

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9241 OF 2021

Chandrakala w/o Pradip Dhasade,
Age : 22 years, Occu. Household,
at present member of Gram-Panchayat,
R/o Melgaon, Tq. Naigaon (kh.),
District Parbhani

PETITIONER

VERSUS

1. The Additional Divisional Commissioner,
Divisional Commissioner Office,
Aurangabad
2. The Collector, Nanded,
Collector Office, Nanded,
Tq. & Dist. Nanded
3. Vinod s/o Anandrao Shinde,
Age : Major, Occu. Agri.,
Melgaon, Tq. Naigaon (kh.),
District Nanded
4. The Gram-Sevak,
Gram-Panchayat office
at Melgon, Tq. Naigaon (kh.),
District Nanded

RESPONDENTS

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Mr. U.B. Bilolikar, Advocate holding for Mr. Amol G. Vasmatkar,
Advocate for the petitioner
Smt. D.S. Jape, A.G.P for the respondent/State
Mr. Umakant B. Deshmukh, Advocate for respondent No.3
Mr. Pratik P. Kothari, Advocate for respondent No.4

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CORAM : MANGESH S. PATIL, J.

DATE : 29.11.2021

ORAL JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith. The learned A.G.P and the learned Advocates for the respondents waive service. At the request of the parties, the matter is taken up for final hearing at the stage of admission.

3. The petitioner, who was the elected member of the Grampanchayat, has been disqualified by the Collector under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958 (hereinafter referred to as 'the Act') read with Section 16(1) of that Act, which order has subsequently been confirmed by the Divisional Commissioner by the order under challenge thereby dismissing the petitioner's appeal under Section 16(2) of the Act.

4. The learned Advocate for the petitioner vehemently submits that a publicly elected member is being sought to be non-sitted without there being concrete evidence of encroachment. The report submitted by the Committee of three officers to the Block Development Officer, which in turn, has been relied upon by the Collector while passing the basic order, is vague. It does not specifically mention about the petitioner having made any encroachment over the Government property. By referring to the photographs (Exh-C), he would submit that the property of the petitioner is landlocked and is surrounded by three properties of different persons and there is a public road on one side. Even if the observations and conclusions in the report are accepted, the observation to the effect that

the properties standing in the name of the petitioner's father-in-law in the assessment record of the grampanchayat, is less than the actual construction found at the spot, at the most the encroachment could be on the private properties of some other persons but not the Government property. In the absence of any such concrete evidence and specific finding based on it regarding such encroachment being on the Government property, no disqualification under Section 14(1)(j3) of the Act could have been attracted.

5. The learned Advocate for the petitioner would then rely upon the observations of the Supreme Court in the case of *Janabai Vs. Additional Commissioner & Ors.*; AIR 2018 SC 5068, particularly paragraph Nos.26 and 27 thereof.

6. The learned A.G.P and the learned Advocates for the respondents would submit that it was specifically alleged in the complaint filed by respondent No.3 inter alia about the petitioner having carried out construction of staircase in front of her house by making encroachment over the public road in front of the house. He had also produced a photograph about it. His learned Advocate would also then point out that the petitioner's husband, aware about the consequences of the complaint filed by respondent No.3, suo motu removed the staircase only couple of days prior to the inspection carried out by the committee. To substantiate this fact, he would also point out a statement of petitioner's husband dated

22.04.2021 wherein while making allegations against respondent No.3 and several other villagers regarding hurling of abuses and assault, he specifically admitted to have removed those steps which were landing on the public road and which were erected by way of encroachment, on 20.04.2021. The learned Advocates, therefore, would submit that this piece of evidence is sufficient to demonstrate that the petitioner had incurred the disqualification, even if the report, which forms the basis for the two authorities below to pass the impugned orders, is ignored.

7. I have carefully considered the rival submissions and perused the papers. At the outset, it is necessary to bear in mind that the petitioner is invoking an extraordinary jurisdiction of this court. There is a limitation in exercise of such a jurisdiction. The disputed facts can hardly be gone into.

8. It is equally trite that the petitioner, who has been publicly elected representative, is being sought to be non-sitted and in a sense is facing a penal action. In the case of ***Ravi Yashwant Bhoir Vs. District Collector, Raigad and others; (2012) 4 SCC 407***, it is observed that in such matters, proof of the facts which constitute and attract disqualification, have to be established strictly. But then, as has been mentioned hereinabove, a writ jurisdiction of this court is being invoked. As is mentioned hereinabove, independent of the impugned order and the report, which forms basis for those orders, there is evidence in the form of

the statement of petitioner's husband wherein he specifically admitted about having removed the encroachment which was carried out in the form of staircase landing on the public street couple of days before the committee visited the spot. Obviously, if the staircase was already removed even before such inspection, one cannot expect any reference to this fact to be had in this report. The petitioner's husband having specifically admitted such an encroachment while lodging the complaint, in my considered view, the petitioner is not entitled to invoke the writ jurisdiction to cause any interference in the orders under challenge.

9. Coming back to the question of proof of the allegations, though a publicly elected person should not be allowed to be easily non-sitted, it is equally important that such a person, who intends to represent people, is also above board. He also should act bona fide. It is in the light of these expectations that it was for the petitioner to have come out with the utmost disclosures as to the source of title of her father-in-law to the property.

10. It is submitted at the bar that by the learned Advocate for the petitioner that the property was allotted to him in implementation of some rehabilitation scheme. Suffice for the purpose to observe that there is absolutely nothing on record except the assessment record of Grampanchayat in form No.8, wherein alongwith the name of the petitioner's father-in-law even the name of his two brothers appears

against a piece of plot.

11. The report, which forms the basis for passing the basic order clearly indicates that going by the assessment record only a portion admeasuring 25 x 16 feet stood in the name of the petitioner's father-in-law whereas the actual construction on the property was seen admeasuring 18'2"x33'3". It is in view of such peculiar state-of-affairs, the petitioner should have made an endeavour to bring on record the actual order of allotment, which would have made everything clear. We do not know if the title to the plot was transferred under that order or merely a possession was delivered to erect a shelter. It is sufficient to bear in mind that by virtue of the provisions of the Act, all the public properties / streets vest in the Grampanchayat unless it is demonstrated that the petitioner's father-in-law had derived title to the portion of land, which stands recorded in the name of Grampanchayat merely for the purpose of collection of taxes, in the assessment record of form No.8. Even otherwise there are no sufficient grounds for this court to cause any interference in the orders of the authorities below, holding her to have incurred the disqualification.

12. The Writ Petition is dismissed. The Rule is discharged.

[MANGESH S. PATIL]
JUDGE