IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13340 OF 2018

Chaya Dilip Gangurde .....Petitioner.

Vs.

The Tahsildar,
Tal. Niphad, Dist. Nashik & Ors. .....Respondents.

Mr. S.P. Dighe for the Petitioner.
Mr. A.R. Metkari, AGP for Respondent Nos. 1, 3 and 5 to 7.
Mr. Sachin Gite for Respondent No. 4.

CORAM : A. S. GADKARI, J.
DATE : 7th JUNE, 2019.

P.C.:-

By the present Petition under Article 227 of the Constitution of India, the Petitioner has taken exception to the concurrent finding of facts recorded by both the Authorities below.

2 Heard the learned counsel for the Petitioner, the learned counsel for the Respondent No. 4 and the learned AGP for the State. Perused the record annexed to the Petition.

3 The Petitioner was a Sarpanch of Village Dahegaon-Vahegaon, Taluka Niphad, District Nashik. Respondent No.4 filed a

Complaint under Section 14(J-3) of the Maharashtra Village Panchayat Act, 1958 alleging that, when the Petitioner was in power as a Sarpanch of the said Village, she encroached upon a piece of Grampanchayat land out of Gat No. 32 and erected an illegal and unauthorized tin shed admeasuring about 15 x 15 feet on the said land and was conducting grocery shop therein.

The learned Collector, through the Talathi of the said village conducted Panchanama dated 13th December, 2017 and after conducting an inquiry into the Application filed by the Respondent No.4, allowed the said Application, thereby declaring the Petitioner as disqualified to be a member of the said Grampanchayat for the remaining tenure, by its Order dated 10th May, 2018.

Appeal No. 43 of 2018 preferred by the Petitioner has been turned down by the Additional Commissioner, Nashik Division, Nashik by the impugned Order dated 28th August, 2018.

4 The learned counsel appearing for the Petitioner submitted that, in fact the brother of the Petitioner namely Shri. Hari T. Barde had erected the said shed and was conducting grocery shop therein. He contended that, the Talathi of the said Village has submitted a false panchanama stating therein that, the Petitioner has

erected the said shed and had conducting the grocery shop therein. He submitted that, the political opponents of the Petitioner, with a view to frame her in a false case, had filed the said Application, upon which both the authorities below have erroneously recorded concurrent findings, thereby disqualifying the Petitioner of being member of the said Grampanchayat.

5 The record indicates that, though the Petitioner was having ample opportunity to putforth her defence by examining the said person, namely Shri. Hari T. Barde, the Petitioner has conspicuously and conveniently not examined Shri. Hari T. Barde as her witness to support her contention that, the said person has in fact erected the shed in question and was conducting a grocery shop therein. In view thereof, a safe adverse inference has to be drawn against the Petitioner.

6 The scope of a petition for a Writ of Certiorari under Article 227 of the Constitution of India is well enumerated by catena of decisions of the Supreme Court. It is the settled position of law that, the concurrent findings recorded by the Authorities below need not be disturbed on the ground that, the evidence on record has not been properly appreciated by it.

7 The Constitution Bench of the Supreme Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan & Others, reported in AIR 1964 SC 477, while dealing with the scope of jurisdiction of the High Court, in issuing writ of certiorari has held that, it is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. It is further held that, a finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the points cannot be agitated before a writ Court.

8 After applying the ratio laid down by the Constitution Bench of the Apex Court in the aforestated decision and perusing the

entire record made available, this Court is of the view that, both the authorities below have not committed any error either in law or on facts. The present petition being devoid of merits, is accordingly rejected.

(A.S. GADKARI, J.)