

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

3. WRIT PETITION NO. 10146 OF 2023

Lalita Raju Deshmukh,
Age: 28 years, Occu : Housewife,
R/o. Narnagal, Tq. Naigaon,
Dist. Nanded.

.. PETITIONER

VERSUS

1. The Additional Commissioner,
Aurangabad Division, Aurangabad.
2. The Collector,
Collector Office, Nanded.
3. The Tahsildar, Naigaon,
Tq.Naigaon, Dist. Nanded.
4. The Block Development Officer,
Panchayat Samiti, Naigaon
Tal. Naigaon (Kh.), Dist. Nanded.
5. The Village Development Officer,
Village Panchayat Naragnal,
Tal.Naigaon, Dist. Nanded.
6. Amrut Dashrath Waghmare,
Age: 48 years, Occu : Agri.
7. Narayan Vyankatrao Vatambe,
Age: 52 years, Occ. : Agri.
Both R/o. R/o. Narangal, Tal. Naigaon,
Dist. Nanded.

.. RESPONDENTS

...

Advocate for the petitioner : Mr.A.M.Gaikwad
AGP for Respondent-State : Mr.K.B.Jadhavar

Advocate for Respondent no.4 : Mr.S.B.Pulkundwar
Advocate for Respondent nos.6 and 7 : Mr.A.N.Suryawanshi

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AND

2 WRIT PETITION NO.10123 OF 2023

Surekha Dajirao Wadje,
Age: 28 years, Occu : Housewife,
R/o. Narnagal, Tq. Naigaon,
Dist. Nanded.

.. PETITIONER

VERSUS

1. The Additional Commissioner,
Aurangabad Division, Aurangabad.
2. The Collector,
Collector Office, Nanded.
3. The Tahsildar, Naigaon,
Tq.Naigaon, Dist. Nanded.
4. The Block Development Officer,
Panchayat Samiti, Naigaon
Tal. Naigaon (Kh.), Dist. Nanded.
5. The Village Development Officer,
Village Panchayat Naragnal,
Tal.Naigaon, Dist. Nanded.
6. Narayan Vyankatrao Vatambe,
Age: 52 years, Occ. : Agri.
Both R/o. Narangal, Tal. Naigaon,
Dist. Nanded.

.. RESPONDENTS

...

Advocate for the petitioner : Mr.A.M.Gaikwad
AGP for Respondent-State : Mr.K.B.Jadhavar
Advocate for Respondent no.4 : Mr.S.B.Pulkundwar

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AND**4 WRIT PETITION NO.10148 OF 2023**

Prakash Ramesh Waghmare,
Age: 29 years, Occu : Agril,
R/o. Narnagal, Tq. Naigaon,
Dist. Nanded.

.. PETITIONER**VERSUS**

1. The Additional Commissioner,
Aurangabad Division, Aurangabad.
2. The Collector,
Collector Office, Nanded.
3. The Tahsildar, Naigaon,
Tq.Naigaon, Dist. Nanded.
4. The Block Development Officer,
Panchayat Samiti, Naigaon
Tal. Naigaon (Kh.), Dist. Nanded.
5. The Village Development Officer,
Village Panchayat Naragnal,
Tal.Naigaon, Dist. Nanded.
6. Narayan Vyankatrao Vatambe,
Age: 52 years, Occ. : Agri.
Both R/o. Narangal, Tal. Naigaon,
Dist. Nanded.

.. RESPONDENTS

...

Advocate for the petitioner : Mr.A.M.Gaikwad
AGP for Respondent-State : Mr.K.B.Jadhavar
Advocate for Respondent no.4 : Mr.S.B.Pulkundwar

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AND
5 WRIT PETITION NO.10149 OF 2023

Laxmibai Chandu Waghmare,
Age: 48 years, Occu : Housewife,
R/o. Narnagal, Tq. Naigaon,
Dist. Nanded.

.. PETITIONER

VERSUS

1. The Additional Commissioner,
Aurangabad Division, Aurangabad.
2. The Collector,
Collector Office, Nanded.
3. The Tahsildar, Naigaon,
Tq.Naigaon, Dist. Nanded.
4. The Block Development Officer,
Panchayat Samiti, Naigaon
Tal. Naigaon (Kh.), Dist. Nanded.
5. The Village Development Officer,
Village Panchayat Naragnal,
Tal.Naigaon, Dist. Nanded.
6. Narayan Vyankatrao Vatambe,
Age: 52 years, Occ. : Agri.
Both R/o. Narangal, Tal. Naigaon,
Dist. Nanded.

