

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

979 WRIT PETITION NO.6382 OF 2022

Nilabai Arjun Ibitwar
Age 45 years, Occ. Agri and H.H.,
Surpanch, Gram Panchayat Shivani,
R/o. Shivani, Tq. Degloor,
District Nanded.

.. PETITIONER

VERSUS

- 1) Sanjay Gangayappa Mathpati
Age 40 years, Occ. Agri and Business,
R/o Shivani, Ta. Degloor,
District Nanded.
- 2) The Block Development Officer
Panchayat Samiti, Degloor,
District Nanded.
- 3) The Village Development Officer,
Grampanchayat Office, Shivani,
Ta. Degloor, District Nanded.
- 4) The Collector,
Nanded, District Nanded.
- 5) Additional Divisional Commissioner
Aurangabad.

... RESPONDENTS

Shri. A. V. Indrale Patil, Advocate for the petitioner
Shri. S. N. Morampalle, AGP for the respondent/State
Shri. D. B. Rodge, Advocate for respondent No. 1
Mr. S. B. Pulkundwar, Advocate for respondent No.2.

**CORAM : M. G. SEWLIKAR, J.
DATED : 19th AUGUST, 2022**

JUDGMENT :-

1. Rule. Rule made returnable forthwith. With the consent of the parties taken up for final hearing at the admission stage.

2. Facts in brief are that the petitioner was elected as Sarpanch. Respondent No.1 filed an application on 12th July, 2021 contending therein that the petitioner had made encroachment over the government land and that the petitioner does not have wash room in her house.

3. This application was made to the District Collector-respondent No. 4. The District Collector directed the Block Development Officer-respondent No.2 to submit his report. Accordingly Block Development Officer-respondent No.2 submitted the report in which he observed that the petitioner has a house in which there is a washroom. He further observed that the petitioner did not make any encroachment.

4. It appears that the matter was heard and was closed for orders. All of a sudden respondent No.1 filed an application

before the Collector for again calling the report of respondent No.2-Block Development Officer about the encroachment. Respondent No.4-Collector directed respondent No.2-Block Development Officer to give the report regarding the encroachment. This time the Block Development Officer-respondent No.2 gave report about the washroom that the washroom is there in the house of the petitioner. However, he mentioned in his report that the petitioner had constructed washroom on the government land and subsequently she demolished it. He further mentioned that thus there was encroachment but that was removed. The learned Collector after considering the report passed the order and disqualified the petitioner to be a Sarpanch.

5. The Block Development Officer-respondent No.2 has submitted two contradictory reports. The first report was that there was no encroachment and the second report was that there was an encroachment and it was subsequently removed. The respondent No. 3-Collector did not assign any reason as to why he was accepting the subsequent report and rejecting the earlier report. In view of the contradictory reports, it cannot be

said with certainty that the petitioner had made encroachment over the government land. In view of this petition will have to be allowed. Petition is accordingly allowed. Orders of the Collector confirmed by the Additional Divisional commissioner, Aurangabad is set aside.

. Rule made absolute. No costs.

[M. G. SEWLIKAR, J.]

ssp