

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

WRIT PETITION NO. 3823 OF 2022

Sunita w/o Dewanand Sakharkar

-- Petitioner

Vs.

Additional Commissioner, Amravati and others -- Respondents

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Amit V. Band, Advocate for Petitioner

Ms. T.H. Khan, AGP for Respondent Nos.1 and 2

CORAM : MANISH PITALE, J.

DATE : 11th JULY, 2022

Heard learned counsel for the petitioner.

2. This petition is challenging order passed by respondent No.2 – Additional Collector, whereby the petitioner stood disqualified to hold the position of Sarpancha of Grampachayat under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1959 and order of the respondent No.1 – Commissioner dismissing the appeal and confirming the order of disqualification.

3. The petitioner was elected as a Sarpancha in the year 2021. The respondent No.4 preferred a complaint before the respondent No.2, claiming that the petitioner stood

disqualified as there was encroachment of Government land. This was contested on behalf of the petitioner.

4. The respondent No.2 took into consideration the material on record and found that father-in-law of the petitioner had indeed indulged in encroachment of Government land. By applying the position of law as laid down by a Three Judge Bench judgment of the Hon'ble Supreme Court in the case of **Janabai Vs. Additional Commissioner and others CIVIL APPEAL NO. 6832 OF 2018**, the respondent No.2 held against the petitioner and declared that she stood disqualified to hold the elected position of Sarpancha.

5. The petitioner filed appeal before the respondent No.1 – Commissioner, which stood dismissed by the impugned order dated 09/05/2022. The respondent No.1 agreed with the findings rendered by the respondent No.2.

6. It was contended on behalf of the petitioner that although the respondent No.1 had called for the record, without waiting for the same, the impugned order dated 09/05/2022, came to be passed, thereby indicating that procedural error was committed by the respondent No.1. It was submitted that when the question of an elected representative being disqualified was under consideration, the respondent No.1 ought to have followed proper procedure and

only upon perusal of the entire record could the appeal be disposed of.

7. This Court has considered the material on record. The respondents, Collector as well as the Commissioner have concurrently found that the father-in-law of the petitioner had encroached upon Government land. These findings of facts are based on appreciation of the documentary material on record, which the petitioner could not satisfactorily rebut before the said authorities or before this Court. In fact, in the nomination paper, it appears that the petitioner had stated the address of the very house of the father-in-law, wherein there was an encroachment on the land of the Government. In the face of such facts, the authorities below correctly applied the ratio of the judgment of the Hon'ble Supreme Court in the case of **Janabai Vs. Additional Commissioner** (supra) and therefore, it cannot be said that merely because the respondent did not call for the records, the appeal could not have been dismissed and the order of the Collector could not have been confirmed.

8. This Court does not find any reason to exercise writ jurisdiction in favour of the petitioner and hence, the writ petition is dismissed.

JUDGE