

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

**WRIT PETITION NO.703 OF 2022**

|                                  |   |                       |
|----------------------------------|---|-----------------------|
| Sow. Nanda W/o Bharat Thosarwal, | ] |                       |
| Age : 29 Years, Occu. Household, | ] |                       |
| R/o Nimgaon, Post. Tunki,        | ] |                       |
| Tq. Vaijapur, Dist. Aurangabad.  | ] | <b>... Petitioner</b> |

**Versus**

|    |                                          |   |                        |
|----|------------------------------------------|---|------------------------|
| 1. | The Divisional Commissioner,             | ] |                        |
|    | Aurangabad Division Aurangabad           | ] |                        |
| 2. | The Additional Collector,                | ] |                        |
|    | Aurangabad.                              | ] |                        |
| 3. | The Tahsildar, Vaijapur,                 | ] |                        |
|    | Tq. Vaijapur, Dist. Aurangabad.          | ] |                        |
| 4. | The Block Development Officer,           | ] |                        |
|    | Vaijapur, Tq.Vaijapur, Dist. Aurangabad. | ] |                        |
| 5. | Gramsevak, Grampanchayat Office Nimgaon] |   |                        |
|    | Tq. Vaijapur, Dist. Aurangabad.          | ] |                        |
| 6. | Bhausahab S/o Laxman Gaikwad,            | ] |                        |
|    | Age : 28 Years, Occ. : Agril.,           | ] |                        |
|    | R/o Nimgaon, Post Tunki,                 | ] |                        |
|    | Tq. Vaijapur, Dist. Aurangabad.          | ] | <b>... Respondents</b> |

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Advocate for Petitioners : Mr. S. S. Thombre h/f. Mr. Yogesh D. Kale  
AGP for Respondents – State : Mr. S. B. Pulkundwar  
Advocate for Respondent No.5 : Mr. A. A. Kakad  
Advocate for Respondent No.6 : Mr. M. K. Bhosale

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**CORAM : MANGESH S. PATIL, J.**

**DATED : 07 JULY 2022**

**ORDER :**

. Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service for respondent nos.1 to 4, learned advocate Mr. A. A. Kakad waives service for respondent no.5 and learned advocate Mr. M. K. Bhosale waives service for respondent no.6. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner is challenging the order passed by the Collector under section 16 of the Maharashtra Village Panchayats Act, 1958 (for short, “the Act 1958) and confirmed by Divisional Commissioner in an appeal, thereby disqualifying her under section 14(1)(j-3) of that Act from holding the membership of Group Gram panchayat Nimgaon, Tq. Vaijapur.

3. Learned advocate Mr.S.S. Thombre for the petitioner would vehemently submit that though the consequence of disqualifications are penal, the authorities below have not insisted for having a concrete evidence regarding the alleged encroachment. Inferences have been drawn based on surmises and conjectures. Even the evidence to demonstrate that the petitioner was residing separate from her father-in-law was ignored.

4. No actual measurement was undertaken to ascertain exact area of encroachment. The petitioner could not have been unseated merely on the basis of suspicion. The decision in the matter of *Janabai Vs. Additional*

*Commissioner and Ors., AIR 2018 SC 5068*, does not govern the situation in view of the evidence showing that she has been residing separate from her father-in-law. The orders passed by the authorities are patently illegal and may be quashed and set aside and if necessary, the matter could be remanded for decision afresh by undertaking fresh measurement.

5. Learned AGP supports the orders.

6. Learned advocate Mr. Bhosale for respondent No.6 submits that the petitioner is misusing the process of court. In spite of being a member of the gram panchayat, she has been taking inconsistent stands. She has also indulged in forgery. A bogus copy of ration card has been prepared to demonstrate that she has been residing separate from her father-in-law. The Aadhar enabled distribution system still shows her name in the same ration card, where the name of her father-in-law appears. The copy of ration card that was produced also doesn't find place in the concerned register of the authorities in the list on which the ration cards were issued. Even while submitting the details in the prescribed form while submitting nomination in response to item no.24 regarding 'no dues certificate' of the gram panchayat, she has annexed a certificate in respect of her father-in-law.