.. RESPONDENTS

...
Advocate for Petitioner : Mr.A.M.Gaikwad Anil M.
AGP for Respondent-State : Mr.K.B.Jadhavar
Advocate for Respondent no.4 : Mr.S.B.Pulkundwar

AND
6 WRIT PETITION NO.10153 OF 2023

Vitthal Pandit Watambe,
Age: 36 years, Occu : Agri.,
R/o. Narnagal, Tq. Naigaon,
Dist. Nanded.

.. PETITIONERS

VERSUS

1. The Additional Commissioner,
Aurangabad Division, Aurangabad.
2. The Collector,
Collector Office, Nanded.
3. The Tahsildar, Naigaon,
Tq.Naigaon, Dist. Nanded.
4. The Block Development Officer,
Panchayat Samiti, Naigaon
Tal. Naigaon (Kh.), Dist. Nanded.
5. The Village Development Officer,
Village Panchayat Naragnal,
Tal.Naigaon, Dist. Nanded.
6. Narayan Vyankatrao Vatambe,
Age: 52 years, Occ. : Agri.
Both R/o. Narangal, Tal. Naigaon,
Dist. Nanded.

.. RESPONDENTS

...

Advocate for the petitioner : Mr.A.M.Gaikwad
AGP for Respondent-State : Mr.K.B.Jadhavar
Advocate for Respondent no.4 : Mr.S.B.Pulkundwar

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CORAM : ARUN R. PEDNEKER, J.

DATE : 16.10.2023

ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] By the present Writ Petitions, the petitioners are challenging the orders dated 28th March, 2023 passed by the respondent no. 2 – Collector, Nanded thereby disqualified the petitioners as member of the Village Panchayat under Section 14 (1) (j-3) of the Maharashtra Village Panchayats Act.

3] All these petitions are taken up together as the common issue is involved in all these matters. The common spot panchanama report is prepared in all these matters and the same is conducted in absence of the petitioners and without notices to the petitioners.

4] The elections to the village panchayat were held in the month of January, 2021 and the results were declared on 18.01.2021. The petitioners contested the said elections and were elected as members of the village panchayat. Thereafter, complaint was filed under Section

14 (1) (j-3) of the Maharashtra Village Panchayat Act for seeking disqualification of the petitioners for having encroached upon the government land or public land. Section 14 (j) (3) provides for disqualification of an elected member of village panchayat, who has encroached upon the government land or public property. In pursuance of the complaint, the respondent no.2 – Collector, Nanded issued notices to all the respondents. The respondent no.2 – Collector, Nanded, by its order dated 30th July, 2021, had directed the respondent no.4 – The Block Development Officer, Panchayat Samiti, Naigaon to hold an enquiry in the allegations made in the dispute and submit a report. In pursuance to the said order, common report was submitted by the respondent no.4 to the Collector against all the petitioners and in terms of the report of the respondent no.4, the petitioners were disqualified for having encroached upon the government land.

5] The learned counsel for the petitioners has submitted that the spot inspection is without notice to the

petitioners and has relied upon the judgment in the case of **Lalita Dilip Khandalkar Vs. Additional Commissioner, Amravati & others** reported in **2019(6) ALL MR 261** to contend that the spot inspection has to be in presence of the parties, at para nos.12 and 13 held as under :

12. In any case, there is nothing on record to show that the spot inspection and measurement was carried out in the presence of either the respondent No.2 or more particularly the petitioner, who was likely to be adversely affected by the findings in such report.

13. Respondent Nos.1 and 2 failed to take into consideration the said aspect. Although it appears that in the appeal filed before respondent No.1 – Additional Commissioner, the petitioner has not raised such a specific ground but since disqualification of a person who has been elected as Member of the Gram Panchayat is a serious matter and by an order the respondent No.2 – Additional Collector has set aside the election of such a person, it is necessary that proper opportunity is given to such a person to dispute material that may come on record in the process of enquiry into the allegations made by the complainant i.e. the respondent No.3. Considering the seriousness of the nature of order that the respondent No.2 – Additional Collector proposed to pass under Section 14 (1) (j-3) of the aforesaid Act, it was

necessary that the petitioner was given ample opportunity to remain present during spot inspection and measurement to raise objections, if any, against such exercise.

