

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

WRIT PETITION NO.3891 OF 2019

Shrimati Kanchana w/o Bhimrao Ramteke,
Age 46 years, Occ : Social Worker,
R/o. Tiroda, District-Gondia.

.. Petitioner
(Ori. Applicant)

.. Versus ..

- 1] State of Maharashtra, through
Secretary, Revenue Department.
- 2] Additional Commissioner,
Commissioner Office,
Gondia.
- 3] Additional Collector,
Collector Officer, Gondia.
- 4] Tahsildar, Tiroda,
Occu :...Tahsil Officer, Tiroda,
Tah. Tiroda, District-Gondia.
- 5] Block Development Officer,
Panchayat Samiti, Tiroda.
- 6] President, Gram Panchayat,
Chorakhmara, Tahsildar,
Tiroda.
- 7] Secretary, Grampanchayat,
Chorakhmara, Tah. Tiroda,
District-Gondia.
- 8] Shrimati Kavita w/o Vinod Gajbhiye,
Age-Major, Occ : Housewife,

R/o. Chorkhmara, Tah. Tiroda,
Dist. Gondia.

.. Respondents
(Ori. Non-Applicants)

.....
Shri N.M. Gaidhane, Advocate for the petitioner,
Shri K.L. Dharmadhikari, AGP for respondent nos.1 to 4,
Shri Mohd. Ateeque, Advocate for respondent no.8.
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CORAM : N.B. SURYAWANSHI, J.

DATED : 11.08.2021.

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The petition takes exception to the order dated 26.09.2018 passed by the Collector, Gondia thereby disqualifying the petitioner from the post of Sarpanch of village Chorakhamara under Section 14 (1)(j-3) of the Maharashtra Village Panchayats Act, 1959 (for short 'the said Act').

3. The respondent no.8 filed application seeking disqualification of the petitioner under Section 14 (1)(j-3) of the said Act on the ground that the husband of the petitioner namely Bhimrao Ramteke has made encroachment on the forest

land Gat No.20 by constructing 'Kanchana Resort'. The said construction was removed by the forest department on 22.9.2015. Again the husband of the petitioner constructed 'Kanchana Resort' and is illegally doing business there.

The father-in-law of the petitioner, by encroaching in Gat No.20 of mouza Chorakhamara on the forest land, started cultivation in the encroached land. After the death of father-in-law, since 1986 the husband of the petitioner is cultivating the encroached land. The residential house, where the petitioner is residing, is also encroached on government land.

4. The Collector, after considering the record and hearing the parties, disqualified the petitioner. The disqualification order of the Collector is confirmed in appeal by the Commissioner. Hence, the present petition.

5. Heard the learned Advocate for the petitioner, the learned Assistant Government Pleader for the respondent nos. 1 to 4 and the learned Advocate for the respondent no.8. I have perused the documents placed on record.

6. The learned Advocate for the petitioner submits that since the issue of encroachment is pending in the Civil Court in Regular Civil Suit No.152/2015, the impugned disqualification order should not have been passed by the Collector. By relying upon the order passed by this Court in Writ Petition No.944/2017, he submitted that since interim order is passed in favour of the petitioner's husband, the Collector was not justified in disqualifying the petitioner. The Commissioner also has lost sight of the fact that the proceedings seeking regularization of encroachment are pending before the Competent Authority as well as the Civil Suit is pending. He therefore prays for setting aside the impugned orders.

7. The learned Assistant Government Pleader, supports the impugned order, stating that it is a matter of record that the husband of the petitioner has encroached on the government land, therefore, the petitioner has been rightly disqualified.

8. The learned Advocate for the respondent no.8, by pointing out the record, submitted that the Civil Suit is filed by the husband of the petitioner and not by the petitioner. The

husband of the petitioner is operating a resort by encroaching on the government land. Although it was removed by the forest department in the year 2008-2009, he has again encroached on the forest land and has been operating the resort there and, therefore, the impugned order of disqualification is justified and there is no merit in the petition and the petition is liable to be dismissed.

9. The record indicates that the husband of the petitioner has encroached on the forest land Gat No.20 in the year 2008-09 and raised a permanent construction i.e. 'Kanchana Resort'. Forest offence No.44/22 was registered against the husband of the petitioner on 16.8.2014. On 22.9.2015 the encroachment was removed by the forest department. He has again by encroaching on forest land constructed resort and is running the same. The letter placed on record dated 7.7.2005 issued by the Deputy Conservator of Forest to the Superintendent of Police and the letter dated 21.9.2015 issued by the Range Forest Officer, Tiroda to Sarpanch of village Gram Panchayat, Chorakhamara proves that the husband of the petitioner has encroached on the

government property.

10. The husband of the petitioner filed Regular Civil Suit No.152/2015 seeking injunction against the forest department and government authorities from removing the encroachment. The interim injunction was refused to him. Thus, from the record it is established that the husband of the petitioner has encroached on the forest land Gat No.20 of village Chorakhamara and has illegally constructed 'Kanchana Resort' and he is doing hotel business. The father-in-law of the petitioner had encroached on the government forest land and started using it for agricultural purposes. Though it is claimed that the proceeding for regularization of the is encroachment is pending, the fact remains that till date the encroachment is not regularized.

11. The Collector, while disqualifying the petitioner, has taken into consideration the relevant records, the enquiry report and the documents which fortify that the husband of the petitioner has encroached on the government land. It is also noted in the impugned order that the encroachment of the

petitioner though was removed in the year 2015, he again constructed the resort by encroaching on the forest land. Therefore, the Collector was justified in disqualifying the petitioner under Section 14 (1) (j-3) of the said Act. The Commissioner has rightly confirmed the decision of the Collector, by placing reliance in the case of **Janabai .vs. Additional Commissioner and others, 2018 (5) Mh.L.J. 921.**

12. For the aforestated reasons, since the encroachment of the husband of the petitioner on the forest land is proved on record, the impugned disqualification order is liable to be sustained. No case is made out by the petitioner to exercise extraordinary writ jurisdiction. The petition therefore fails and the same is dismissed. Rule discharged. No costs.

(N.B. Suryawanshi, J.)