

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

919 WRIT PETITION NO.7959 OF 2023

Jyoti Satish Sandanshiv,

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department
Mantralaya, Mumabai-32

...RESPONDENTS

2. The Additional Commissioner,
Nashik Division, Nashik

3. The District Collector,
Jalgaon

4. The Chief Executive Officer,
Zilla Parishad, Jalgaon

5. The Block Development Officer,
Panchayat Samiti, Parola
Dist. Jalgaon

6. Gram Sevak,
Grampanchayat, Village Mhasve
Parola, Dist. Mukhed

7. Madhuri Khandu Pawar

Mr. N. L. Chaudhari, Advocate for the petitioner

Mr. M. L. Sangit, Advocate for respondent Nos. 7

Mr. S. B. Pulkundwar, AGP for the respondents/State

AND
920 WRIT PETITION NO.7960 OF 2023

Jyotsana Sunil Pagare

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department
Mantralaya, Mumabai-32
2. The Additional Commissioner,
Nashik Division, Nashik
3. The District Collector,
Jalgaon
4. The Chief Executive Officer,
Zilla Parishad, Jalgaon
5. The Block Development Officer,
Panchayat Samiti, Parola
Dist. Jalgaon
6. Gram Sevak,
Grampanchayat, Village Pimpri
Parola, Dist. Mukhed
7. Pramod Ramlal Patil
8. Ramikrishna Gambhir Patil
9. Gopal Bhaidas Patil

...RESPONDENTS

Mr. N. L. Chaudhari, Advocate for the petitioner
Mr. M. L. Sangit, Advocate for respondent Nos. 7 to 9
Mr. K. N. Lokhande, AGP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 24th JULY, 2023

P. C.

1. Both these petitions can be conveniently disposed off as the facts are similar. The petitioners are elected as Sarpanch. Later on, complaint came to be filed before the Collector, Jalgaon with a prayer to declare the petitioners as disqualified for committing encroachment under Section 14 (J-3) of the Maharashtra Village Panchayats Act.

2. The Block Development Officer was directed to hold an enquiry about encroachment. Learned Block Development Officer submitted a report that the person who have allegedly made encroachment are elected Sarpanch. Their ration cards are also different and therefore it is not the encroachment by the persons who are holding the posts as Sarpanch. The learned Collector however, considering the said report held that encroachment by any of the members of the family or relatives also attracts disqualification and passed the order on 24-03-

2023. The petitioners therefore, filed an appeal Nos. 50/2023 and 53/2023 before the Additional Commissioner, Nashik Division, Nashik. The learned Additional Commissioner Nashik Division, Nashik by order dated 19-05-2023 rejected the applications for stay. It is submitted by the learned advocate for the petitioners that when in the report of Block Development Officer it is clearly stated that the person who have committed encroachment are residing separately and they are not members of the joint family on the basis of ration card, it was necessary for the learned Collector to reject disqualification. He further submits that in any case when the appeal is pending it was necessary for the Commissioner to stay the effect and operation of the impugned order passed by the learned Collector.

3. Learned advocate for respondent No. 7 in wp/7959/2023 and 7 to 9 in wp/7960/2023 vehemently argued that the learned Collector has rightly considered the report of the Block Development Officer. He relies upon the judgment in the case of Janabai Vs Additional Commissioner and others

passed by the Hon'ble Apex Court in SLP (Civil) No. 24212/2017 wherein the Hon'ble Apex Court has considered the object of the act. It is held that even if the encroachment is by any of the relatives still attracts the disqualification to a person holding the elected post.

4. Learned AGP also vehemently opposed the petitions stating that appeal is still pending before the learned Additional Commissioner. It is discretion of the learned Commissioner to grant stay by considering facts and materials on record. No illegality is committed by the learned Additional Commissioner.

5. Considering the above position, this court finds that since the appeals are pending before the learned Additional Commissioner, Nashik Division, Nashik, it would be in the interest of justice to direct the learned Additional Commissioner, Nashik Division, Nashik to decide the appeals within eight weeks from today. This court finds that no case is made out to grant urgent relief. Hence, the following order:-

ORDER

- a. Writ petitions stand partly allowed in terms of prayer clause-E.
- b. The learned Additional Commissioner, Nashik Division, Nashik is directed to decide the appeal Nos. 50/2023 & 53/2023 till 31-08-2023.
- c. With this, writ petitions stand disposed off.

[KISHORE C. SANT, J.]

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