

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

956 WRIT PETITION NO.11810 OF 2022

AYODHYA SANTOSH SANGALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the petitioner : Mr.M.R.Sonawane
AGP for Respondent-State : Mr.K.B.Jadhavar
Advocate for Respondent nos.5 and 6 : Mr.P.P.Dama
Advocate for the respondent nos.7 and 8 : Mr.N.P.Badale
h/f. Mr.S.G.Kawade

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CORAM : ARUN R. PEDNEKER, J.

DATE : 18.04.2023

P.C. :

- 1] Heard the learned counsel for the parties.
- 2] The petitioner is elected as member of Village Panchayat Malegaon Khurd, Taluka and District Jalna from Ward No.2 from general category [women] in the elections held in the month of January 2021. That the complaint was filed against the petitioner under Section 14 (1) (j-3) of the Maharashtra Village Panchayat Act, 1950 [for short 'Act of 1958'] on the ground that the petitioner has encroached upon the government land.

3] On complaint being filed, the Collector, Jalna called report from the Block Development Officer, Panchayat Samiti, Jalna. The report submitted by the Block Development Officer, which is at Page No.58 of the petition, indicated that in addition to legal occupation of the petitioner of her own properties, the petitioner had excess area of 26 x 55 feet. The report was submitted that the petitioner is not owner of the said land as such the petitioner has encroached upon the government land.

4] However, the report submitted by the Block Development Officer dated 29.10.2021 does not rely on any evidence that the excess land in possession of the petitioner is a government land and the petitioner has encroached upon the Government land i.e. 26 x 55 feet. On the basis of the report submitted by the Block Development Officer, the Collector, Jalna disqualified the petitioner as the petitioner has encroached upon the government land.

5] However, in absence of any evidence in respect

of encroachment of the petitioner on government land, disqualification of the petitioner cannot be sustained. The evidence in respect of encroachment upon the government land or public land has to be established so as to incur disqualification under Section 14 [1] [j-3] of the Act of 1958.

6] In view of the same, the impugned order dated 10.06.2022 passed by the District Collector and the impugned order dated 02.08.2022 passed by the Additional Divisional Commissioner, Aurangabad Division, Aurangabad are quashed and set aside. The matter is remanded back to the Collector to decide as to whether the additional land in occupation of the petitioner i.e. 26 x 55 feet is a Government property or a public property. It is only after rendering finding in respect of additional land in possession of the petitioner is a government or public property, then the petitioner can be disqualified for being a member of the Village Panchayat.

7] The Collector to decide the remanded matter as expeditiously as possible after hearing all concerned parties.

8] The Writ Petition is disposed of accordingly.

[ARUN R. PEDNEKER]
JUDGE

DDC