

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

919 WRIT PETITION NO. 12992 OF 2022

**RANJANA MALHARI BALLOD & OTHERS
VERSUS
THE ADDITIONAL DIVISIONAL COMMISSIONER
AURANGABAD & OTHERS**

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Advocate for the petitioners : Mr.U.B.Deshmukh
AGP for Respondent-State : Mr.K.B.Jadhavar
Advocate for Respondent no.4 : Mr.Ganesh V. Sukale
Advocate for respondent no.5 : Adv.Yogita S. Thorat

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CORAM : ARUN R. PEDNEKER, J.

DATE : 09.02.2023

P.C. :

1] Heard the learned counsel for the parties.

2] The petitioners are elected members of the Village Panchayat, Borgaon [Nadhari]. On the complaint made by the respondent no.4, the proceedings were initiated under Section 14 (1) (j-3) of the Maharashtra Village Panchayat Act [for short 'the said Act'] against the petitioners, alleging therein that the petitioners have encroached upon the Government land. In the said proceedings, the Collector called for a report from the Block

Development Officer. Thereafter, the Block Development Officer visited the said village and prepared a panchnama and submitted his report. In the report of the Block Development Officer, it was pointed out that the petitioner nos. 1 and 2 have encroached upon 22.88 square feet of land beyond the petitioners' land, whereas the petitioner no.3 has encroached upon 180 square feet of land beyond the petitioners' land. After receipt of the report of the Block Development Officer, the Collector disqualified the petitioners for having done encroachment beyond the land owned by the petitioners.

3] Being aggrieved by the said order, the petitioners preferred an appeal before the Additional Divisional Commissioner, Aurangabad Division, Aurangabad and the Additional Divisional Commissioner has confirmed the said order. The petitioners, thereafter, filed the present Writ Petition challenging the orders passed by the authorities below.

4] The learned counsel for the petitioners submits

that the encroachment, which is pointed out, is not demonstrated to be on public land. The lands, which is measured on three sides, are the private lands and fourth side is a road. The learned counsel further submits that it is necessary to demonstrate that the encroachment is on the Government land and / or public road so as to incur disqualification under Section 14 (1) (j-3) of the Maharashtra Village Panchayat Act.

5] Having perused the material on record, such as, panchanama, report of the Block Development Officer and the orders passed by the authorities below, there is no finding that there is an encroachment on the government land. In view of the same, it would be more appropriate that the matter is remanded back to the Collector to find out as to whether the encroachment done by the petitioners is on the public land. The Collector may direct the Block Development Officer to do the measurement afresh in presence of the parties.

6] The parties to appear before the Collector on 28.02.2023.

7] The Collector to fix the date of measurement of the encroached land with the presence of the parties so that no further notice is required to be given to the parties.

8] After receipt of the report of Block Development Officer, the Collector is directed to decide the matter, as early as possible.

9] The impugned orders dated 18.08.2022 and 29.11.2022 passed by the Collector, Nanded and Additional Divisional Commissioner, Aurangabad, are quashed and set aside. The matter is remanded back to the Collector to decide the same afresh as early as possible.

10] The parties are directed to co-operate in the proceedings and no unnecessary adjournments to be granted to the parties.

11] Accordingly, the Writ Petition is disposed of.

[ARUN R. PEDNEKER]
JUDGE

DDC