

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.936 OF 2022

Alka W/o Vijay Suryavanshi,
Age- 38 years, Occ- Agriculture,
R/o. Nagad, Tq. Kannad, Dist.Aurangabad.

...**PETITIONER**

VERSUS

1. The State of Maharashtra
Through its Principal Secretary
Rural Development Department,
Mantraya, Mumbai.
2. The Additional Divisional Commissioner
Aurangabad.
3. The District Collector,
Aurangabad, Dist. Aurangabad.
4. The Tahsildar
Tahsil Office, Kannad,
Tq. Kannad, Dist. Aurangabad.
5. The Circle Inspector,
Circle Officer, Karajkheda,
Tq. Kannad, Dist. Aurangabad.
6. The Talathi, Talathi Sajja,
Nagad, Tq. Kannad, Dist. Aurangabad.
7. The Block Development Officer
Panchayat Samiti, Kannad,
Tq. Kannad, Dist. Aurangabad.

8. The Extension Officer (Panchayat),
Panchayat Samiti, Kannad, Dist. Aurangabad.
9. The Gramsevak, Grampanchayat,
Nagad, Tq. Kannad, Dist. Aurangabad.
10. Vishnu S/o. Mahadu Sasane,
Age- Major years, Occ- Agriculture,
R/o. Nagad, Tq. Kannad,
Dist. Aurangabad.

...RESPONDENTS

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Mr. S.S. Thombre h/f. Mr. Murlidhar Karad, Advocate for the
Petitioner.

Mr. S.B. Pulkundwar, AGP for Respondents-State.

Mr. C.D. Biradar, Advocate for Respondents No. 7 to 9.

Mr. Deepak Rajput, Advocate for Respondent No. 10

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 25th MARCH, 2022

JUDGMENT :

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

2. By this petition the petitioner challenges the order passed
by the Collector, Aurangabad under Section 14(j-3) and 16 of the
Maharashtra Village Panchayat Act, 1958 (for short 'said Act'), thereby
disqualifying the petitioner from being member of Nagad Gram

Panchayat. The petitioner is elected as member of Gram Panchayat in the general election held in the year 2020. The Respondent No. 10 filed application under Section 14(j-3) and 16 of the said Act contending that the petitioner has incurred disqualification as her husband has encroached on gavthan land. Pursuant to the application, the petitioner appeared and resisted the application contending that the petitioner's husband has purchased the property by way of a registered sale deed on 19.08.1991 admeasuring 48.97 sq. mtrs. The 50% portion of the said property i.e. 24 sq. mtrs was subsequently sold by the husband of the petitioner to his brother. It is further mentioned that the husband of the petitioner has not encroached on any Government property and entry recorded in Form No. 8 of the Gram Panchayat is incorrect and the husband of the petitioner has filed application seeking correction of Gram Panchayat record.

3. On the directions of the Respondent No. 3, the Block Development Officer submitted a report that by making excess construction the husband of the petitioner has encroached on 4.18 feet area in north south direction. Similar report is filed by the Tahsildar.

The Collector after considering the record and hearing the parties, disqualified the petitioner as her husband has encroached on the Government property. The petitioner challenged the order of Respondent No. 3 by filing an appeal before the Respondent No. 2, which is dismissed. Hence, the present petition.

4. Heard the learned advocate for the petitioner, learned advocate for Respondent No. 10 and learned Assistant Government Pleader for State.

5. The learned advocate for the petitioner straneously submitted that the petitioner has not encroached on Government property. The petitioner at the most said to have been encroached on his own property, therefore, Section 14(j-3) of the said Act is not attracted to the facts of the present case. According to him the inquiry report of Block Development Officer as well as the Tahsildar is not submitted after carrying out the measurement of the property of the petitioner's husband, therefore, the same ought not to have been relied upon by the Collector. He further submits that the total area purchased

by the husband of the petitioner was 48.97 sq.mtrs and the petitioner's husband by sale deed transferred area of 24 sq.mtrs to his brother and therefore, the husband of the petitioner is in possession of 24.97 sq. mtr area, therefore, the construction of the petitioner is on his own area and it cannot be termed as an encroachment. He therefore, submits that the Respondents No. 2 and 3 have failed to consider these aspects in the proper perspective and therefore the impugned orders are unsustainable and the same may be quashed and set aside.

6. The learned advocate for respondent No. 10 on the other hand submits that the encroachment on the part of husband of the petitioner is clearly reflected from the report submitted by the Block Development Officer as well as by the Tahsildar. The encroachment is on the Government road, which is on southern side of the property of petitioner's husband. In terms of Section 53 of the said Act, husband of the petitioner has encroached on the Government property and therefore, the Collector has rightly disqualified the petitioner.

7. The learned Assistant Government Pleader by placing reliance on the affidavit in reply filed by Respondents No. 3 and 4 supported the impugned order.

8. The record indicates that the petitioner in reply to the application filed by the Respondent No. 10 has categorically averred that the husband of the petitioner in the year 1991 purchased the plot in question admeasuring 48.97 sq. mtrs (North-South 31 feet and South-West 17 feet), bounded by on East-Government road, West-Compound of S.T Bus Stand, South- Government road and North-open space. It is further stated that half portion of the said plot admeasuring 24.00 sq. mtrs (East-West-17 feet and North-South 15.50 feet), was sold by her husband to his real brother on 07.04.2016.

9. The Respondent No. 7 on actual inspection of plot in question has reported that the shop of husband of the petitioner is admeasuring East-West 16.04 feet and North-South 19.68 feet. The boundaries of it are East- shop of Dhanraj Rathod, West- compound wall of S.T. Bus stand, North- shop of Ramesh Suryawanshi and South-

Government road. The Respondent No.7, therefore, reported that the husband of the petitioner has made 4.18 feet excess construction than his area in north-south direction. The Tahsildar has also submitted a similar report. After selling half portion of the plot to his brother, the husband of the petitioner was having South-West 17 feet and North-South 15.5 feet area, since he has constructed on 19.68 feet towards southern direction, it is clear that he has encroached on the Government road by making excess construction of 4.18 feet. Thus, the fact of encroach of husband of the petitioner on 4.18 feet area towards south i.e. on the Government road is clear from the record.

10. The affidavit in reply filed by Respondents No. 3 and 4 also confirms this fact of encroachment of the husband of the petitioner on Government road on southern side by excess construction of 4.18 feet. In this view of the matter, the respondent No. 3 was justified in disqualifying the petitioner for encroachment made by her husband on Government road. The Respondent No. 2 has rightly confirmed the order passed by Respondent No. 3.

11. In view of the record, it is not possible to accept the arguments of the petitioner that her husband has not encroached on the Government land and he has constructed on his own land purchased by him.

12. Concurrent findings of facts are recorded by the Respondents No. 2 and 3. There is no illegality or perversity in the orders impugned in the present petition. The writ petition being devoid of merits, is dismissed. No costs. Rule is discharged.

[NITIN B. SURYAWANSHI]
JUDGE