

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

902 WRIT PETITION NO.2920 OF 2023

**PRATIKSHA SOPAN KSHIRSAGAR  
VERSUS  
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL SECRETARY AND  
OTHERS**

...  
Advocate for Petitioner : Mr. S.S. Thombre  
AGP for Respondents 1 to 5 : Mr. K.B. Jadhavar  
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**CORAM : ARUN R. PEDNEKER, J.  
DATED : 25/04/2023**

**PER COURT :**

1. Heard the learned counsel for respective parties. The bailiff report shows that the respondent No. 9 has refused to accept the notice in the present writ petition.
2. The petitioner is challenging the order passed by the respondent No. 3 – District Collector, Aurangabad, so also the order passed by the appellate authority, the respondent No. 2 – Additional Divisional Commissioner, Aurangabad, holding the petitioner disqualified under section 14 (1) (J-3) read with section 16 of the Maharashtra Village Panchayat Act, 1958 for having encroached on the Government lands bearing No. 24 and 36.
3. The facts giving rise to the present writ petition can be summarised as under :-

The petitioner was elected as the member of the Village Panchayat Bhindon, Taluka and District Aurangabad from OBC category in the month of January 2021. Thereafter, the petitioner was elected as Sarpanch of the village panchayat. Complaint was filed by respondent No. 9 – Sambhaji

Daulatrao Shinde against the petitioner on the ground that the petitioner has encroached on the Government properties Nos. 24 and 36 and as such, the petitioner be disqualified as a member of Village Panchayat under section 14 (1) (J-3) of the Maharashtra Village Panchayat Act. The Collector called for a report from the Block Development Officer and also response of the petitioner as regards the complaint made against the petitioner.

4. On examination and consideration of the contentions of the parties, the respondent No. 2 - Collector held that the petitioner has encroached upon the properties Nos. 24 as well as 36 and disqualified the petitioner. The appellate authority has also maintained the order passed by the Collector against which the present writ petition is filed.

5. Mr. S.S. Thombre, learned counsel for the petitioner contends that the orders passed by the authorities, disqualifying the petitioner, are erroneous in law. As far as property No. 36 is concerned, the petitioner is found in excess area of 67.5 Sq. Fts. However, there is no findings recorded that the property is government property / public property. In absence of such findings being rendered, the disqualification under section 14 (1) (J-3) cannot be fasten upon the petitioner.

6. As regards property No. 24 is concerned, the learned counsel for the petitioner submits that it was his response before the Collector that the property does not belong to him or the petitioner does not reside in the said property. It was the contention of the petitioner that her cousin father-in-law is the owner of the said property and the petitioner has no concern with the same and as such, the petitioner has not encroached on the said property.

7. Per contra, Mr. K.B. Jadhavar, learned AGP appearing for the State submits that report of the Tahsildar which is at page No. 30 of this petition shows that there is encroachment on the road as far as property No. 24 is concerned. As regards property No. 36, the petitioner is in possession of excess land than what he owns i.e. 67.5 Sq. Fts. and the excess land is the Government land.

8. Having considered the rival submissions and on perusal of the record, as regard property No. 36 is concerned, there is no finding that the excess land of 67.5 Sq. Fts. in possession of the petitioner that the said land is the Government land or the public land and unless such finding is rendered, the disqualification incurred under section 14 (1)(J-3) cannot fasten on the petitioner. As regards property No. 24 is concerned, the Collector called the report from the Tahsildar in respect of the encroachment, which mentions that the encroachment is on the public road. As there is no finding that property No. 24 is owned by Government. On perusal of the Form No. 8, the name of the owner of property No. 24 is shown as Vishwanath Ganpat Kshirsagar, who is the cousin grandfather of the petitioner. Form No. 8 shows that petitioner is not an occupant of the said property No. 24. The Tahsildar has conducted panchanama on the orders of this Court of property No. 24 and the panchanama indicate that in property No. 24 the person residing is the fourth cousin of the petitioner and children of Vishwanath. Photocopy of the panchanama produced by the Tahsildar dated 24.4.2023 drawn by the Tahsildar in the presence of the Gram Sevak as well as other witness is taken on record and the original is returned back to the learned AGP and the same is marked as 'X' for identification.

9. The Hon'ble Supreme Court in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others** reported in [2012] 4 SCC 407 has held at para nos.35, 36 and 37 as under:

*35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (vide Jyoti Basu v. Debi Ghosal, Mohan Lal Tripathi v. District Magistrate, Rae Bareilly and Ram Beti v. District Panchayat Raj Adhikari].*

*36. In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency / electoral college is also deprived of representation by the person of their choice.*

*37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like "no confidence motion", etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period.*

10. In the case of **Sunil Daulat Patil Vs. The State of Maharashtra & others** in Writ Petition No.3419 of 2013, decided on 04.12.2013 held at para nos.14 and 15 :

14. Upon careful perusal of the contents of the notice, which was issued to the petitioner under Sections 7 and 36 of the said Act, it is abundantly clear that there is no mention of any specific chargespoints, which are required to be answered by the petitioner. This Court in the case of **Pratiba Sanjay Hulle Vs. Additional Collector & others** reported in **2010(4)Bom.C.R.700**, more particular, in para No. 36 held that, 'to enable Sarpanch to raise proper defence and explain sufficient cause for his failure to perform any statutory function, he must be informed essentially as regards his failure meaning thereby he must be communicated the specific charges.'

15. In the facts of that case, the allegation was that the petitioner therein i.e. Sarpanch, did not perform his statutory obligation as envisaged under Sections 7 and 36 of the said Act. This Court taking into consideration the fact that the specific charges were not communicated to the petitioner therein, held that enquiry and the order passed against the petitioner therein is vitiated.

11. Thus, in view of the law lay down in the case of **Ravi yashwant Bhoir [supra]** and **Sunil Daulat Patil [supra]** that the charges has to specific and disqualification of elected member is a serious issue. As regards property No. 36 is concerned, the excess land in possession of the petitioner is not proved to be the Government land and the liability cannot be fasten on the petitioner to incur the disqualification under section 14 (1) (J-3) of the Act. The panchanama drawn on indicates that on property No. 24 the petitioner is not in possession of the petitioner and therefore, the liability under section 14 (1)(J-3) cannot be fastened for occupation of property no. 24. Property No. 24 is in possession of a distant cousin of the petitioner.

12. In view of the above, both the orders passed by the authorities below are quashed and set aside and the matter is remitted back to the

Collector to decide it afresh. The complainant would be at liberty to establish before the Collector that in the property No. 24 the petitioner is in the joint possession of the said property. So also it will be open to the complainant to establish that the additional space of 67.5 Sq. Fts in property No. 36 which is in possession of the petitioner belongs to the Government.

13. Writ Petition is disposed of accordingly.

**[ARUN R. PEDNEKER J.]**

ssc/