

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

990 WRIT PETITION NO.12493 OF 2022

WITH

CA/2590/2023 IN WP/12493/2022

RUKHMAN TUKARAM DAPKE

VERSUS

STATE OF MAHARASHTRA

THROUGH ADDITIONAL COMMISSIONER AND OTHERS

...

Advocate for Petitioner: Mr. Patel Sameer F
AGP for Respondent/State: Mr. K. B. Jadhavar

Advocate for Respondents No.3&5:

Mr. H. P. Kshirsagar

Advocate for Respondents No.6&8:

Mr. G. N. Chincholkar

...

AND

...

997 WRIT PETITION NO.3893 OF 2023

SHANKAR KACHARU RAWATE

VERSUS

STATE OF MAHARASHTRA

THROUGH ADDITIONAL COMMISSIONER AND OTHERS

...

Advocate for Petitioner: Mr. Patel Sameer F
AGP for Respondent/State: Mrs. V. N. Patil Jadhav

...

CORAM: ARUN R. PEDNEKER, J.

DATE: 13th APRIL, 2023

PER COURT:

1. Heard.

2. In Writ Petition No.12493 of 2022, petitioner - Rukhman Tukaram Dapke, is elected as the member of the village panchayat Chambharwadi, Taluka - Kannad, District - Aurangabad in the year 2021 as Deputy Sarpanch of the village panchayat. The complaint was filed against the petitioner seeking disqualification under Section 14(1)(J-3) under the Maharashtra Village Panchayats Act, 1958 for having encroached on the Government land. Inquiry was conducted in the matter and the report was submitted. The petitioner also filed reply contending that as per her ration card she was staying with her 2 children and husband at the separate plot land. However, the petitioner's father-in-law as per the report was found staying in the property i.e. *maulie*, which is on a government land. In the spot inspection conducted, it was found that the property on which the father-in-law Mr. Ramrao Punjaba Dapake is residing is a government land and is on Gut No.163, as such the father-in-law is held to be residing on a encroached government land. There

is no independent finding in the impugned order that the petitioner is residing with her father-in-law and that she has joined the encroachment in any form. The Collector relying upon the Judgment of the *Janabai Vs. Additional Commissioner and others, (2018) 18 SCC 196* and held that if any member of the family has encroached upon the government land, the elected member would be disqualified in view of the said Judgment of *Janabai (supra)*. The same order was upheld by the appellate authority.

3. I have perused the order passed by the learned Collector as well as the appellate authority. There is no independent finding that the petitioner is residing with the father-in-law or has joined the encroachment. The Judgment of *Janabai (supra)* would be wholly inapplicable in the instant case. The petitioner would be held liable under Section 14(1)(J-3) of the Maharashtra Village Panchayats Act, 1958 only in the event that the petitioner joins the encroachment or in some form benefit from the encroachment.

4. In Writ Petition No.3893 of 2023, it has been held that the father and the brother of the petitioner has encroached upon the government land. However, there is no finding that the petitioner has joined the encroachment in any form or the petitioner is also resident of the same place.

5. Thus, there is wrongful application of Judgment in the case of *Janabai (supra)*.

6. In view of the same, in both the matters, the orders passed by the authorities are set aside and the matters are remitted back to the Collector to render an appropriate finding as regards the joining of the petitioners in the encroached property. It is only if the petitioners have encroached or joined the encroached property the Judgment of *Janabai (supra)* would be applicable and disqualification would be incurred by the petitioners. The matters are remitted back to the authorities for fresh decision.

7. The Writ Petitions are partly allowed and disposed of. Pending civil applications, if any, shall stand disposed of.

[ARUN R. PEDNEKER, J.]

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