

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

WRIT PETITION NO. 3861 OF 2023

1. Somabai w/o. Ramesh Kadam .. Petitioners
Age. 50 years, Occ. Household,

2. Achyut s/o. Eknath Bondare,
Age. 44 years, Occ. Agri.,

3. Balaji s/o. Yadu Matore,
Age. 25 years, Occ. Agri.,

All R/o. Dhanora (Makta), Tq. Loha,
Dist. Nanded.

Versus

1. The Additional Commissioner, .. Respondents
Aurangabad Division, Aurangabad.

2. The Collector,
Collector Office, Nanded,
Tq. & Dist. Nanded.

3. Kantabai w/o. Shivdas Gaykhar
Age. 52 years, Occ. Household,
R/o. Dhanora (Makta), Tq. Loha,
Dist. Nanded.

4. Ankush s/o. Shivaji Rathod,
Age. 38 years, Occ. Agri.,
R/o. Shivaji Nagar Tnada, Post Dhanora (Makta)
Tq. Loha, Dist. Nanded.

5. The Sub-Divisional Engineer
Public Works Division Office, Loha,
Tq. Loha, Dist. Nanded.

6. The Block Development Officer,
Officer of Panchayat Samaittee, Loha,
Tq. Loha, Dist. Nanded.

7. The Gramsevak,
Grampanchayat Dhanora (Makta)
Tq. Loha, Dist. Nanded.
[R-7 - Deleted as per order dated 05.04.2023]

Mr.Anil M. Gaikwad, Advocate for the petitioners.

Mr.K.N. Lokhande, AGP for respondent Nos.1,2 and 5.

Mr.V.D. Salunke h/f. Mr.M.P. Kale, Advocate for respondent Nos.3 and 4.

CORAM : KISHORE C. SANT, J.
DATED : 21.06.2023

ORDER :-

01. The petitioners in this petition are elected representatives in the Grampanchayat, Village Dhanora, Tq. Loha, Dist. Nanded. They are declared as disqualified by the learned Collector, Nanded vide order dated 02.12.2022 to be members of Grampanchayat under section 14(1) (j-3) of the Maharashtra Village Panchayats Act for having encroached upon Government/ public land. In the appeal, said order has been confirmed by the Additional Divisional Commissioner-1 vide order dated 13.03.2023.

02. The facts in short are that all the petitioners came to be elected as

members to village Panchayat Dhanora. Respondent No.3 filed a dispute before the learned Collector, Nanded alleging that the petitioners have violated section 14 (1) (j-3) of the Act. It is stated that these petitioners have encroached upon main District road No.28 to the extent of 50 ft. and thus have incurred disqualification. Petitioner No.1 is alleged to have a property bearing No.646. She has committed encroachment to the extent of 27 ft. by making RCC construction. The brother of petitioner No.2 is alleged to have property No.578. He is alleged to have committed encroachment on Road No.28 to the extent of 29 ft. The father of petitioner No.3 - owner of property No.559 has committed encroachment on the said road to the extent of 29 ft. and has constructed a house and toilet. The notices were, therefore, issued by the Sub-Divisional Engineer, Public Works Department, Sub-Division, Loha to various persons including petitioner No.1 and brother of petitioner No.2, as also petitioner No.3.

03. On receiving a complaint on 27.07.2021, the learned Collector issued notices and heard the parties. The Collector relied upon a report prepared and submitted by the Block Development Officer dated 21.04.2022 and came to a conclusion that there is an encroachment committed by

petitioner No.1 and relatives of petitioner Nos.2 and 3 as stated above. It is further observed that petitioner No.2 though is residing as a tenant in his brother's property, but still he is aware of the encroachment.

04. In the appeal, the learned Commissioner confirmed the order passed by the learned Collector.

05. The learned Advocate for the petitioners submits that in-fact there is no encroachment made by the petitioners on the public road or the Government property. The Public Works Department could not give details under the Right to Information Act. The Dy. Engineer (Constructions), Zilla Parishad, Loha clearly stated in his communication dated 08.11.2021 that the information cannot be furnished as the information does not come under his jurisdiction since the information is about the acquisition of land for the road. He submits that thus the authorities issuing notice could not furnish proper information. He submits that the Block Development Officer submitted a report dated 04.04.2022 showing different properties than mentioned by the learned Collector in the operative order. Thus, the property in respect of which encroachment is shown in the order of the learned Collector differs in

particulars and therefore submits that the action is totally illegal.

06. The learned AGP submits that the properties mentioned in the learned Collector's order and the Block Development Officer are in-fact one and the same. There is typographical error while typing the order and justifies the order passed by the Collector.

07. The learned Advocate for respondent Nos. 3 and 4 vehemently opposes the petition. He submits that the notices issued to the petitioners/their relatives, clearly show that the properties are the same. The panchanama also bears numbers of the property correctly. He further points out that even the petitioners/relatives have signed panchanama dated 10.03.2022. At the time of panchanama, no objection was raised. Thus, he submits that the petitioners now cannot raise any dispute about identity of properties.

08. Considering the submissions, this Court finds that the learned Collector had given opportunity to the petitioners and respondent Nos.3 and 4 and thereafter has passed the order. Except pointing out typographical

mistake the petitioners could not point out any other mistake committed by the Authorities. What is sought to be canvassed is that the complainants i.e. respondent Nos.3 and 4 have not produced anything on record in the form of a map or land record. This Court finds that the learned Collector has also considered this argument. The learned Collector has rightly come to a conclusion that the petitioners are disqualified.

09. On going through the order passed by the learned Additional Commissioner, Aurangabad, this Court finds that he has also rightly applied his mind to the facts of the case. So far as contention of the petitioner that the panchanama is of different properties, does not hold any water, as the respondents have shown from the notice and from other documents like panchanama etc. that in the Collector's order, there is only typographical mistake. This Court finds that when both the authorities have rightly applied their mind and have rightly come to a conclusion that the petitioners have incurred disqualification, this Court need not interfere in the said finding, merely because there is typographical mistake in the learned Collector's order.

10. The learned Advocate for respondent Nos. 3 and 4 relied upon

recent judgment delivered by this Court in Writ Petition No.4758 of 2022 in the case of Sonali Gajanan Dhepe & Anr. Vs. The Additional Divisional Commissioner, Aurangabad Division, Aurangabad and Ors. In similar facts and circumstances, this Court had rejected the writ petition. This Court has taken similar view in the facts and circumstances of the case and there is no reason for taking different view.

11. Therefore, for the reasons discussed above, the writ petition is dismissed with no order as to costs.

[KISHORE C. SANT, J.]