

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8956 OF 2023

Sunita w/o Ramkrushna Pandalwad,
Age; 39 years, Occ; Business & Sarpanch
R/o; Bori (Kd), Tq. Kandhar,
District; Nanded.

**...PETITIONER
(Ori. Resp.No.1)**

V E R S U S

- 1) The State of Maharashtra
Through its Secretary
Rural Development Department
Mantralaya, Mumbai-32.
- 2) The Additional Divisional Commissioner,
Aurangabad Division, Aurangabad.
- 3) The Collector, Nanded.
- 4) The Block Development Officer,
Panchyat Samiti, Kandhar,
Tq. Kandhar, Dist. Nanded.
- 5) Gangadhar s/o Satwaji Munde
Age; 55 years, Occ; Mistry,
R/o; Bori (Kh.), Tq. Kandhar,
Dist. Nanded.

**...RESPONDENTS
(Resp.No. 5 Orig.
Appellant)**

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Advocate for Petitioner : Mr. H.I.Pathan
AGP for Respondent Nos. 1 to 3 : Mr. K.B.Jadhavar
Advocate for Respondent No. 4 : Mr. S.B. Pulkundwar
Advocate for Respondent No. 5 : Mr. J.M. Kurkute

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CORAM : KISHORE C. SANT, J.

Date :- 09.08.2023

JUDGMENT :

1. Rule. Rule made returnable forthwith by consent of the parties.
2. The petitioner before this Court is an unsuccessful member of the Grampanchyat, who is declared as disqualified by Respondent No. 2, the Additional Divisional Commissioner, Aurangabad by setting aside the judgment and order passed by Respondent No. 3, the Collector, Nanded, by which the Collector had held that the Petitioner is not disqualified as there is no sufficient material to hold that the Petitioner or his family members have encroached upon the Government/public land.
3. The Petitioner was elected as a member of Grampanchyat Bori (Kh.), Tq. Kandhar, Dist. Nanded in the election held in March, 2021. Thereafter, she also became the Sarpanch by way of election amongst the members of the Grampanchyat. Respondent No. 5 filed a dispute under Section 14 (1) (j-3) of the Maharashtra Village Panchyats Act (for short "the Act"), stating that the house in which the Petitioner resides is constructed on the excessive area than permissible. It is held that there is encroachment on the Government/public land.
4. The Collector on receipt of the dispute filed against two persons including present Petitioner dated 28.03.2022, called report from

the BDO. The BDO, on the basis of inspection conducted by the Deputy Engineer of Zilla Parishad (Construction), Sub Division, Kandhar, District Nanded submitted a report that there appears to be an excess construction on the Government/public land.

5. It is specific say of the Petitioner that there is no any encroachment made on the Government/public land. The learned Collector on going through the report submitted by the BDO held that a further report is necessary and called for a specific report by communication dated 20.06.2022. Pursuant to the said communication, the BDO directed the Deputy Engineer of Zilla Parishad (Construction), Kandhar to submit a specific report, which was specifically sought for, as to whether the father-in-law of the Petitioner has encroached upon the public/Government land. Along with that letter even Namuna No. 8 was also sent in respect of the residential property wherein the Petitioner resides.

6. The Deputy Engineer of Zilla Parishad (Construction), on visiting the spot and drawing the panchanama specifically answered that the house property of the Petitioner does not come on the road.

7. The learned Collector on considering all the material, specifically recorded that no encroachment of the house property is on the public/Government land. He allowed the dispute only to the extent of another member namely Chhaya Tokalwad and rejected the dispute to

the extent the Petitioner by order dated 05.01.2022.

8. Respondent No. 5 challenged the order of the Collector by filing an appeal before the Additional Divisional Commissioner, Aurangabad. The said appeal came to be allowed by holding the petitioner to be disqualified under Section 14 (1) (j-3) of the Act.

9. The learned Advocate for the Petitioner submits that there is no any specific report or finding that there is any encroachment on the public/Government land, assuming that there is encroachment and it is not in fact an encroachment and as per the report it is only an excess construction. He thus, submits that there is no question of incurring disqualification of the petitioner as there is no encroachment found on the public/Government land or road. The provisions of Section 10 (1)(j-3) of the Act is attracted only if there is an encroachment found on the public/Government land. He submits that the learned Collector has rightly appreciated the report and recorded the finding that there is no encroachment on the public/Government land.

10. The learned Additional Divisional Commissioner, however, without sufficient reason and sufficient material on record has set aside the finding of the learned Collector without any cogent reason. The learned Advocate thus, prays for quashing and setting aside the order passed by the learned Additional Divisional Commissioner, Aurangabad.

11. The learned Advocate for respondent No. 5 opposes the petition. He submits that there is clear report showing that the construction of the Petitioner's house is found in excess. If the construction is in excess, it has to be on the Government or the public land. The learned Collector had wrongly appreciated the report and has wrongly come to the conclusion, which has rightly set aside by the learned Additional Divisional Commissioner. There is encroachment to the extent of 75 feet. When the report was there, the learned Collector has relied upon the affidavit filed by the Petitioner and has arrived at a wrong conclusion. The learned Additional Divisional Commissioner has rightly appreciated the report.

12. The learned AGP also supports the impugned order.

13. Considering the record and the documents produced before this Court, this Court finds that the finding of the learned Collector is mainly based upon first report submitted by the BDO and secondly on the second report which was submitted by the Deputy Engineer of Zilla Parishad (Construction). In first report no specific opinion was formed, therefore, the learned Collector rightly called for second report. Therefore, this Court finds that the learned Collector rightly recorded that there is specific answer by the Deputy Engineer of Zilla Parishad (Construction), that no encroachment is found on the Government/public land. There is no material to show that the said report is incorrect. There is also no

other material to show that there is encroachment on the public/Government land. The learned Additional Divisional Commissioner, however, has only taken in to consideration that there is a report that some excessive construction was made. For the purpose of Section 14 (1) (j-3) what is material is the encroachment on the public/Government land. Any encroachment or excessive construction cannot incur disqualification under this Section. To make public representative unseat is serious thing. It was necessary, therefore, to look into the material carefully before passing an order. In this case it is found that the material aspect is not looked into by the learned Additional Divisional Commissioner, Aurangabad and only recorded that some excessive construction was found. This Court finds that it was not sufficient to come to the conclusion that the Petitioner has incurred disqualification thereby. This Court, thus, finds that a case is made out to allow the Writ Petition. The impugned Judgment and order is, therefore, quashed and set aside. The Writ Petition thus allowed in terms of prayer Clause -(C).

(KISHORE C. SANT)
JUDGE