

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

919 WRIT PETITION NO.6419 OF 2021

**ARATI RAVINDRA KADUS
VERSUS
THE ADDITIONAL COMMISSIONER AND OTHERS**

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Advocate for Petitioner : Mr. Rajendra S. Deshmukh, Senior Advocate
a/w. Mr. Ketan D. Pate & Mr. Devang Deshmukh i/by.
Mr. Abhijeet P. Avhad

AGP for Respondent – State : Mr. K.B. Jadhavar
Advocate for Respondent No.3 : Mr. R.R. Khandebharad

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CORAM : SANDEEP V. MARNE, J.

DATE : 15-11-2022

PER COURT :

. By this petition, the petitioner has assailed the order dated 04.05.2021 passed by the Additional Commissioner, Nasik in Grampanchayat Appeal No.3 of 2021 and the order dated 22.01.2021 passed by the District Collector, Ahmednagar in Grampanchayat Remand Application No.29 of 2020. By order dated 22.01.2021 the petitioner has been disqualified to be as Sarpanch of village Sarola Kasar, Tal. and Dist. Ahmednagar on the ground of encroachment on government land. When the petition came up for admission on 28.05.2021, this Court passed the following order.

“Heard. Issue notice to respondents returnable on 15th June 2021. Learned A.G.P. waives service for respondents No.1 and 2.

2. The petitioner was Sarpanch of village Sarola Kasar. The Collector has disqualified her to hold the post of Sarpanch since she was found to have made an encroachment on Government land. The order of the Collector has been confirmed by the Additional Commissioner, Nasik Division, Nasik vide order dated 4/5/2021. Both these orders are under challenge in this Writ Petition. Perused the City Survey map and the relevant statements and the report submitted by the Committee comprising of the Naib Tahsildar, City Survey Officer, Village Talathi and the Gramsevak. As per City Survey map, in between the house property bearing C.T.S. No.268 on one hand and C.T.S. Nos.269 and 275 on the other, there is an open passage belonging to the Government. This passage is said to have been encroached by the petitioner.

3. Perused the statements and the report of the aforesaid Committee. The same indicates that the owners of C.T.S. No.275 have erected a shed in the passage and installed a gate. From the statement, it appears that, the owners of C.T.S. No.275 have created access to their property through this passage. Using the passage for passing and repassing does not amount to encroachment. The father-in-law of the petitioner is shown to be a co-owner of C.T.S. No.275. he is no more. On his demise, the name of the petitioner's husband or anyone else has not been recorded in the City Survey record as his heir/successor-in-interest. The name of the father-in-law of the petitioner himself appears in the City Survey record along with co-owners. The co-owners themselves have claimed to have erected the shed. Both the authorities below have held the petitioner to be an encroacher because her father-in-law was one of the co-owners of C.T.S. No.275, who have erected the shed. The petitioner has not made any encroachment.

4. Till the next date, therefore, there shall be ad-interim relief in terms of prayer clause (C).

5. Stand over to 15th June 2021."

2. The term of office of the petitioner as Sarpanch was from

October-2017 to October-2022 and the same is now reportedly over. It is also submitted by Mr. Deshmukh, the learned Senior Advocate for the petitioner that the election programme for conducting fresh elections has also been declared by the State Election Commission.

3. Another fact which is required to be noted is that the original complainant – respondent no.4 is reportedly dead.

4. Considering the fact that this Court recorded a *prima facie* conclusion in the order dated 28.05.2021 that the petitioner has not made any encroachment coupled with the fact that the term of the petitioner is already over, no fruitful purpose would be served by keeping the present petition pending.

5. Mr. Deshmukh, the learned Senior Counsel expresses a concern that though the term of the office of the petitioner has come to an end, the finding of the encroachment recorded in the impugned order might be used in future against the petitioner and for that purpose, the impugned orders passed by the Collector and the Divisional Commissioner may be set aside.

6. Considering the fact that this Court has already recorded

prima facie finding that the petitioner has not made any encroachment coupled with the fact that the petition is not being opposed on account of death of the original plaintiff i.e. respondent no.4, the impugned orders of the Collector dated 22.01.2021 and the Additional Commissioner dated 04.05.2021 are set aside. Writ Petition is accordingly partly allowed.

(SANDEEP V. MARNE, J.)

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