

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

WRIT PETITION NO.2497 OF 2021

Smt. Indu w/o Rakesh Wanjari,
Aged about 32 years,
Occu: Sarpanch, Gram Panchayat,
Birsi, Post Paraswada,
Tq. & Dist. Gondia. **PETITIONER**

...VERSUS...

1. Additional Commissioner,
Nagpur Division, Nagpur,
Civil Lines, Nagpur,
Tq. & Dist. Nagpur.
2. The Collector, Collectorate Compound,
Gondia, Tq. & Dist. Gondia.
3. Gram Panchayat, Birsi,
Post Paraswada, Tq. & Dist. Gondia,
acting through its Secretary.
4. Airports Authority of India, having its
office at Birsi Airport (Gondia) through
its Asstt. General Manager.
5. Shri Laxmiprasad Rajaram Wanjari
Aged about 55 years,
Occu: Labour, R/o Birsi, Post Paraswada,
Tq. & Dist. Gondia. **RESPONDENTS**

Mr. U. K. Bisen, Advocate for Petitioner.
Ms. Tajwar Khan, AGP for Respondents 1 & 2/State.
Mrs. Shiba Thakur, Advocate for Respondent 5.

CORAM: **ROHIT B. DEO, J.**
DATE: **4th JANUARY, 2022.**

ORAL JUDGMENT:

Heard.

2. Rule.

3. With consent, the petition is finally heard.

4. The petitioner is the Sarpanch of Gram Panchayat, Birsi, who is duly elected as such in the elections which were held in the year 2017.

5. Respondent 5 preferred an application under Section 14 (1) (j-3) of the Maharashtra Village Panchayat Act, 1958 (Act for short) seeking a declaration that the petitioner is disqualified to continue as the Sarpanch on the premise that her husband Mr. Rakesh Wanjari encroached upon government land.

6. It is averred in the application seeking disqualification, that the petitioner and her husband Mr. Rakesh Wanjari constructed a temporary construction (*kutcha* in vernacular) house on gat 308 which is public land vested with the Airports Authority of India. It is further submitted that the

temporary construction is assigned number 521 and is located in Ward 2 of the village and that the petitioner and her husband Mr. Rakesh Wanjari are residing in the said house along with their children. Respondent 5 further averred that the Airports Authority of India issued notice dated 01.08.2018 to Mr. Rakesh Wanjari to remove the said encroachment.

7. The petitioner denied each and every allegation in the application seeking her disqualification. She denied that her husband committed any encroachment on gat 308 owned by the Airports Authority of India. She specifically denied that she and her husband reside in the temporary construction allegedly erected on government land. The petitioner denied that the Airports Authority of India issued notice dated 01.08.2018 to her husband, for removal of the encroachment. The petitioner submitted that she along with her husband Mr. Rakesh Wanjari reside at Birsi Ward 2 since prior to the election and their names are enrolled in the voters list.

8. The Collector referred to several decisions which articulate that even if the husband or family members of the elected representative commits encroachment, the disqualification

follows. The order of the Collector is absolutely unreasoned inasmuch as, after reproducing and extracting certain observations from the decisions, the Collector, without assigning any reason, reaches the conclusion that the petitioner is disqualified.

9. The petitioner preferred an appeal under Section 16 (2) of the Act and sought stay to the order of disqualification. The appellate authority refused to oblige and the petitioner is invoking this court's writ jurisdiction.

10. The respondent 5 has preferred an application for vacating the stay granted by this Court. Considering that the petition assails an interim order of refusal of stay, ordinarily I would have refrained from making any positive observation on the merits of the order of the Collector. However, I am impelled to observe, that the petitioner did demonstrate an excellent *prima facie* case in appeal considering that the order of disqualification is bereft of any reason.

11. The appellate authority erred in refusing to stay the order of disqualification.

12. The order impugned is set aside.

13. The appellate authority is requested to decide the appeal as expeditiously as possible and in any event within the next eight weeks.

14. Till the final decision in appeal, and for a further period of two weeks thereafter if the final order is adverse to the petitioner, the order of disqualification shall remain stayed.

15. The petition is disposed of in the aforestated terms.

JUDGE

NSN