

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

WRIT PETITION NO. 6678 OF 2022

Jayshree Pramod Burade
Aged about 35 years,
Occ.: Household/Member,
Gram Panchayat Gavhanipani,
R/o. Gavhanipani, Tah. Dhamangaon
Railways, District – Amravati.

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.. Petitioner

Versus

1. The Divisional Commissioner,
Amravati Division, Amravati.
2. The Additional Collector,
Amravati, District – Amravati.
3. The Talathi, Gavhanipani,
Tah. Dhamangaon Railway,
District – Amravati.
4. Gram Panchayat Gavhanipani,
Through its Secretary, Tah. Dhamangaon
Railway, District – Amravati
5. Lalit s/o Vinayakrao Hatwar
Aged : Major, Occ. Agriculturist,
R/o. Gavhanipani, Tah. Dhamangaon
Railway, District – Amravati.

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.. Respondents

Mr. R.D. Karode, Advocate for petitioner.
Smt. M.A. Barbde, A.G.P. for respondent Nos.1 & 2.
Mr. C.R. Sharma, Advocate for respondent No.5.

CORAM : VINAY JOSHI, J.

DATED : 25.11.2022.

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally
with the consent of the learned counsel appearing for the rival parties.

(2) This writ petition raises a challenge to the order dated 15.07.2022, passed by the respondent No.2 – Additional Collector, Amravtai, holding that the petitioner was liable to be disqualified under Section 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1959, (for short 'Act of 1959'), on the ground that she has encroached upon the government land. So also, the challenge is to the order dated 07.10.2022, passed by the respondent No.1 – Divisional Commissioner, Amravati, dismissing the appeal confirming the order of respondent No.2.

(3) The petitioner has been elected as a Member of the Gram Panchayat village Gavhanipani, Taluka – Dhamangaon Railway, District – Amravati, from ward No.2 in the year 2020. Respondent No.5 a voter of said Gram Panchayat has filed an application for disqualification of the petitioner under Section 14(1)(j-3) of the Act of 1959, contending that the petitioner has made encroachment on government land which is a piece of E-Class land out of Gat No.291. In pursuance of the said application, Additional Collector, Amravati, called for the report from Talathi as well as Secretary of Gram Panchayat. In-turn Talathi of village Gavhanipani submitted a report

dated 31.08.2021, stating that the petitioner has encroached upon E-Class government land bearing Gat No. 291. It is reported that a piece of land admeasuring 4.47 H.R. bearing Gat No.291 was E-Class land adjacent to the village. On enquiry and inspection, it was noticed that there was illegal construction of 103 houses including house of petitioner's brother-in-law Prafula Burade and father-in-law Umeshwar Burade. It is reported that though the house constructed on a government land was in the name of Prafula, however, petitioner is jointly residing with him in the said encroached house.

(4) In pursuance of said clear report the respondent No.2 – Additional Collector, has recorded a finding that the petitioner has illegally occupied on Government land resulting into disqualification in terms of Section 14(1)(j-3) of the Act of 1959. Being aggrieved the petitioner has filed an appeal to the respondent No.1 – Additional Commissioner, who has verified the documents and expressed that though the concerned house of Prafula is standing in the name of petitioner's brother-in-law, however, petitioner is staying along with Prafula in said property. He has ascertained that the said house situates at land Gat No.291, which is E-Class Government land.

It is noted that the petitioner has not appeared before respondent No.2 – Additional Collector, despite sufficient opportunity. On that basis, respondent No.1 – Additional Collector has confirmed the order of disqualification passed against the petitioner.

(5) Heard learned counsels appearing for the parties. Mr. Karode, learned counsel appearing for the petitioner submitted that both the authorities erred in holding that the petitioner has encroached upon the Government land. It is contended that the Additional Collector has acted upon the report of Talathi without waiting for the report of Gram Panchayat, Secretary. It is submitted that the report of Talathi was based on record, but he has not verified the position by carrying spot inspection. Secondly, it is contended that though the house of petitioner's brother-in-law Prafula and father-in-law - Umeshwar Burade, situates on the Government land, however, petitioner is residing elsewhere. According to him, without verifying the factual position, she has been illegally disqualified from the post of Member of Gram Panchayat.

(6) Per contra, learned counsel appearing for contesting respondent No.5, strongly supported the impugned orders, it is

contended that the report of Talathi dated 31.08.2021 is clear enough to convey that the area was inspected as well as due enquiry was made. The report bears a list of 103 encroachers including the name of petitioner's brother-in-law and father-in-law. It is submitted that the revenue extract of land Gat No.291, discloses that it is E-Class Government land. He would submit that the petitioner has not established that she is residing separately. Moreover, by placing reliance on the decision in the case of ***Janabai Vs. Additional Commissioner and Ors., 2018 (5) Mh.L.J.***, he would submit that since petitioner has shared an encroached property and resided with others, the provisions of disqualification under Section 14(1)(j-3) of the Act of 1959, would attract.

(7) While assailing the impugned order, it is submitted that while carrying spot inspection, if any, measurements ought to have conducted in presence of the petitioner, otherwise, it is illegal. For this purpose, petitioner relied on the decision of this Court in the case of ***Sau. Lalita Dilip Khandalkar Vs. Additional Commissioner and Ors., 2019 SCC Online Bom 13129***. In case at hand question of ascertaining encroachment by measurement does not arise because the entire house

property was on encroached area. The petitioner's learned counsel has not disputed said position, therefore, being distinct facts, the said decision is not applicable.

(8) The petitioner's learned counsel has submitted that when a person is already declared as encroacher, the question about his disqualification can be decided by filing election petition and his election cannot be set aside by Commissioner. For this purpose, he has relied on the decision of the Hon'ble Supreme Court in the case of *State of H.P. and Ors. Vs. Surinder Singh Banolta, AIR 2007 SCC 903*. The said case is clearly distinguishable on facts, since, herein no such a declaration is made by the authority.

(9) Pertinent to note that the petitioner has not disputed that land bearing Gat No.291, is E-Class Government Land, where the houses of her brother-in-law and father-in-law have been constructed. The limited question arose whether the petitioner was residing along with encroachers. Though, it is submitted that the petitioner was not residing on encroached area however, the petition as well as appeal memo is totally silent as to where the petitioner is residing.

(10) The petitioner's learned counsel has conceded that there is no reference nor a pleading as to where the petitioner is residing. The petitioner could have come up with a case that she is residing separately with her husband elsewhere. Therefore, the logical conclusion is that the petitioner is residing jointly with her brother-in-law and father-in-law as reported by Talathi in his report. In the above referred case of *Janabai Vs. Additional Commissioner and Ors., 2018 (5) Mh.L.J.*, it has been ruled that when a person shares an encroached property by residing their he/she is well covered by Section 14(1)(j-3) of the Act of 1959, attracting the consequence of disqualification.

(11) In view of above, the impugned order calls no interference and accordingly, the petition stands dismissed.

[VINAY JOSHI, J.]

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