6] The learned counsel for the respondent No.4 contends that no notice is required of spot inspection and has relied upon the judgment in the case of **Rahul Raju Kulsange Vs. Additional Collector, Nagpur and others** reported in **2022 (2) Mh.L.J. 555** wherein this Court has held that enquiry conducted by the Collector is summary in nature and cannot be converted into adversarial nature, this Court at para no.15 has held as under :

15. It is, thus, apparent, a plain reading of the language of section 16 (2) and the proviso thereto, of the M.V.P. Act, would indicate that the enquiry under section 16 (2) of the M.V.P. Act, has to be summary in nature restricted to the observations of principles of natural justice and cannot be converted into an enquiry of an adversarial nature, requiring evidence to be led by permitting parties and witnesses to be examined and cross-examined, by reading into it such a requirement. Such a concept, would be totally alien to the nature of enquiry, as contemplated under section 16 of the M.V.P. Act as an enquiry of an adversarial nature was

not intentionally provided by the legislature while enacting section 16 of the M.V.P. Act, though it was aware, that the disqualification would result, in denial of a right vested in the elected member, due to his election.

7] Having heard the learned counsel appearing for the parties, in view of the judgments of this Court in the cases of **Rahul Raju Kulsange** and **Vishwas Laxman Bhagat** [supra], the question that arises for consideration is whether this Court can direct the spot inspection of the alleged encroached property in presence of the petitioners / elected members in view of summary scope of enquiry under Section 16 [2] of the Maharashtra Village Panchayats Act.

8] The case of **Rahul Raju Kulsange Vs. Additional Collector, Nagpur and others** reported in **2022 (2) Mh.L.J. 555** this Court has held at para nos. 10 and 14 as under :

10. Further considering that such an enquiry has to be completed all post-haste as far as possible, within a period of 60 days from the date of receipt of the application as mandated by section 16 (2) of the M.V.P. Act and the

nature of such enquiry, having been specified by the proviso to section 16 (2) of the M.V.P. Act, in my considered opinion, it is not permissible for the Courts to enlarge the scope of the summary enquiry, as contemplated by the proviso to section 16 (2) of the M.V.P. Act, by inserting or reading into the provision, elements of an enquiry of an adversarial nature, by permitting leading of evidence and cross-examination.

14. *The question regarding the nature of the enquiry in respect of a proceeding under section 16 of the M.V.P. Act, also fell for consideration before a learned Division Bench of this Court in Vishwas Laxman Bhagat vs. Devendra Gana Bhagat and others, 2016(4) Mh.L.J. 178. The question raised is reflected in para 7, which for the sake of ready reference is quoted as :*

“7. Further, it is submitted that the Collector was expected and duty bound to make enquiry by following principles of natural justice, which contemplate recording of evidence and giving an opportunity to the Appellant to rebut the material adduced against him. In the instant case, it is urged that no such enquiry was initiated by the Collector himself. No opportunity of adducing evidence or rebutting the material produced by Respondent Nos. 1 to 4 against the Appellant, was given to the Appellant and on this count also, the

impugned order needs to be quashed. In support of this submission that adherence and compliance with the principles of natural justice is a must in any enquiry, reliance is placed on the authority of Narsingrao Gurunath Patil and ors. vs. Arun Gujarathi, Speaker and ors, 2003(1) Bom.C.R. 363."

Answering the same it has been held as under-

20. Thus, even the bare perusal of section 16 (2) of the Act makes it clear that this enquiry is in the nature of summary and inquisitorial proceedings, though it casts a duty on the Collector to make enquiry into Such Dispute Application, it does not lay down any procedure, much less, the manner in which the enquiry is to be conducted. No rules are also framed for laying down the procedure to conduct such enquiry. The only mandate laid down in Proviso to sub-section (2) of section 16 of the Act is that, no such order disqualifying a person shall be passed by the Collector against any Member, without giving him a reasonable opportunity of being heard. Except for this mandate, the provisions of section 16 of the Act or any other provision under the Act does not lay down a specific procedure to be followed for the purpose of enquiry. It is left entirely to the discretion of the Collector as to the

particular mode of enquiry, which he may deem fit, to adopt in facts and situation of that case. The Collector is, thus, while adjudicating the issue of disqualification, required only to follow the principles of natural justice and fair play.

