

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

WRIT PETITION NO. 9279 OF 2023

- | | | | |
|----|--|----|-------------|
| 1. | Saber s/o. Siraj Khan Pathan
Age. 37 years, Occ. Sarpanch,
R/o. Village Abdimandi,
Daulatabad, Tq. & Dist. Aurangabad. | .. | Petitioners |
| 2. | Shagufta w/o. Saber Khan Pathan
Age. 26 years, Occ. Upsarpanch,
R/o. Village Abdimandi,
Daulatabad, Tq. & Dist. Aurangabad. | | |

Versus

- | | | | |
|----|--|----|-------------|
| 1. | The State of Maharashtra
Through Department of Rural Development,
Mantralaya, Mumbai – 32. | .. | Respondents |
| 2. | Principal Secretary,
Department of Rural Development,
Mantralaya, Mumbai – 32. | | |
| 3. | The Divisional Commissioner,
Aurnagabad. | | |
| 4. | The District Collector, Aurangabad,
Dist. Aurangabad. | | |
| 5. | The Tahsildar, Aurangabad,
Tq. & District Aurangabad. | | |
| 6. | The Block Development Officer,
Panchayat Samiti, Aurangabad,
Tq. & District Aurangabad. | | |

7. The Circle Officer,
Bhavsingpura, Aurangabad.
8. The Gramsevak, Gram Panchayat,
Abdimandi, Tq. & District Aurangabad.
9. Shaikh Siraj s/o. Shaikh Tamijjoddin,
Age. 52 years, Occ. Agri.,
R/o. Village Abdimandi,
Daulatabad,
Tq. & District Aurangabad.

Mr.D.P. Palodkar, Advocate for the petitioners.
Mr.K.B. Jadhavar, AGP for the respondent/State.
Mr.R.V. Gore, Advocate for respondent No.9.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	04.08.2023
PRONOUNCED ON	:	13.09.2023

PC :-

01. This petition is filed by the Sarpanch and Upsarpanch of the Grampanchayat, Abdimandi, who have been declared to be disqualified to be Members of Grampanchayat by judgment and order dated 17.07.2023 passed by the learned Additional Divisional Commissioner, Aurangabad in Appeal bearing outward No.2023/Grampanchayat/Appeal.2/CR.27. Respondent No.9 is original complainant, who raised dispute before respondent No.4 – Collector. Respondent No.4 rejected the dispute. In appeal, the learned Additional Divisional Commissioner – respondent No.3 allowed the appeal of respondent No.9 as stated above.

02. The facts in short are that the petitioners are residents of village Abdimandi and are husband and wife. They contested the election to the Grampanchayat and got elected as Members, in January, 2021. After the elections of the Members, they came to be elected as Sarpanch and Dy. Sarpanch respectively by the Members.

03. Respondent No.9 filed a dispute before the Collector stating that the petitioners have incurred disqualification under section 14(1)(j-3) of the Maharashtra Village Panchayats Act. It is alleged that real mother of petitioner No.1 is owner and possessor of land admeasuring 941 sq. ft. (15 sq.ft. x 64 sq.ft.) in village Abdimandi. However, by making encroachment on the public land, she got her house extended to the extent of 15 sq.ft. x 95 sq. ft. Further, it is alleged that both the petitioners have constructed house without obtaining permission from the Grampanchayat. They have also encroached upon public road and taken bore well in front of their house. It is further alleged that the petitioners have misused power by overwriting in the proceeding book of monthly meeting held on 08.03.2021. On the proposal No. 6 and 12 now entry is taken on the basis of gift-deed. However, there is

copy of the gift deed on record.