7. Learned advocate would further submit that the petitioner has nowhere disputed the result of the panchanama showing some encroachment

over the public property. Her only grievance throughout has been that the property where she has been residing has not been measured and the measurement of her father-in-law's property has been undertaken. He would further submit that a report was submitted by the concerned Block Development Officer to the Tahsildar pointing out that the petitioner herself had objected to and created obstruction in carrying out measurement when the team had reached the spot. He would further submit that a notice has also been issued to her father-in-law under section 52, 53 and 54 of the Act 1958, calling upon him to remove the illegal and unauthorized construction, which has never been controverted. All these facts and circumstances and the material clearly justifies the orders of the Collector and the Divisional Commissioner holding her to have incurred disqualification.

8. I have carefully considered the rival submissions and perused the papers.

9. Apparently, the petitioner is coming with two lines of defences. Firstly, according to her, she has not been residing with her father-in-law in the property which constitutes the alleged encroachment. Secondly, there is no encroachment or the evidence is not sound enough to reach such a conclusion.

10. So far as the first line of the defence is concerned, if really she has been residing separate from her father-in-law, there was no reason why she

would have objected to the measurement when the team has reached the spot as reported by Block Development Officer to the Tahsildar in his communication dated 07-08-2021.

11. A copy of the Aadhar enabled distribution system produced with the affidavit-in-reply has not been controverted. It clearly shows that even in July 2021, her name along with father-in-law appears in the same ration card. Though a copy of ration card has been produced by her showing that the name of her father-in-law does not appear in it, a copy of the extract of the concerned register of the authority issuing the ration cards does not show any ration card having been issued in the name of either her husband or in her own name on the date on which it purports to have been issued i.e. 29-07-2021 from the office of the Tahsildar. Even this copy of extract of register has not been controverted by her.

12. Again, the ration card which is standing in the name of her father-in-law and copy of her ration card bear same serial number, which is also a circumstance which belies her. The respondent has also produced a copy of information submitted by the petitioner while filling the nomination. While responding to column no. 24 regarding 'no dues certificate' of the gram panchayat, she has produced a certificate that there were no dues from her father-in-law.

13.           Apart from the above state of affairs, though she has been coming with a stand that she has been residing separate from her father-in-law, the stand is as vague as it could be. Rather it is an evasive one. She has nowhere not even in the present petition specifically mentioned as to at which address and in which property she has been residing, if she is not residing with her father-in-law.

14.           These circumstances independently and cumulatively are sufficient to discard her first stand.

15.           As regards the actual encroachment, there is no dispute about the fact that the petitioner has not specifically challenged the fact that there is some encroachment made by her father-in-law. Her only grievance seems to be that there is no concrete proof in the form of actual length and breadth. However, the spot panchanama, a copy of which is annexed with petition clearly shows the dimensions and the alleged encroachment.

16.           Again, the gram panchayat has issued a notice to the petitioner's father-in-law under sections 52, 53 and 54 of the Act, 1958 on 19-10-2020 describing the dimension of his property as East-West 30 ft. and South-North 24 ft. but alleges about he having carried out encroachment beyond these dimensions unauthorizely and illegally. If it is read with the panchanama referred to hereinabove, one can easily reached a logical conclusion that the petitioner's father has made encroachment over the adjoining public lane.

17. Having considered these aspects, the material was enough before the authorities below to reach an objective conclusion that there was an encroachment made by petitioner's father-in-law over the adjoining public road and since there is also evidence that she has been staying with him in the same property, in view of the decision in the case of ***Janabai Vs. Additional Commissioner and Ors. (supra)***, even she would incur the disqualification under section 14(1)(j-3) of the Act, 1958.

18. There is no illegality in the orders passed by the authorities.

19. Writ petition is dismissed.

( MANGESH S. PATIL, J.)