24. Even in the authority relied upon by learned counsel for the Appellant that of Narsingrao Gurunath Patil (supra) referred above, it was held that, whether the principles of natural justice were followed or not would necessarily depend upon the facts and circumstances of each case, including the nature of the action, the grounds on which the action is taken, the material on which the allegations are based, the attitude of the parties, the nature of the plea raised in the reply, the request for further opportunity, the admission by conduct or otherwise of the parties, all these materials in order to know whether the principles of natural justice are followed or not. Their applicability, thus, depends upon the context of facts and circumstances of each case.

27. In the case of K.L.Tripathi vs. State Bank of India and ors., MANU/SC/0334/1983, the Supreme Court has further elaborated, by observing that, the concept of fair play in action must depend upon particular lis between the parties.... There is no

requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there is no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so, when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version of the credibility of the statement.

28. According to Supreme Court, the principles of natural justice are such means of achieving ends of justice. They cannot be perverted to achieve the very opposite end that would be a counter protective exercise.

30. Thus, point to be stressed is that the principles of natural justice cannot be reduced to hard and fast formula. These principles cannot be put in straight jacket. Hence, unless some prejudice is shown to have been caused by non-observance of such principles of natural justice, the decision arrived at by the authorities cannot be vitiated or quashed and set aside" The question referred to the learned Division Bench in Vishwas Laxman Bhagat (supra), as would be evident from para 7 above, was specific as to whether the principles of natural

justice would contemplate and include recording of evidence and giving an opportunity to rebut the evidence, while conducting an enquiry under section 16 of the M.V.P. Act. The same clearly appears to have been negated by holding, that the Collector is, while adjudicating the issue of disqualification, required only to follow the principle of natural justice and fair play.

9] The Hon'ble Supreme Court in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others** reported in [2012] 4 SCC 407, while dealing with the removal of elected member, has held at para nos. 35, 36 and 37 as under :

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (vide Jyoti Basu v. Debi Ghosal, Mohan

Lal Tripathi v. District Magistrate, Rae Bareilly and Ram Beti v. District Panchayat Raj Adhikari].

36. *In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency / electoral college is also deprived of representation by the person of their choice.*

37. *A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like “no confidence motion”, etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period.*

10] Considering above judgments of this Court in the case of **Rahul Raju Kulsange** [supra] that whether the

principles of natural justice are followed or not would depend upon the facts and circumstances of each case, including the nature of the action, the grounds on which the action is taken. The case in hand relates to the encroachment on a public place by an elected member. In order to seek disqualification, the authority will have to render a finding that the elected member has encroached upon the government land. In order to verify as to whether an elected member has encroached upon the government land, it is necessary to measure the encroached structure in occupation of the elected members / petitioners which may be partially on their own private properties and partly on the government land. Measurement has to be conducted by a person who is competent to conduct the measurement, so also, if excess land is found in possession of the elected member after measurement, it has to be verified, whether the excess area in possession of the elected member is on government land. All these are technical aspects and the measurement can be carried out only by a technically competent person in presence of the panchas. The property

in possession of the elected member has to be identified and for that purpose the presence of the petitioners and the complainant may be necessary. In the event of non-identification of the property and in the event of measurement being conducted by a person who is not competent to measure the land, the natural consequences that would follow is that the authority i.e. the Collector would pass a wrong order and the same has happened in the instant case as is narrated below. The report, which is called, is prepared by a person, who is not competent to measure the land. To illustrate the case, I have taken the case of petitioner, namely, Lalita Raju Deshmukh in Writ Petition No.10146 of 2023.

11] The respondent no.4 Block Development Officer in its report dated 03.11.2022 in respect of the petitioner namely Lalita Raju Deshmukh in Writ Petition No.10146 of 2023 has found that as per the village record i.e. Namuna No.8, the house is in the name of her father in law of the petitioner and the measurement of the house as per

namuna no.8 is north-south 16 feet, east-west 32 feet but the construction actually measured is found as north-south 20.83 feet and east-west 31.59 feet. It was further held that the house is not shown in namuna no.8 yet there is a house constructed on the government land. The Collector has inferred that the house constructed by the petitioner is on the government land. The petitioner has placed on record Namuna No.8 at Exhibit-H and the name of Gopal Gyanoba is indicated as owner of the property. The boundaries of the properties are mentioned as under :

East	:	Road
West	:	Road
North	:	Sanjay Narayan
South	:	Kamaji Deshmukh

The property is shown to be admeasuring 512 square feet and north-south 16 feet and east-west 32 feet.