04. After receipt of complaint/dispute, the learned Collector directed inquiry and called for report from respondent No. 5 – Tahsildar, Aurangabad. The Tahsildar submitted his report. The Tahsildar in his report submitted that no encroachment by the petitioners is found. The Block Development Officer also submitted a report to the Collector. In the report of the Block Development Officer, he submitted that petitioner No.1 and his wife are staying on rent in the house of some other person. The panchanama was also drawn on 27.05.2022 by the Circle Officer and report was submitted. In the said panchanama, it is recorded that in the land CTS No.118, construction is found to the East-West 89 ft. and South-North 15.5 ft. As per Grampanchayat record, said property stands in the name of Sagirkhan Harunkhan Pathan. The alleged bore-well is not found on the spot as concreting is on road. However, respondent No.9 produced photograph before construction of the road showing bore well. A report was submitted to the Tahsildar. In the said report, it was submitted that the measurement in the actual land does not tally with the record. In Form No.8 register, the area of CTS No. 182, 183, 187, 184 and 188 is found to be recorded more than actual possession of the

petitioners.

05. On receiving the report, the learned Collector recorded that respondent No.9 himself has committed forgery by using forged seal of the Grampanchayat and got forged signature of Gram Sevak done on the same. There was also complaint filed against him for the offence punishable under section 420, 468, 469, 471, and 473 of the Indian Penal Code. It is reported that no bore well is found as per photograph produced by respondent No.9. He also recorded that no encroachment is found by him by the petitioners and rejected the dispute by judgment and order dated 17.02.2023.

06. Respondent No.9, therefore, filed an appeal before respondent No.3. The Additional Divisional Commissioner after hearing the parties decided the appeal. On going through the record and reports, respondent No.3 held that the petitioners have incurred disqualification under section 14(1) (j-3) of the Act and allowed the appeal. It is observed that the petitioners have got documents fabricated. The area of land CTS No.186 is shown to have been increased in the record by fabrication. So far as record of CTS No.118 is concerned, there is also fabrication and allowed the appeal.

07. The learned Advocate for the petitioners Mr. Palodkar vehemently submitted that the findings recorded by the learned Additional Divisional Commissioner are not as per the record. The report of the Circle Officer is wrongly considered without making actual measurement. He submitted that the changes are in-fact effected by following proper procedure in the record of the Grampanchayat. Respondent No.9 has a grudge in his mind as his wife is defeated in the election. There was also a notice issued by the Grampanchayat to the respondent for making illegal construction on his land. The Collector after calling for the record had decided the dispute. The properties on which the encroachment is alleged are the properties belonging to the relatives. Petitioner Nos.1 and 2 are in-fact residing in a rented premises and that is rightly considered by the Collector. When finding of encroachment is to be recorded, there has to be strict proof of fact before recording such finding. In this case the finding of encroachment is recorded very rightly. He thus prays for allowing the petition by quashing and setting aside the impugned judgment and order.

08. The learned Advocate Mr. Gore opposes the petition stating that

the petitioners are coming with double stand. On one hand he submits that there is Hibanama executed on 20.07.2020, that itself is a forged document. Considering panchanama, it is clearly observed that in Grampanchayat record, in the register of Form No.8 at various places whitener is applied and overwriting is made. He thus submits that whitener is applied when the petitioners were in the office and when they were having control over the affairs of the Grampanchayat, on the property CTS No.186, which is shown to be open space in-fact belongs to the Government. He further submits that Zilla Parishad issued letter that the petitioner himself has given measurement of land as 14.7 sq.ft. x 64 sq.ft., whereas the record shows otherwise in the Grampanchayat record. The entry shows that it is manipulated as in the register the measurement of the property CTS No.186 is shown to be 17 ft. x 93 ft. Thus, there is variance in the register of CTS No.186, which is subsequently done. He invited attention to the copy of minutes of meeting No.278, where it is shown that to the proposal of effective change there is no proposer or seconder to the resolution. Thus, it is clear that false record is created. So far as entry of transfer of property CTS No.186 is concerned, in the record, it is shown that mother of petitioner No.1 has transferred land in the name of Shagir Harunkhan Pathan. However, there is no mention of valid

document on the basis of which entries are being effected. This manipulation is done only after the dispute is filed. He also pointed out that now the complaint is filed by respondent No.9 against present petitioner No.1 and other members of his family and the authorities for fabricating record of the Grampanchayat in the Court of learned JMFC, Aurangabad, seeking direction under section 156(3) of the Cr.P.C., wherein the learned JMFC has passed order issuing process on 14.07.2022. Even revision preferred against the order of JMFC, came to be rejected. All these facts clearly show that the petitioners have prima facie done manipulation in the record. Though it is submitted that the petitioners are residing in a rented premises, no agreement is enclosed in the nomination form. Hibanama is executed in the month of July, 2020, whereas tax is paid by the petitioner on 12.10.2020. No dues certificate is obtained in December, 2020. He submits that the learned Additional Divisional Commissioner has rightly appreciated all the material and allowed the appeal.

