeks review of the judgment and order dated 18.10.2019 passed by this Court in Writ Petition No.1392 of 2018. By the impugned order the writ petition came to be dismissed.

2. Heard Shri V. D. Hon, learned Senior Advocate for the applicant.

3. The applicant is an elected member of Grampanchayat, Eklahare, Taluka Amalner, District Jalgaon for the term 2015 to 2020. She is also Sarpanch of the Grampanchayat. Her husband allegedly made an encroachment on the Government land (Gut Nos. 275/1 and 275/2). Respondent Nos.3 and 4, therefore, moved the Collector for declaring the petitioner to be disqualified to continue as Sarpanch and even member of the Grampanchayat. The Collector, Jalgaon, upheld the contention. The petitioner was also unsuccessful in an appeal preferred before the Commissioner. She, then, preferred writ petition, which came to be dismissed holding that the two authorities below have concurrently held the petitioner's husband to have made an encroachment on the government land. The petitioner being a family member of an encroacher and having shared the encroached premises, was declared to be disqualified to continue to be a member of the Grampanchayat.

4. Learned Senior Advocate would submit that the petitioner has never admitted her husband to have made any encroachment. The alleged encroachment came to be removed in March-2018. This Court, therefore, vide order dated 22.03.2018 stayed the operation of the

orders passed by the Collector and confirmed by the Commissioner. Learned Senior Advocate would further submit that the applicant had deposited with this Court a sum of Rs.1,00,000/- to show her *bona fides*. Learned Senior Advocate took me through the relevant materials on record to contend that false and frivolous complaint has been made against the applicant.

5. This Court, mainly relying on the judgment of the Hon'ble Supreme Court in the case of ***Janabai Vs. Additional Commissioner and others*** reported in ***(2018) 18 SCC 196***, held the petitioner to have rightly been disqualified to continue to be the member of the Grampanchayat.

Learned Senior Advocate would submit that the judgment in the case of ***Janabai (supra)*** is pronounced in September -2018. The applicant's husband removed the alleged encroachment long before the judgment was passed. Learned Senior Advocate meant to say that the alleged encroachment no longer continued. There is, therefore, no question of the petitioner to be disqualified. According to learned Senior Advocate, the petitioner had not been issued any notice regarding removal of encroachment. It was the petitioner, who, herself moved application for measurement of land to show that there is no encroachment, as had been alleged.

6. This being an application for review, a limited question is involved herein so as to ascertain whether there is any error apparent on the face of record. No issue of fact can be reopened. This Court has already observed that the two authorities below have concurrently held the petitioner's husband to have made encroachment on the government land. This Court too observed that the name of the petitioner's husband appeared in the list of encroachers, prepared way back in 2013.

7. Had the petitioner or her husband removed the alleged encroachment, no sooner the complaint was made to disqualify the petitioner to continue as a member of the Grampanchayat, learned Senior Advocate, then, would have been right to contend that the petitioner no longer continued to share alleged encroachment on the government land and therefore, she could not be held to have been disqualified. Here is the case that the petitioner has been unsuccessful first before the Collector and then before the Commissioner. After filing of the Writ Petition (No.1392 of 2018), the encroachment (so called) came to be removed in March-2018. I reiterate that once the petitioner has incurred disqualification to continue to be a member of the Grampanchayat and the alleged encroachment came to be removed long after and on having been declared to be disqualified, the removal

of encroachment would be of no consequence, so far as regards disqualification that has already been incurred.

8. In my view, therefore, the review petition fails, the same is thus, dismissed.

9. Interim order to continue till 13th December, 2019.

[R. G. AVACHAT, J.]

SMS