

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.6416 OF 2021**

Dnyaneshwar Gopal Bhosale,
Age: 44 years, Occu. Agril,
R/o. Horti, Tal. Tuljapur,
Dist. Osmanabad. ..Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai.
2. The Additional Commissioner,
Aurangabad Division, Aurangabad.
3. The Additional Collector,
Osmanabad.
4. Vilas Narsappa Gaikwad,
Age: 48 years, Occu: Agril,
R/o. Horti, Tal. Tuljapur,
Dist. Osmanabad. ..Respondents

**AND
WRIT PETITION NO.10312 OF 2021**

Dnyaneshwar Gopal Bhosale,
Age: 44 years, Occu. Agril,
R/o. Horti, Tal. Tuljapur,
Dist. Osmanabad. ..Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai.
2. The Additional Commissioner,
Aurangabad Division, Aurangabad.
3. The Additional Collector,
Osmanabad.

4. Bebananda Masaji Kambale,
Age: 48 years, Occu: Agril,
R/o. Horti, Tal. Tuljapur,
Dist. Osmanabad. ..Respondents

AND

WRIT PETITION NO.6417 OF 2021

Dnyaneshwar Gopal Bhosale,
Age: 44 years, Occu. Agril,
R/o. Horti, Tal. Tuljapur,
Dist. Osmanabad. ..Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai.
2. The Additional Commissioner,
Aurangabad Division, Aurangabad.
3. The Additional Collector,
Osmanabad.
4. Ashok Keshavaro Rajmane,
Age: 52 years, Occu: Agril,
R/o. Horti, Tal. Tuljapur,
Dist. Osmanabad. ..Respondents

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Mr. Sanjay A. Wakure, Advocate for the Petitioner.
Mr. K. N. Lokhande, AGP for Respondents-State.
Mr. Vikram S. Undre, Advocate for Respondent No.4.

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CORAM : SANDEEP V. MARNE, J.

DATED : 17th NOVEMBER, 2022.

ORAL JUDGMENT:-

1. In these three writ petitions petitioner is aggrieved by orders passed by the Additional Commissioner on 08.03.2021 allowing the appeals filed by respondent no.4 against the orders passed by the Collector on 31.12.2020 disqualifying respondent no.4 from being a member of village

panchayat under the provisions of Section 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1959 (for short 'the Act, 1959').

2. The election of Grampanchayat, Horti was held in April 2019 and respondent no.4 in each of the writ petitions came to be elected as members of the Grampanchayat. Petitioner filed application under Section 14(1)(j-3) of the Act, 1959 seeking disqualification of three members before the Collector, Osmanabad on 03.02.2020. The disqualification was sought essentially on the ground that all the three members had encroached upon Government land. In support of his complaint, petitioner relied upon notices issued by Gram Sevak alleging encroachment and unauthorized constructions as well as site inspection. The Collector proceeded to pass order dated 31.12.2020 disqualifying all the three members. On appeals being preferred under Section 6(2) of the Act, 1959, the order of the Collector have been set aside by the Additional Commissioner, Aurangabad on 08.03.2021. Petitioner is challenging the order dated 08.03.2021 in the present petitions.

3. Appearing for the petitioner, Mr. Wakure, learned counsel would submit that notices issued by Gram Sevak are conclusive proof of indulgence in the activities of encroachment and unauthorized construction on the part of the three members. He would rely upon the panchanama drawn in respect of each of the three members to demonstrate that there

was an encroachment on their part. Mr. Wakure would further submit that the Collector had rightly disqualified all the three members for having made encroachments on the Government land. He would submit that despite the encroachment being conclusively proved, the Additional Commissioner erred in reversing the order of the Collector.

4. Per contra Mr. Undre, learned counsel appearing for respondent no.4 in each of the petitions opposes the petitions and supports the orders passed by the Additional Commissioner. He would submit that petitioner was earlier elected as Sarpanch. However, on account of complaint made against him of having three children, he came to be disqualified and out of sheer vengeance, he filed application seeking disqualification of the three members. Mr. Undre would submit that panchanama was drawn behind the back of his clients. He would further submit that in absence any conclusive proof of encroachment on Government land, disqualification cannot be made under the provisions of Section 14(1)(j-3) of the Act, 1959. He prays for dismissal of the petitions.

5. Mr. Lokhande, learned A.G.P. supports the order passed by the Additional Commissioner and seeks dismissal of the petitions.

6. I have heard the learned counsel appearing for the parties and I have perused the records. Since disqualification is sought under the provisions of Section 14(1)(j-3) of the Act, 1959,

it would be appropriate to reproduce the said provisions as under:

"14. (1)] No person shall be a member of a panchayat, or continue as such, who—
(j-3) has encroached upon the Government land or public property;"

7. Thus for the purpose of disqualification of member of Grampanchayat, it is necessary to establish that he has encroached upon any Government land or public property. I have perused the notices issued by the Gram Sevak to each of the members alleging encroachment and unauthorized construction. However, in that notice there is no specific finding to the effect that there is any encroachment on Government land or public property. The same is the case in respect of panchanama drawn in respect of each of the three members. Even though an allegation is made that they have encroached upon additional portion of land, there is no specific finding to the effect that there is any encroachment on the Government land or public property. In my opinion, therefore, Collector did not have any material before him to arrive at a conclusion that there is any encroachment on the Government land or public property. Despite this position, the Collector has proceeded to disqualify the members only on the basis of the notices of encroachment being issued by the Gram Sevak. The Additional Commissioner, in my view has rightly set aside the orders passed by the Collector.

8. It is settled position that an elected representative cannot be removed in a casual manner. In this regard a reference can be made to the judgment of **Ravi Yashwant Bhoir vs. Chief Minister and others** reported in (2012) 4 SCC 438.

"34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

*35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (vide *Jyoti Basu v. Debi Ghosal*, *Mohan Lal Tripathi v. District Magistrate, Rae Bareilly* and *Ram Beti v. District Panchayat Raj Adhikari*).*

36. In view of the above, the law on the issue stands crystallized to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and

holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected officebearer but his constituency/electoral college is also deprived of representation by the person of their choice.

37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like "no confidence motion", etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period."

9. Applying the said ratio to the present case, members could not have been disqualified in absence of a full and concrete material to the effect that there is any encroachment on Government land or public property.

10. Therefore, no interference is warranted in exercise of writ jurisdiction under Article 226/227 of the Constitution of India.

11. The petitions are devoid of any merits and the same are dismissed without any orders as to cost.

(SANDEEP V. MARNE)
JUDGE