09. In rejoinder the learned Advocate for the petitioner again reiterated that there is no proof of encroachment. It is for the first time on 10.08.2021 the representation is given to which already an explanation is

given to the Block Development Officer by the petitioner, which is prior in time to filing of the complaint by respondent No.9. Learned Advocate Mr. Gore pointed out that the complaint by respondent No.9 was filed on 13.07.2021 itself. He also submits that the rent agreement was not before the Collector.

10. The learned AGP supports the impugned judgment and order.

11. In support of the submissions learned Advocate Mr. Gore relied upon judgment in the case of **Rahul Raju Kulsange Vs. Additional Collector, Nagpur & Ors. reported in 2022 (2) Mh.L.J. 555.** In the said case this Court held that inquiry for the purpose of section 16 of the Maharashtra Village Panchayats Act is summary in nature. It is not necessary for the Collector to record evidence and give opportunity to other side to rebut the same. He thus submits that in this case, sufficient opportunity of hearing was given. All the parties were heard. There is no question of any violation of principle of natural justice.

12. He further relied upon judgment in the case of **Suvarna Prakash**

Patil Vs. Anil Hindurao Powar & Ors., 2004(1) Mh.L.J. 1062. On going through the said judgment this Court finds that this judgment has no much application to the facts of the case in hand. He further relied upon judgment by this Court in the case of Sushila w/o. Vinod Chavan Vs. The Additional Divisional Commissioner-1, Aurangabad and Ors. (Writ Petition No.8089 of 2023), wherein it is again held that inquiry under section 16 is a summary inquiry and no much evidence is required and authority can proceed on the material placed before it. Further reliance is placed on the judgment in the case of Janabai Vs. Additional Commissioner and Others reported in (2018) 18 SCC 196, wherein it is held that even the encroachment by the family member also attracts disqualification under section 14(1)(j-3) of the Act.

13. On consideration of the submissions and the facts of this case, this Court finds that the learned Additional Divisional Commissioner has rightly come to a conclusion that the petitioners have incurred disqualification under section 14(1)(j-3) of the Act. It is rightly considered that in the Resolution No. 6, entry is taken showing that the property in the name of mother is transferred in the name of Sagir Pathan. There is also alteration in the area shown in the said entry. Said area of 1475.8 sq.ft. is more than the

area shown in the Hibanama, which is admeasuring 940.8 sq.ft. of property CTS No. 186. It is rightly held that the Tahsildar has given report that construction is found to be in excess to the extent of 438.7 sq.ft. Same report was submitted by the Circle Officer by drawing panchanama on 22.07.2022. Still same was not considered by the Collector. It is also rightly considered that the Criminal Court has taken cognizance of the complaint. Though it is case of the petitioners that they are residing in the rented premises, still there is no rent agreement produced on record. The panchanama and measurement made by the Circle Officer is also not denied. The conclusion drawn that by showing excess measurement the area shown to be more on record, that finding also does not require any interference at the hands of this Court. For all these reasons this Court finds that no case is made out for interference at the hands of this Court in the judgment of the learned Additional Divisional Commissioner. The writ petition thus deserves to be dismissed and the same is dismissed with no order as to costs.

[KISHORE C. SANT, J.]

. After pronouncement of order, the learned Advocate for the petitioners makes a request to stay the effect of judgment and order of respondent No.4.

. The learned Advocate for the respondent No.9 submits that there was no interim relief granted during pendency of this petition. Also there was no interim relief granted by the learned Additional Divisional Commissioner.

. Considering this, this Court finds that as there was no interim relief granted by this Court, there is no question of continuing the same. Therefore, the request of learned Advocate for the petitioners for interim relief is rejected.

[KISHORE C. SANT, J.]