

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.583/2020

Sau. Indira Amol Mate

..V/s..

Additional Commissioner, Nagpur Division, Nagpur and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.U. Bhuyar, Advocate for the petitioner.
Shri A.A. Madiwale, A.G.P. for respondent Nos.1 to 3.
Shri V.G. Dhage, Advocate for respondent No.6.

CORAM : RAVINDRA V. GHUGE, J.

DATED : 28.1.2020.

1] The petitioner is aggrieved by the order dated 23.5.2019 passed by the Additional Collector, Bhandara disqualifying the petitioner under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act. The petitioner is also aggrieved by the order dated 23.12.2019 passed by the Additional Commissioner, Nagpur Division, Nagpur confirming the earlier order of the Additional Collector.

2] I have considered the submissions of the learned Advocate for the petitioner and the learned A.G.P. on behalf of respondent Nos.1 to 3.

3] Section 14(1)(j-3) of the Maharashtra Village Panchayats Act reads as under:

“14.(1) No person shall be a member of a panchayat continue as such, who- (j-3) has been encroached upon the Government land or public property; or”

4] The record reveals that the petitioner has put-forth a case that though her husband Amol Anandrao Mate had encroached upon the government land and his name is found in the Grampanchayat record, from 2011, he was not an encroacher on the date the petitioner filed her nomination form for the election held in 2018. It is frankly stated that prior to her filing of the nomination papers, her husband gifted the encroached portion of land on 18.7.2017 to Keshrat Bhaduji Mate for no consideration. As such, it is strenuously submitted that the law laid down by the Hon'ble Apex Court in *Janabai V/s. Additional Commissioner and others* [2018 (5) **Mh.L.J. 921**], would not be applicable to the petitioner and she cannot be disqualified as she has not directly and personally caused an encroachment.

5] The learned A.G.P. submits on the basis of the record that there is no doubt in view of the stand taken by the petitioner and the record available that the husband of the petitioner had encroached upon the government land from 2011. The encroached portion was a forest land and her husband was enjoying the said encroachment till 18.7.2017, when he created a make-believe picture of having issued a gift deed, in writing, to Keshrat Mate, gifting the said portion of the land. In the village panchayat records, however, the name of the petitioner's husband figures as an encroacher. There is no dispute that the petitioner resides in the marital home along with her husband in the same village.

6] I find that the petitioner seeks to rely upon the judgment delivered by the Hon'ble Apex Court in *Sagar Dhundare V/s. Keshao Aba Patil and others* [(2018) 1 SCC 340], that unless it is specifically proved that an individual has personally caused the encroachment, there would be no disqualification. However, in the judgment delivered in *Janabai V/s. Additional Commissioner and others* (supra), the view taken in *Sagar Dhundare V/s. Keshao Aba Patil and others* (supra) was overruled.

7] This case indicates that the husband of the petitioner has courageously entered into a written gift deed which is executed in favour of a person who seems to be close to the petitioner. Being a gift deed, it indicates that there was no consideration taken by the husband of the petitioner.

8] The village panchayat records indicate that the husband continues to be an encroacher of the land. Such statutory records maintained under law have a legal presumption, that the gift deed appears to be a document aimed at creating an eye-wash.

9] Considering the above, I do not find that the impugned order can be branded as perverse or erroneous. This petition being devoid of merits is, therefore, **dismissed**. No costs.

(RAVINDRA V. GHUGE, J.)