

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

937 WRIT PETITION NO. 2903 OF 2023

**SURYKLABAI UDHAV SHINDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the petitioner : Mr.S.S.Thombre
AGP for Respondent-State : Mr.K.B.Jadhavar

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CORAM : ARUN R. PEDNEKER, J.

DATE : 11.04.2023

P.C. :

1] Heard the learned counsel for the petitioner and the learned AGP for the respondent-State.

2] The notice issued to respondent no.9 is returned unserved as he has refused to accept the notice. As there is urgency in the matter, the matter is taken up for hearing with the assistance of the learned counsel for the petitioner and the learned AGP.

3] The petitioner takes exception to the orders

dated 23.06.2022 passed by the District Collector, Aurangabad and the order dated 14.02.2023 passed by the Additional Divisional Commissioner, Aurangabad. The petitioner is disqualified under Section 14 (1) (j-3) of the Maharashtra Village Panchayat Act, 1958 [for short 'the Act of 1958'] for having encroachment on the government land.

4] The petitioner is elected as member of Village Panchayat of Bhindon, Taluka and District Aurangabad from reserved category. The complaint was filed that the petitioner is in possession of the property bearing No.28 admeasuring 600 square feet on the government land. Notices were issued in the said complaint by the Collector and the petitioner submitted his say before the Collector that the property bearing No.28 belongs to his father in law and that it is not a government land.

5] The Collector called report from the Tahsildar and pursuant thereto, the Tahsildar visited the property bearing No.28. The panchanama was conducted and it was found that the property admeasuring 4935 square feet was

in possession whereas as per records, the father in law of the petitioner owns 4590 square feet.

6] Thus, it was observed that the petitioner's father in law is in occupation of the property so also the petitioner is in occupation of 345 square feet in excess land and report was submitted by the Tahsildar to the Collector.

7] Based on the report submitted by the Tahsildar, the Collector held that the petitioner is in possession of 345 square feet and Collector further held that the report of the Tahsildar indicated that excess land i.e. 345 square feet is a government land and as such the Collector disqualified the petitioner under Section 14 [1] [j-3] of the Act of 1958 for having encroachment on the government land. The order of the Collector was upheld by the Appellate Authority. The petitioner has challenged both the orders passed authorities below in the instant petition.

8] Having examined the report of the Tahsildar with the assistance of the learned counsel for the petitioner

and the learned AGP. The Tahsildar has held in the said report that the land of 345 square feet is in occupation of the petitioner's father in law so also the petitioner. Otherwise, there is no observation in the report that the excess land i.e. 345 square feet is a government land or the public property. In absence of such observation, the disqualification under Section 14 [1] [j-3] of the Act of 1958 cannot be fastened upon the petitioner.

9] In view of the same, the order dated 14.02.2023 passed by the Additional Divisional Commissioner, Aurangabad and the order dated 23.06.2022 passed by the District Collector, Aurangabad are quashed and set aside. The matter is remanded back to the Collector to ascertain whether the excess land i.e. 345 square feet, which is in possession of the petitioner, is a government land or a public land. The Collector to decide the remanded matter as expeditiously as possible, after hearing all concerned parties.

10] All contentions are kept open.

11] Writ Petition is disposed of accordingly.

[ARUN R. PEDNEKER]
JUDGE

DDC