12] In terms of spot inspection, the construction measured is found as north-south 20.83 feet and east-west 31.59 feet. As per village record i.e. namuna no.8, the

north-south shown as 16 feet and east-west shown as 32 feet. There is property of Sanjay Narayan towards north side. There is another property of Kamaji Deshmukh towards south side and there are roads towards east and west of the property. Thus, the excess construction of 8 feet is not on the government land as the east-west measurement is 31.59 feet and in order to disqualify the petitioners, the encroachment has to be upon the government land or public property. However, in this the encroachment, if any, is not on the government property.

13] In the other Writ Petitions, there is claim of mis-identification of the property. The spot inspection is by a person who is not qualified to measure the land.

14] The authority has conducted spot inspection and measurement of the encroached property and the same is possible for the competent authority only with the assistance of the both parties as the site that needs to be measured has to be identified. The requirement under Section 16 of the M.V.P.Act is that there has to be a fair

enquiry and the same need not be adversarial in nature but minimum that is expected from the authority is that the correct process is followed and report is called from competent person.

15] In the judgment of the Division Bench of this Court in the case of **Vishwas Laxman Bhagat vs. Devendra Gana Bhagat and others** reported in 2016 [4] Mh.L.J. 178 wherein it has been held that there is no mandate for following specific process to be followed for the purpose of enquiry and it is left entirely to the discretion of the Collector as to the particular mode of enquiry, which he may deem fit, to adopt in facts and situation of that case. The Collector is, thus, while adjudicating the issue of disqualification, required only to follow the principles of natural justice and fair play and whether the principles of natural justice were followed or not would necessarily depend upon the facts and circumstances of each case including the nature of the action, the grounds on which the action is taken. In the instant case, the encroachments

which are enquired into and of which enquiry is conducted is by the person who is not competent to measure the lands so also without assistance of the petitioners, the land / property cannot be identified and measured. Thus, in the instant case, without notice to the petitioners, the process conducted by the Block Development Officer in preparing the report, is completely erroneous. This is also in contravention of the law laid down in the case of **Ravi Yashwant Bhoir** [supra] of the Supreme Court of India.

16] Thus in the fact situation of the present case I hold that the spot inspection report ought to have been prepared in presence of the parties by a competent person.

17] The learned counsel appearing for the respondents have not been able to show and has not contested the position that the report is after notice to the petitioners herein. The record also does not show the notice were issued to the petitioners. Spot panchanama is carried out apparently without presence of the petitioners and without notice to the petitioners. The spot panchanama is

by an person who is not competent to conduct the inspection and without identification of the properties.

18] In view of the same, the impugned orders dated 28th March, 2023 passed by the respondent no. 2 – Collector, Nanded, thereby disqualified the petitioners as member of the Village Panchayat under Section 14 (1) (j-3) of the Maharashtra Village Panchayats Act so also the order dated 28.07.2023 passed by the Additional Commissioner, Aurangabad Division, Aurangabad are quashed and set aside. The matters are remitted back to the Collector for afresh adjudication.

19] The Collector to call for spot inspection report from the Authority concerned and the Collector to ensure that the measurement is carried out by the Taluka Inspector of Land Records and the authority concerned to conduct spot inspection after notice to all the parties in the matter.

20] The parties to appear before the Collector on 23rd October, 2023. No further adjournment would be

granted to the parties by the Collector and the Collector to decide the date of spot inspection so as to enable the parties to remain present at the time of making spot inspection.

21] The Collector to decide the matters within 12 weeks from the date of production of this order before the Collector. The Collector to also ensure that the report received is within time and the Collector to pass the appropriate orders after hearing all the parties. The petitioners are restored back to the position as the members of the village panchayat.

22] All Writ Petitions are disposed of with above directions.

[ARUN R. PEDNEKER]
JUDGE

DDC