

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

WRIT PETITION NO. 1496 OF 2021

Shrikrushna Shyamrao Wankhede,
Aged – Major, Occupation – Agriculturist,
R/o Manardi, Post – Jastgaon,
Tq. Sangrampur, District – Buldana.

.... **PETITIONER**

VERSUS

1) Additional Commissioner,
Amravati Division, Camp Area,
Amravati.

2) Additional Collector,
Buldana, District – Buldana.

3) Secretary,
Gram-Panchayat Manardi,
Tq. Sangrampur, District – Buldana.

4) Maya w/o Gautam Sultane,
Aged – Major, Occupation – Labour,
R/o Manardi, Post – Jastgaon,
Tq. Sangrampur, District – Buldana.

.... **RESPONDENTS**

Mr. H.D. Futane, Counsel for the petitioner,
Mr. S.M. Ukey, Addl.G.P. for respondents 1 and 2,
Mr. J.B. Gandhi, Counsel for respondent 4.

CORAM : ROHIT B. DEO, J.
DATED : 6th JANUARY, 2022

ORAL JUDGMENT :

Heard Mr. H.D. Futane, learned Counsel for the petitioner, Mr.

S.M. Ukey, learned Additional Government Pleader for respondents 1 and 2 and Mr. J.B. Gandhi, learned Counsel for respondent 4.

2. With consent, the petition is finally heard.

3. The limited grievance of the petitioner is that the learned Additional Commissioner, Amravati Division, Amravati who is the appellate authority under the provisions of Section 16(2) of the Maharashtra Village Panchayats Act (Act), erred in remanding the appeal preferred by respondent 4-Sarpanch, Gram-Panchayat, Manardi, District Buldhana, challenging her disqualification under Section 14(1)(j-3) of the Act, ordered by the Additional Collector.

4. The petitioner preferred application dated 03-9-2019 under Section 14(1)(j-3) of the Act seeking a declaration that respondent 4 is disqualified since her husband committed encroachment on Government land, and she is residing in the illegally constructed structure. Perusal of the application reveals that there is absolutely no disclosure of the relevant particulars and the application is premised on an omnibus assertion.

5. Respondent 4-Sarpanch contended in her reply that she was

elected as the Sarpanch on 07-10-2017 and neither her husband nor she has committed any encroachment on Government land. She pointed out that the application seeking her disqualification does not even specify the description of the property or land on which the encroachment is committed. She specifically submitted that she and her husband reside in tented premises and the landlord is Rameshwar Kailas Giri. She specifically averred that there is a lease agreement executed even prior to the institution of the proceedings, which would substantiate that she and her husband are tenants of Rameshwar Kailas Giri.

6. The Additional Collector held respondent 4 to be disqualified on the premise that the spot inspection reveals that Shaligram Suryabhan Sultane and Venibai, the father-in-law and mother-in-law of respondent 4-Sarpanch, are shown to be the joint owners of construction assigned property number 187, which stands on Government land. The Additional Collector further observes that according to the inspection report, the Sarpanch and her husband Gautam reside in one room in the said construction.

7. The Additional Commissioner has remanded the matter to the Additional Collector after setting aside the order of disqualification

reasoning that the Additional Collector did not consider, muchless appreciate, the implication of the lease agreement on record.

8. *De hors* the observations of the authorities below, respondent 4 has placed on record certain documents in support of her assertion that the construction which is allegedly effected by her in-laws, is regular and legal.

9. I need not make any observation on the documents now placed before me.

10. The matter is remanded, and I do not see any reason to interfere in such order, particularly since the remand will give an opportunity to the parties to place on record additional material in support of their respective contentions. I note, that the observations of the Additional Collector which are adverse to respondent 4 make out a case which is not even pleaded in the application seeking disqualification.

11. The petition is dismissed.

12. However, the Additional Collector shall permit the parties to file additional pleadings and documentary material in support of their

respective contentions and after hearing the parties, the fresh order shall be rendered within sixty days of the appearance of the parties.

13. The parties shall appear before the learned Additional Collector on 12-1-2022.

JUDGE

adgokar