

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

WRIT PETITION NO.10678 OF 2022

- . Shaikh Jadanbee Shaikh Rais
Age: 39 years, Occu.: Sarpanch,
R/o. Jomala Tq.:Bhokardan,
Dist. Jalna
- .. Petitioner**
[Original Resp. No.1]

Versus

1. The District Collector,
Collector Office, Jalna,
Tq. & Dist. Jalna
2. The Tahsildar,
Tahsil Office, Bhokardan,
Tq. Bhokardan, Dist. Jalna
3. The Block Development Officer,
Panchayat Samiti, Bhokardan,
Tq.Bhokardan, Dist. Jalna
4. The Gram Sevak,
Grampanchayat Office, Garkheda-Jomala,
Tq. Bhokardan, Dist. Jalna
5. Shaikh Mukhtar Shaikh Hanif,
Age: 42 years, Occu.: Agriculture,
R/o. Jomala, Tq.Bhokardan, Dist.Jalna
6. Shaikh Rais Shaikh Bhikan,
Age: 43 years, Occu.: Agriculture,
R/o.Jomala, Tq.Bhokardan, Dist.Jalna
7. Shaikh Rauf Shaikh Bhikan,
Age: 56 years, Occu.: Agriculture,
R/o.Jomala, Tq.Bhokardan, Dist.Jalna
8. Shaikh Salim Shaikh Bhikan,
Age: 51 years, Occu.: Agriculture,
R/o.Jomala, Tq.Bhokardan, Dist.Jalna

.. Respondents

[Resp. No.5 is orig. Applicant
and Resp.no.2,3,4,6 to 8 are
original Resp. No.2 to 7]

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Advocate for Petitioner: Mr. R. V. Gore
AGP for Respondent/State: Mr. K. B. Jadhavar

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CORAM:	ARUN R. PEDNEKER, J.
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Reserved on:	06.12.2022
Pronounced on:	13.12.2022

JUDGMENT:

1. The petitioner is an elected member of village panchayat Garkheda-Jomal and she became Sarpanch of the said panchayat in February-2021.

2. Respondent No.5 filed a compliant before the learned Collector, Jalna under Section 14(1) (j-3) and 16 of the Maharashtra Village Panchayats Act, 1959 seeking a disqualification on the ground that the petitioner has made encroachment over the government land. It has been noted in the complaint that the petitioner has constructed a house at gaathan land admeasuring 15 X 20 feet by committing encroachment. It is the case of the petitioner that on 06.09.2022 the petitioner

appeared before the Collector and on that day it was found that the Block Development Officer / Respondent no.3 had submitted an inquiry report in the complaint. The petitioner then received copy of the inquiry report dated 09.07.2021 and in the said inquiry report spot inspection / panchanama was not submitted. It is the case of the petitioner that the alleged spot inspection was done behind the back of the petitioner and in absence of the petitioner. However, it is stated in the said report that on 06.07.2021 around 03:30 pm measurement was done in respect of house of the petitioner and in the said report it is also stated that there is encroachment on a public road.

3. The petitioner, thereafter, on 20.09.2022 submitted the application before the Collector and requested for re-inquiry / spot inspection as the same was not drawn in her presence and prayed for fresh spot inspection in presence of revenue officers having technical knowledge. The petitioner, thereafter, on 04.10.2022, submitted

another application and prayed for fresh inquiry report and time to file written statement. On 04.10.2022, the Collector, Jalna passed interim order on *Roznama*, thereby, rejecting the request of the petitioner for inquiry on the ground that the request is not legal and then directed the petitioner to submit his written statement. The petitioner has challenged the interim order passed by the Collector on the *Roznama* rejecting her request for re-inspection by filing the present writ petition.

4. Mr. Gore, learned counsel for the petitioner submitted that since the inquiry is behind the back of the petitioner and that the report submitted by Block Development Officer would adversely affect the petitioner in her disqualification case before the Collector, the Collector ought to have accepted the request of the petitioner for re-inspection and fresh report on encroachment. The learned counsel for the petitioner also relies upon the judgment passed by the High Court of Bombay, Nagpur Bench directing

re-inspection of encroached portion by giving notice to the petitioner therein, in case of Lalita Dilip Khandalkar Vs. Additional Commissioner, Amravati Division, Amravati and others, 2019 (6) All M. R. 261, at para 12 has observed as under:

"12. In any case, there is nothing on record to show that the spot inspection and measurement was carried out in the presence of either the respondent no.2 or more particularly the petitioner, who was likely to be adversely affected by the findings in such report."

5. Relying upon the judgment of **Lalita Dilip Khandalkar** (*supra*), the learned counsel submits that the spot inspection has to be necessarily carried out in presence of the petitioner and non compliance of the same would vitiate the inspection report and, therefore, in the interest of justice prayed for a fresh inquiry report in presence of the petitioner.

6. Per contra, Mr. Jadhavar, the learned AGP on perusal of the report pointed out that the report indicates that report dated 09.07.2021 has

been done in presence of the petitioner and her prayer is misconceived.

7. Having considered the rival submissions and the observations in the report as under:-

"सदर तक्रारीच्या अनुषंगाने मी श्री. जि. एस. पाखरे विस्तार अधिकारी (पं) पंचायत समिती भोकरदन व संबंधीत ग्रामसेवक तक्रारदार यांच्यासह दिनांक ०६/०७/२०२१ वेळ ०३:३० वाजता जायमोक्यावर जाऊन तक्रारदार यांनी ज्यांच्याविरुद्ध तक्रार दाखल करण्यात आलेली आहे त्यांचे राहत असलेल्या घराची त्यांची समक्ष न. न. ८ च्या नोंदीनुसार प्रत्यक्ष मोजमाप करण्यात आले व त्याबाबतचे जि. ओ. टॅग फोटो काढण्यात आलेले आहे."

English Translation of the same reads thus:-

"In accordance to said complaint, I, Shri G. S. Pakhare, Extension Officer(P), Panchayat Samiti, Bhokardan and the concerned Gramsevak alongwith complainant went to the spot on date 06.07.2021 at 03:30 hrs. and conducted physical measurement as per exh. no.8 of the residential house of the respondent in their presence against whom the complainant had filed the complaint and G. O. Tag photographs of the same measurement has been snapped."

8. It is seen from the report that the petitioner's house has been measured in the presence of the petitioner herself. The petitioner disputes that the petitioner was present while the

spot inspection was done by Block Development Officer. However, in view of the report containing a statement of presence of the petitioner at the time of spot inspection, it would be a matter of evidence before the Collector, as to whether such report was made in presence of the petitioner. It is only after a finding is recorded that the report is not in presence of the petitioner that further directions can be made towards a fresh inspection report. But in the instant case, since the report itself indicates that the report was made in presence of the petitioner, prima faice, we cannot accept the contention of the petitioner that the report is in absence of the petitioner and direct re-inspection. The same will have to be considered after consideration of evidence on record on the aspect of petitioner's presence at the spot of inspection, at a final stage.

9. In view of the above, this Writ Petition is disposed of.

[ARUN R. PEDNEKER, J.]

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