

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

WRIT PETITION NO.13218 OF 2019

Sharda W/o Rajbhau Sagare,
Age: 40 years, Occ: Household & Sarpanch
of Grampanchayat, Bensur,
R/o. Bensur, Tq. Patoda, Dist. Beed.

PETITIONER

VERSUS

1. The State of Maharashtra
through its Secretary,
Revenue & Forest Secretary
2. The Additional Commissioner,
Commissioner Office, Aurangabad.
3. The District Collector,
Collector Office, Beed.
4. The Block Development Officer,
Panchayat Samiti, Patoda,
Tq. Patoda, Dist. Beed.
5. The Gramsevak Village Panchayat Bensur,
Tq. Patoda, Dist. Beed.
6. Sushila W/o Parshuram Arsul,
Age : 32 years, Occ: Household,
and Deputy Sarpanch of Grampanchayat,
Bensur, Tq. Patoda, Dist. Beed.
7. Sheetal D/o. Rajabhau Sagare,
Age : 22 years, Occ: Household,
and Member of Grampanchayat, Bensur,
R/o. Bensur, Tq. Patoda, Dist. Beed.
8. Rajabhau S/o Dashrath Sagare,
Age : 48 years, Occ: Medical Officer,
Primary Health Centre, Limbaganesh
Tq. Dist. Beed. At present R/o. Bensur,
Tq. Patoda, Dist. Beed.

... **RESPONDENTS**

...
 Advocate for Petitioner : Mr. D.A. Mane
 AGP for respondent Nos. 1 to 3 : Mr. PN. Kutti
 Advocate for Respondent No.5 : Mr. K.B. Jadhavar
 Advocate for Respondent No. 6 : Mr. N.L. Jadhav
 ...

CORAM : MANGESH S. PATIL, J.

DATE : 12.08.2021

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. The petitioner who happens to be the elected Sarpanch of Village Bensur, Taluka Patoda, District Beed, is impugning the order passed by the Collector holding her to have incurred disqualification under Section 14 (1)(j-3) of the Maharashtra Village Panchayats Act, 1959 (hereinafter the Panchayat Act) in a proceeding under Section 16(2) of that Act and confirmed by the learned Additional Commissioner whereby her Appeal under Section 16(2) of the Panchayat Act has been dismissed.

3. The respondent No.5 who happens to be the Deputy Sarpanch of the same Grampanchayat filed a complaint with the respondent No.3 Collector alleging that the petitioner has made encroachment to the extent of 36 x 23 feet adjacent to the property owned and possessed by her husband bearing property No.323 which admeasures East-West 44 feet and North-South 17.06 feet (774 Sq.ft). An inquiry was held. Spot panchanama was conducted by the Extension Officer of Panchayat Samiti. Since it was found that the petitioner had made encroachment the learned Collector arrived at a conclusion that she had incurred the disqualification which order has been confirmed by the Additional Commissioner in the Appeal.

4. The learned advocate for the petitioner would submit that the authorities below have not discharged the quasi judicial function properly.

They have not assigned sufficient and cogent reasons for arriving at the conclusions. Though two panchanamas were conducted (Exhibit – E) and (Exhibit – F) on two different dates by the same Gramsevak, the observations and the measurements noticed are inconsistent. There is no concrete evidence regarding encroachment. Several villagers have filed their affidavits to the effect that no encroachment was made by the petitioner which are placed on the record and in spite of such state of affairs, the authorities have readily accepted the allegations and arrived at the conclusions which are perverse, arbitrary and illegal.

5. The learned advocate for the petitioner would further submit that in fact she had made an attempt to bring on record the correct state of affairs and had filed an application before the appellate authority, requesting to undertake inspection to conduct elaborate inquiry to ascertain the fact of encroachment. The appellate authority has illegally rejected that prayer.

6. The learned AGP and the learned advocate for the respondent No.6 support the orders of both the authorities. They submit that even if there is some variance in the two panchanamas the fact remains that the property in possession of the petitioner has been found to be more than what has been actually recorded in the Assessment Record of the Grampanchayat in Form No. 8. It was for the petitioner to have demonstrated as to how her husband has acquired the title to the property in her possession which is more than what has been recorded in the Grampanchayat record. However she failed to prove it. Rather, by filing the affidavit of the villagers an attempt is made to demonstrate that the Grampanchayat record is incorrect and a lesser area is recorded in the name of her husband. Even if it is the property standing in the name of her husband, by virtue of the decision in the case of **Janabai Vs. Additional Commissioner and others ; AIR 2018 SC 5068**, since the petitioner has been residing with him in the same place, she is liable to incur the disqualification. Since the authorities below have considered all these aspects and have reached a plausible conclusion based on facts, this Court

should not enter into any further scrutiny while exercising the Writ Jurisdiction.

7. I have considered the rival submissions and perused the papers. One need not over emphasis the importance of inserting various grounds on which an elected Sarpanch can be disqualified. Various clauses contained in Section 14 of the Panchayat Act provide the grounds on which such a disqualification can be attached. In spite of being a people's representative if a Sarpanch commits an encroachment, it is indeed a serious thing and the person cannot be allowed to continue to hold the Public Office.

8. I am emphasizing on this aspect just to demonstrate that no sooner the respondent No.6 had made a complaint to the Collector regarding the petitioner having incurred the disqualification on the ground of encroachment, the latter should have been proactive in demonstrating as to how the allegations regarding encroachment are ill founded. However, she has not made any attempt to establish that she has been in legal possession of the area which is more than what has been recorded in the Grampanchayat record. It was for her to have explained as to why she or her husband never made any attempt to rectify the record. It would be very convenient for her now to come out with such a stand and file affidavits of number of villagers.

9. True it is that there is some variance in the Panchanamas dated 12.07.2018 (Exhibit – E) and 20.05.2019 (Exhibit – F). However, if one peruses the latter panchanama it clearly mentions that earlier panchanama was in fact covering two properties bearing No.323 and 324 when in fact the petitioner's husband owns and possesses only the Property No.323. Even in that second panchanama the petitioner and her husband are shown to be possessing a property admeasuring 74.5 x 17.6 feet which is clearly more than what is recorded in their name in the Assessment Record in Form 8.

10. Again, the fact that they are in possession of more area than what is recorded in the Assessment Record of the Grampanchayat now

stands corroborated from the number of affidavits of villagers filed by the petitioner herself in this petition (page Nos. 35 to 44). The version of these affiants is that a less area was recorded in the name of the petitioner's husband. Meaning thereby that the petitioner and her husband are holding possession over more area than what has been recorded in the Grampanchayat record. If such is the state of affairs, irrespective of the exact area of encroachment, the factum of encroachment stands duly established.

11. Though the authorities below have not extensively discussed the aforementioned state of affairs, the ultimate conclusion drawn by them is clearly reasonable and can be borne out from the material. By no stretch of imagination can it be said that the observations and the conclusions are either perverse, arbitrary or capricious. I find no sufficient and cogent reason to cause any interference.

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

(MANGESH S. PATIL, J.)

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