

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1943/2019

Anjali S.Nathe Vs. The Additional Commissioner, Amravati Division and ors.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri R.P.Masurkar, Advocate for petitioner.
Shri A.M.Kadukar, Assistant Government Pleader for respondent nos. 1 & 2.
Shri S.M.Vaishnav, Advocate for respondent no.5.

CORAM : A.S.CHANDURKAR, J.

DATED : NOVEMBER 25, 2019.

The challenge raised in the present writ petition is to the order of disqualification passed by the Collector, Akola under Section 14 (1) (j-3) of the Maharashtra Village Panchayats Act, 1958 (for short, the said Act) which order has been confirmed by the Divisional Commissioner on 22.02.2019.

Heard Shri R.P.Masurkar, learned counsel for the petitioner, Shri A.M.Kadukar, learned Assistant Government Pleader for respondent nos. 1 and 2 and Shri S.M.Vaishnav, learned counsel for the respondent no.5.

It is seen from the record that the petitioner was found in occupation of a house bearing property no.53 which property was a part of plot no.846. That plot is recorded in the name of the State Government which finding has been recorded by the Collector in his order dated 27.12.2018. According to the petitioner, the land in question was allotted by the Tahsildar by issuing a certificate in that regard. However such certificate is not in possession of the petitioner. She has instead relied upon a similar certificate issued to one Tulshiram Ekoji Virghat. After perusing that certificate, the Collector was directed to file an affidavit indicating authenticity of that certificate. Affidavit has

been filed by the Tahsildar dated 04.07.2019 in which it has been stated that after taking search of the entire record, the said document which is at page 72 of the writ petition is not found in the records of the Tahsildar.

Be that as it may, that certificate at page 72 stands in the name of one Tulshiram Ekoji Virghat while the revenue entries for plot no.846 indicate names of Kashiram Laxman Nathe and Pralhad Gondu Virghat who were found in possession. It is evident that the certificate which is undated does not indicate the name of person found in possession. In any event the petitioner is not in possession of any such certificate. Hence the findings recorded by both the Authorities are based on documents placed on record and there is no reason to come to the conclusion that the said conclusion is in any manner contrary to the record. Though the learned counsel for the petitioner has relied upon the decision in *Sandip Ganpatrao Bhadade Vs. Additional Commissioner, Amravati and others, 2017 (1) Mh.L.J. 79* to submit that there must be a clear case of encroachment which has to be duly proved, the ratio of that decision is not applicable to the case in hand. The petitioner has not been able to place on record any document to indicate her entitlement to occupy property no.53 that is situated on plot no.846. Hence there is no case made out to interfere in writ jurisdiction. The writ petition is therefore dismissed. No costs.

As the civil suit for declaration of the petitioner's rights is pending in Civil Court, this order shall not come in the way of the petitioner in those proceedings. The same shall be decided on their own merits.

JUDGE