

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8386 OF 2022

Mrs. Sangita Bhausahab Jagtap ... Petitioner
Vs
Suresh Shantaram Sonawane & Ors. ... Respondents

Mr. N. V. Bandiwadekar i/b. Mr. A. N. Bandiwadekar for the Petitioner
Mr. Satyajeet P. Dighe for the Respondent Nos. 1 & 2
Mr. P. P. Pujari, AGP for the Respondent Nos. 4 & 5

CORAM : NITIN W. SAMBRE, J.

DATED : 18th JULY, 2022

P.C.:

1. Heard.
2. The challenge in the petition is to the impugned order dated 02.06.2022 passed by the respondent no. 4-Additional Commissioner, Nashik Division, Nashik ordering disqualification of the petitioner pursuant to the provisions of section 14(j)(3) of the Maharashtra Village Panchayats Act, 1959 (for short "the Act")
3. The facts necessary for deciding the petition are as under:
4. The respondent nos. 1 & 2 initiated proceedings under the aforesaid provision against the petitioner alleging that petitioner being member of Gram Panchayat of village Satali, Tal. Yeola, District Nashik with her husband has encroached on the gram panchayat land, which is adjacent to the property no. 96. The said proceeding

was resisted by the petitioner and the Additional Collector vide its order dated 18/12/2021 dismissed the said proceedings.

5. The Respondent Nos. 1 & 2 feeling aggrieved, preferred Gram Panchayat Appeal No. 58 of 2022 u/s. 16 of the said Act which is allowed by the respondent no. 4. As such, this petition.

6. While questioning the order impugned, Mr. Bandiwadekar counsel appearing for the petitioner would urge that the disqualification of the petitioner is based on the alleged encroachment on the adjacent gram panchayat land (to that of the gram panchayat property). According to him, the said property which is actually in possession of the petitioner is not hit by any encroachment. He would urge that one Mr. Naguji Kokate has encroached on the government land which is not bearing any property number. The said Mr. Naguji Kokate constructed shed and is operating small unit of iron jali. So as to substantiate the said contentions, he would urge that said Mr. Naguji Kokate has specifically communicated about said encroached area and the same was substantiated by producing the certificate under the Shops and Establishment Act.

7. He would urge that the gram panchayat has already taken note of the same and prayer for regularization of alleged encroachment of

said Mr. Naguji Kokate is under active consideration.

8. According to Mr. Bandiwadekar, respondent no.4-Appellate Authority has committed an error in appreciating the inquiry report dated 03/03/2021 tendered by Extension Officer, Mr. Bhagwan Uttamrao Bacchav.

9. Mr. Bandiwadekar would urge that just because the alleged encroachment on 18 x 25 feet i.e. 450 sq.ft is on the western side of the property no. 96 of the petitioner, it will not lead to infer that same is encroached upon by the of the petitioner. As such, he would urge that the order impugned warrants interference.

10. Mr. Dighe, counsel appearing for respondent nos. 1 & 2 and the AGP would support the order impugned.

11. According to them, the order is based on re-appreciation of the entire material placed on record. He has specifically invited my attention to the finding recorded as regards the illegal structure erected by the petitioner and use of the same.

12. I have considered the rival submissions.

13. It appears that the application for disqualification of the petitioner was moved by the respondents/complainants alleging that the petitioner and her husband has encroched on the land which is owned by the gram panchayat and without the permission of the

gram panchayat alleged construction is carried out. It is also claimed that on the said property petitioner is carrying out certain manufacturing activities.

14. According to counsel for the respondents, respondents had applied to the Block Development Officer for carrying out assessment of the encroached portion on 09.02.2021 and accordingly intimation was given to the gram panachayat.

15. Pursuant to above, it is claimed that the measurement was carried out by the Extension Officer on 03.03.2021 in the presence of the petitioner and her husband, wherein it was noticed that the petitioner has carried out illegal encroachments on 875 sq.ft of land. As such, it is claimed that petitioner has incurred disqualification.

16. The aforesaid claim was resisted by the present petitioner by filing reply, claiming that the claim put forth in the application is false and hence denied. According to petitioner, there is no revenue entry as regards encroachment of the petitioner. So as to substantiate the said claim, Form 8 is relied on.

17. It is also claimed by the petitioner that the complaint is politically motivated. It is the further contention of the petitioner that one Mr. Naguji Kokate has carried out construction on the adjacent property i.e. encroached portion, who is running the establishment

by the name Swara Wires & Industries. So as to substantiate the said claim, license under Shop and Establishment Act issued by the Inspector of Shop and Establishment is sought to be relied on, in which it is claimed that Swara Wires & Industries is run by the said Mr. Naguji Kokate on 22.12.2020. However, it is worth to mention here that the said document viz. certificate issued under Shop and Establishment Act does not bear the date of its issuance.

18. Apart from above, the report of the extension officer in categorical terms speaks of the encroachment carried out by the petitioner.

19. Apart from above, it has to be noted that before carrying out measurement by the extension officer, petitioner was served with notice that said measurement would be carried out on 16.02.2021. It is claimed that the petitioner's husband was hospitalized. However, there is hardly any material on record to justify the said claim.

20. Fact remains that the structure which is constructed on the gram panchayat land is admittedly not sanctioned by any of the authority. If the petitioner has come out with the case that construction is of Mr. Naguji Kokate, burden shifts on the petitioner to prove the same which she has failed to which is rightly held by the Appellate Authority.

21. Neither the license issued under the Shops and Establishment Act nor any other document establishes that encroachment on the gram panchayat's land was that of the 3rd person and not that of the petitioner.

22. The records collected during the inquiry rather expressly demonstrate that the encroached portion being an extension of the extended construction of the petitioner being property no. 96 was at the behest of the petitioner.

23. In the aforesaid background, I hardly see any reason to infer that the Appellate Authority while ordering the disqualification of the petitioner has committed an error in recording that the petitioner has encroached on the gram panchayat land.

24. In that view of the matter, no case for interference is made out. The petition stands dismissed.

(NITIN W. SAMBRE, J.)