

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

WRIT PETITION NO.4138 OF 2022

**SHAMABI GULAB PATHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. Prashant S. Shinde
AGP for Respondents – State : Mr. P. N. Kutti
Advocate for Respondent Nos. 5 to 7 : Mr. T. M. Shaikh

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 06TH APRIL, 2022

PER COURT :

1. The petitioner is aggrieved by order dated 04-02-2022 passed by the District Collector, Aurangabad, thereby disqualifying the petitioner from the post of Sarpanch under Sections 14 and 16 of the Maharashtra Village Panchayat Act, 1958 (for short 'the Act, 1958'). The said order is confirmed in the appeal by the Divisional Commissioner, Aurangabad.

2. The petitioner is directly elected as Sarpanch of Grampanchayat Nandrabad-Kadim Shahpur, Taluka Gangapur, District Aurangabad, in the elections held in 2017. Respondent Nos. 5 to 7 filed application under Sections 14(1)(J-3) and 16 of the Act, 1958 contending that the petitioner by misusing her position as Sarpanch has

encroached on the Government *Gayran* land Gut No.23 and has constructed big onion storage shade and cattle shed and hence, the petitioner be disqualified from the post of Sarpanch and member of Grampanchayat. On 29-06-2020 and 26-06-2021 respondent Nos. 5 to 7 complained to the Collector, Chief Executive Officer, Zilla Parishad, Aurangabad, Tahsildar, Gangapur and Block Development Officer, Gangapur against the petitioner. On the basis of the complaints dated 29-05-2020 and 23-06-2020 the Circle Officer, Shendurvada, Talathi, Saja Puri, Gram Sewak and Police Patil along with respondent Nos. 5 to 7 were asked to remain present on 25-06-2020 for panchanama. Accordingly they all remained present for panchanama. On that day, son of the petitioner Sarpanch Afsar Gulab Pathan, her husband Gulab Hussain Pathan and their relatives did not allow to conduct the panchanama.

On 26-06-2020 the police officers from Gangapur Police Station went to the said spot, at that time husband of the petitioner and other relatives agreed to remove the encroachment of shed. However, in spite of lapse of more than 14 months since then, the encroachment is not removed, and therefore, the petitioner has incurred disqualification under Sections 14(1)(J-3) and 16 of the said Act, 1958.

3. The petitioner resisted the said application by filing written

say wherein the petitioner denied that any encroachment is made by herself or her husband or the family members. The said panchanama is contrary to Form No.8 maintained by the Village Panchayat wherein the encroachment is not recorded in the name of family members of the petitioner.

4. On the directions of the Collector panchanama is conducted by the Circle Officer on 22-07-2021, wherein it is recorded that in the presence of panchas inquiry was made and it was revealed that a big onion storage shed No.1 is erected by Gulab Hussain Pathan. Moin Gulab Pathan informed that onion shed No.2 is of his uncle Nawaz Hussain Pathan and shed No.3 is of Sharif Hamid Pathan. In shed No.1 the Massey Ferguson Tractor, owned by Afsar Gulab Pathan was standing. The encroachers agreed that the encroachment shall be removed within a period of 7 days.

5. The Collector after going through the record came to a conclusion that the petitioner has incurred disqualification on account of encroachment made in the Government *Gayran* land. The order of the Collector is confirmed by the Divisional Commissioner in appeal. The petitioner has challenged both these orders.

6. Heard the learned advocate for petitioner, the learned

advocate for respondent Nos. 5 to 7 and the learned Assistant Government Pleader for respondent – State.

7. According to the learned advocate for petitioner, at the time of conducting panchanama no notice was given to the petitioner or to her family members and at the instance of respondent No.5 to 7 one-sided panchanama was conducted, which should not have been relied upon by the Collector. On this ground alone the matter needs to be remanded for consideration on merits to the Collector, for conducting fresh panchanama after giving opportunity to the petitioner. He further emphasised on the fact that the names of petitioner or her family members are not reflected in Form No.8 maintained by the Village Panchayat as encroachers. He, therefore, submits that the impugned order is unsustainable and the same may be quashed and set aside.

8. The learned advocate for respondent Nos. 5 to 7 on the other hand supports both the impugned orders. He pointed out that during the panchanama the son of petitioner was present and he has admitted the fact of encroachment. He further pointed out that at earlier point of time when the panchanama was sought to be conducted, the petitioner's family members obstructed the same and did not allow the authorities to conduct the panchanama. In that view of the matter the

petitioner is rightly disqualified by the Collector and the said order is confirmed by the Divisional Commissioner by giving cogent reasons.

9. The learned Assistant Government Pleader supports both the impugned orders.

10. It is a matter of record that in the panchanama conducted on 22-07-2021 the fact of encroachment on the part of the husband and relatives of the petitioner is reflected. The submission of the petitioner that the panchanama was conducted without issuing notice to the petitioner or her family members cannot be accepted in the light of the fact that son of the petitioner namely Moin Gulab Pathan was very much present at the time of conducting panchanama and he has signed the panchanama as a panch at Sr. No.3. It is specifically mentioned in the panchanama that onion storage shade No.1 is erected by Gulab Hussain Pathan (who is husband of the petitioner). The tractor of another son of the petitioner namely Afsar Gulab Pathan was parked in Shade No.1. Moin has also admitted that the shed and encroachment shall be removed within a period of 7 days from the date of panchanama. Thus, the encroachment on the Government *Gayran* Land by the family members of the petitioner is proved on record. The Collector was, therefore, justified in passing the order of disqualification of the

petitioner.

11. The submission of the learned advocate for petitioner that the names of family members of the petitioner are not reflected in the record maintained by the Village Panchayat in Form No.8 is also not acceptable as the petitioner being Sarpanch is in control of the record maintained by the village panchayat. Therefore, there is every possibility that the petitioner did not take entry of encroachment made by her family members in the village panchayat record. The fact remains that the name of daughter-in-law of the petitioner is mentioned as encroacher at Sr. No.210 in the encroachment register of the village panchayat.

12. The Collector and the Divisional Commissioner have passed reasoned orders, on the basis of material available with them.

13. No case is made out by the petitioner to interfere in the concurrent findings of facts recorded by both the authorities. The writ petition being devoid of merits is dismissed. No costs.

(NITIN B. SURYAWANSHI, J.)