

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1362 OF 2022

Sau. Savita w/o Mahesh Bhoyar,
aged about 30 years, occ.
Sarpanch, R/o Gadegaon, Tah.
Hinganghat, Dist. Wardha.

.... **PETITIONER**

// VERSUS //

1. The Additional Commissioner,
Nagpur Division, Nagpur, Old
Secretariate Building, Civil Lines,
Nagpur.
2. The Collector, Wardha, Collector
Office Compound, Civil Lines,
Wardha
3. The Tahsildar, Hinganghat, Dist.
Wardha.
4. The Block Development Officer,
Panchayat Samiti, Hinganghat, Dist.
Wardha.
5. The Gram Panchayat, Gadegaon,
through its Secretary, Gadegaon,
Tah. Hinganghat, Dist. Wardha.
6. The Regional Forest Officer,
(Regional), Gandhibag Rop Watika,
in front of J.B. Science college,
Wardha.
7. Shri Sanjay s/o Madhusudan Giri,
aged about 52 years, Occ Cultivator,
R/o Gadegaon, Tah. Hinganghat,
Dist. Wardha.

.... RESPONDENTS

Shri B.S. Dhandale, Advocate for the petitioner.

Assistant Government Pleader for respondent nos. 1 to 3 and 6.

Shri Ranjeet Singh V. Gahilot, Advocate for respondent no. 7.

CORAM : ROHIT B. DEO, J.

DATED : 09.03.2022

ORAL JUDGMENT :

Heard. **RULE.** With consent, the petition is heard finally.

2. The petitioner is the elected Sarpanch of Gram Panchayat, Gadegaon, Tah. Hinganghat.

3. The respondent 7 Mr. Sanjay Giri preferred an application purportedly under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1958 ('the Act'), seeking disqualification of the petitioner.

4. Perusal of the application preferred by the respondent 7, reveals that the first ground on which disqualification is sought, is that the Sarpanch has committed encroachment on the abadi land by erecting a structure in front of her house. The second ground is that the father-in-law of the Sarpanch Mr. Namdeo Bhoyar has encroached on certain portion of the forest land, which is adjacent to his agricultural field.

5. The Collector was pleased to dismiss the application seeking disqualification. The Collector noted the contents of the report dated 09.06.2021 submitted by the Block Development Officer, which exonerated

the Sarpanch from the charge of the encroachment.

6. Dissatisfied, the respondent 7 preferred an appeal under Section 16(2) of the Act. It appears that certain documents, which were not placed on the record before the Collector, were placed on the record before the appellate authority vide praecipe dated 24.12.2021 and a separate application dated 11.01.2022, was preferred seeking permission to place on the record the said documents. The Sarpanch objected to such course vide her reply dated 31.01.2021. It is not in dispute that no order came to be passed before the final hearing of the appeal, on the said application.

7. It appears that after hearing the parties, the Commissioner allowed the appeal, reversing the order of the Collector and held the Sarpanch disqualified on the premise, that her father-in-law has admitted the encroachment as is discernible from the various documents placed on the record for the first time in the appeal.

8. The Commissioner recorded a further finding that the Sarpanch resides in joint family along with her father-in-law, who allegedly encroached forest land.

9. Perusal of the order rendered by the Commissioner reveals that the entire order is founded on the additional documents, which were placed before him for the first time. In paragraph 5(5), the Commissioner holds that since the documents could not be placed on the record of the Collector, he is

permitting the production of the documents in appeal. In the earlier subparagraph, the Commissioner observes that the factum of encroachment was not established on the record of the Collector. In the same breath, the Commissioner further observed that the encroachment is established in appeal.

10. The Commissioner was deciding an extremely important issue. Curtailment of tenure and that too, stigmatic curtailment, cannot be lightly done. The elected representative is entitled to ordinarily complete his or her tenure, and such is also the expectation and the right of the electorate, which elects the representative.

11. Since I propose to remit the matter to the Collector, I do not wish to make positive observations on the rival contentions. Suffice it to note, that had the Sarpanch known before hand that she would be disqualified only on the basis of the documents, which are obtained under the Right to Information Act and which are placed before the Commissioner for the first time, she may as well have taken certain steps to protect her interest and effectively defend herself against the charge. No further observation is necessary.

12. The order of the disqualification rendered by the Commissioner, is set aside.

13. The order of the Collector is also set aside with a direction that

the entire controversy shall be revisited by the Collector after giving the parties sufficient opportunity to amend the pleadings, if so advised, and to adduce oral and documentary evidence, in support of the rival contentions, if deemed fit. The Collector is expected to accord priority to the adjudication.

14. The petition is allowed in the afore-stated terms.

(ROHIT B. DEO, J.)

Trupti