

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

WRIT PETITION NO.319 OF 2020

Sow. Vandana w/o Ganesh Rakade

Petitioners

Versus

The State of Maharashtra & others

Respondents

Mr.Shrikant G. Kawade, advocate for the petitioner.

Mr.Kishor Hoke Patil, AGP for Respondents No.1 to 4 & 6.

Mr.Yogesh Kale, advocate for Respondent No.8.

CORAM : AVINASH G. GHAROTE, J.

DATED : 29th JUNE, 2021.

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PER COURT :

1 Heard Mr.Shrikant Kawade, learned Counsel for the petitioner, Mr.Kishor Hoke Patil, AGP appears for Respondents No.1 to 4 and 6 and Mr.Yogesh Kale, advocate for Respondent No.8. None appears for Respondents No. 5 and 7, though served.

2 The present petition challenges the order dated 28.10.2018 passed by the learned District Collector, Aurangabad in Case No.2018/Gram Panchayat Appeal/CR No.07, whereby the election of the present petitioner has been cancelled, under the provisions of Section 14(1)(j-3) of the

Maharashtra Village Panchayats Act, by accepting the contention that the petitioner has encroached upon land of G.No.5 situated in the limits of Gram Panchayat Kasod, which is admittedly a Government land. The Collector found, upon hearing the parties and upon perusal of the report of the Tahsildar, Sillod dated 24.09.2018, that the land of G.No.5 was Government land and the petitioner was occupying the same along with her husband. In view of this finding, since the same clearly amounted to encroachment, the election of the petitioner, was cancelled and the said seat was declared to be vacant. The Commissioner, in Appeal, maintained the order of the learned Collector resulting in filing of present writ petition.

3 Mr.Shrikant Kawade, learned Counsel for the petitioner, submits that the petitioner was married to one Ganesh Rakade in the year 2011 and since there was no issue, said Shri Ganesh Rakade had performed a second marriage, as a result of which the present petitioner was residing separately since 2011. To demonstrate this, he invites my attention to the affidavit at page 43, which bears the name of both Shri Ganesh Gajanan Rakade and the petitioner Vandana Ganesh Rakade indicating separation of Vandana - the present petitioner, on

account of second marriage by her husband. This document is purported to be dated 04.10.2011. He also invites my attention to the tenancy agreement which is claimed to be dated 24.06.2011, indicating taking on lease one room on the first floor in House No.126 for a period of ten years on lease by the petitioner. He further invites my attention to the ration card which shows the name of the petitioner alone. He, therefore, submits that all these documents, clearly indicate separation of the petitioner, from her husband and, therefore, it was not open for the authorities below to have taken a contrary view and hold that the petitioner was disqualified under Section 14 (1)(j-3) of the Maharashtra Village Panchayats Act.

4 Learned AGP Mr.Patil for Respondents No.1 to 4 & 6 and Mr.Yogesh Kale, learned Counsel for Respondent No.8, support the impugned order. Mr.Kale invites my attention to the *panchanama* dated 24.09.2018 to contend, that the contention put-forth by the petitioner of having been separated from her husband, has been belied as the *panchanama* found her to be residing with her husband. He further contends, that the ration card has been obtained on 26.10.2018, which is subsequent to the election, which was held on 09.10.2017. He, therefore,

submits that the contentions which are sought to be raised have been appropriately considered by the authorities below, whose orders do not require any interference.

5 It is not in dispute, that the land of G.No.5 is Government land. It is also not in dispute, that Ganesh Rakade, the husband of the petitioner, is an encroacher on the land of G.No.5 and is residing there. What remains to be seen, is whether the petitioner, has been legally separated or not. The learned Counsel for the petitioner Mr.Kawade, fairly submits that there is no legal document to show separation, nor any legal proceedings are pending with any Court in this regard. That leaves us with only three documents (1) the affidavit; (2) the tenancy agreement; and (3) the ration card to consider on which reliance has been placed to contend separation. The affidavit, though it is written on a stamp paper dated 04.10.2011, is not a document which is sworn before any authority, legally empowered to administer oath. Surprisingly, the affidavit bears the signatures of two witnesses, which in normal parlance, does not happen, in case of an affidavit. The document, therefore, clearly loses its credibility. The second document, which is styled as a rental agreement, though

requires to be witnessed, is not so. That apart, by this document, lease has been created for a period of 10 years, from 24.06.2011 to 23.06.2021, which clearly requires registration compulsorily, which is absent. The said document, therefore, also, cannot be looked into for the purpose for which it is being pressed into service. Insofar as the ration card is concerned, though it bears the name of the petitioner alone, however, the date upon it is 26.10.2018, which indicates, that it has been created post-election. That apart, the same also does not bear entries of distribution of essential food grains, as would be necessary to be indicated, had the same been actually used. The same also does not bear the signature of the person distributing food grains in the column for that purpose. All these indicate, that the documents upon which reliance has been placed by the learned Counsel for the petitioner, lack credibility. It cannot, therefore, be said with any certainty, that the petitioner, is estranged from her husband and on that count is living separately, which would resultantly indicate that she is living in a shared house with her husband, which finds place on the Government land of G.No.5, which admittedly is an encroachment. The position regarding the residence of the petitioner along with her husband on the land of G.No.5 is also

substantiated from the *panchanama* dated 24.10.2019, placed by the respondents 1 to 4 on record.

6 In the case of **Janabai Vs. Additional Commissioner & others**, 2018 AIR (SC) 5068, it has been categorically held that the term “person” as used in Section 14 (1) (j-3) of the Maharashtra Village Panchayats Act, has to include legal heir, if any, of the encroacher who continued to occupy the Government land and when members share an encroached property by residing there and there is continuance, he/she has to be treated as disqualified.

7 In view of what has been discussed above and the law laid down in the case of **Janabai (supra)**, I find that the authorities below have correctly applied their mind to the factual position as placed on record in the light of the law applicable. There is, therefore, no infirmity in the orders passed by the authorities below.

8 The petition, therefore, being devoid of any merits, is accordingly dismissed. Needless to state that the interim order dated 10.01.2020 stands vacated.

9 The learned Counsel for the petitioner, consequent to the judgment, makes a request to continue the protection granted to the petitioner by the authorities below as well as this Court under the order dated 10.01.2020 for a further period of one month. The request is opposed by Mr.Yogesh Kale, learned Counsel for Respondent No.8, contending that only two months of the term is remaining. However, in view of the protection already afforded continuously to the petitioner, the protection, granted under the interim order dated 10.01.2020 of this Court, shall continue for a further period of four weeks from today.

(AVINASH G. GHAROTE)
JUDGE

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