

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

21 WRIT PETITION NO.8089 OF 2023

1. Sushila W/o. Vinod Chavan, ...**PETITIONER**

VERSUS

1. The Additional Divisional Commissioner-1,
Aurangabad ...**RESPONDENTS**

2. The District Collector,
Nanded, Dist. Nanded

3. The Block Development Officer,
Panchayat Samiti Bhokar,
Tq. Bhokar, Dist. Nanded

4. The Forest Officer,
Forest Division, Nanded
Tq. & Dist. Nanded

5. Gramsevak Grampanchayat Chidgiri,

6. Pravin Uttamrao Chavan

Mr. R. V. Gore, Advocate for the petitioner

Mr. K. B. Jadhavar, AGP for the respondents/State

Mr. S. S. Deshmukh, Advocate h/f Mr. Ashish Shinde, advocate
for the caveator

CORAM : KISHORE C. SANT, J.

DATE : 12th JULY, 2023

P. C.

1. Heard the parties.
2. The petition is taken for final disposal by consent of the parties.
3. The petitioner had challenged the impugned judgment and order dated 03-07-2023 passed by the learned Additional Divisional Commissioner, Aurangabad rejecting the her appeal and order passed by the learned Collector, dated 14-03-2023 holding that petitioner is disqualified to hold the post of Sarpanch of Grampanchayat Chidgiri, Tq. Bhokar, Dist. Nanded.
4. Facts in short are that; the petitioner was elected member and later on came to be elected as Sarpanch of the village. Respondent No. 6 filed a dispute before the Collector under section 16 of the Maharashtra Village Panchayats Act on the ground that the husband of the petitioner has encroached

upon the forest land and has incurred disqualification under section 14 (j)(3). The authorities have held that there is an encroachment on the forest land caused by the husband of the petitioner and held her to be disqualified.

5. Learned advocate for the petitioner submits that while passing the order there was no sufficient material and evidence before the learned Collector, Nanded. The learned Collector, Nanded has relied upon the report submitted by the Range Forest Officer, Nanded. He submits that panchanama is not drawn in her presence and therefore such panchanama cannot be relied upon. Further report was called from Block Development Officer. However, the Block Development Officer has also submitted report based upon the letter received from the Range Forest Officer. He thus criticized the judgment.

6. The learned advocate for respondent No. 6 submits that both the authorities have recorded finding and cannot be gone into while exercising the writ jurisdiction under Article 227

of the Constitution of India. He submits that when there is specific allegation, it was necessary for the petitioner to deny the allegation. From the defense it clearly appears that there is no specific denial of the allegation. Denial is general and not specific. Looking to the nature of the enquiry i.e. summary enquiry no more enquiry was expected. He submits that in any case in absence of pleading the case of the petitioner cannot be accepted that he is in possession of the land Block Gut No. 217 and this ground is being raised for the first time and cannot be accepted. He further submits that for preparing report no hearing is required of the petitioner though the alleged encroachment is by the husband of the petitioner. In view of the judgment in the case of Janabai Vs Additional Commissioner and Others reported in (2018) 18 SCC 196 even the encroachment by any of the relatives of the members of the family is sufficient to disqualify the member. He further relied upon the judgment in the case of Suvarna Prakash Patil Vs Anil Hindurao Powar and others reported in 2004 (1) MHLJ 1062.

7. Learned AGP supports the order stating that both the authorities have rightly passed the order and since there is concurrent findings this court need not interfere in the impugned orders.

8. In rejoinder the petitioner relies upon the judgments of this court in the case of Lalita Dilip Khandalkar Vs Additional Commissioner, Amravati Division, Amravati and others reported in 2019 DGLS (Bom) 1463 and in the case of Subhash Krushnarao Khartadkar Vs Divisional Commissioner, reported in 2022 DGLS (Bom) 2894. He also relies upon the judgment in the case of Ravi Yashwant Bhoir Vs District Collector, Raigad and others reported in 2012(3)AIR Bom R 552. On the strength of these judgments he submits that it was necessary for the respondent authorities to obtain a specific report. From the judgment in the case of Lalita Dilip Khandalkar (supra) he submits that specific notice was required to be given before the spot inspection and to ascertain the fact of encroachment. By relying upon the judgment in the case of *Subhash Krushnarao*

Khartadkar (supra) he submits that the learned Collector had directed the SDO calling for report as to whether report however without waiting for the said report he proceeded with the judgment.

9. This court finds that the letter dated 18-10-2022 is not calling for the report but it is only in respect of query that is made as to whether the said encroachment can be regularized. Thus, report was not called to verify whether there is encroachment or not. On the contrary it proceeds on the footing that whether encroachment can be regularized. Before the Collector there is no specific denial. It can be gathered that she has accepted the encroachment.

10. After going through the submissions and the judgments relied upon by the parties, this court finds that an enquiry contemplated under Section 16 is in the nature of the summary enquiry. In this case once report/letter was given by the Forest Officer that was sufficient to come to a conclusion

that there is an encroachment. No further enquiry is necessary. If the arguments of the petitioner is accepted then enquiry would become lengthy. Looking to the time consumed and looking to the denial of the members of the panchayat such enquiry is not expected.

11. Considering the above, this court finds that no case is made out to call for interference in the impugned judgment and order. Therefore, the petition stands dismissed.

12. No order as to costs.

[KISHORE C. SANT, J.]

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