

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13042 OF 2023

Jijabai Satish Khaire ...Petitioner

V/s.

The State of Maharashtra, thru' ...Respondents

**WITH
WRIT PETITION NO.13057 OF 2023**

Vaishali Shahaji Khaire ...Petitioner

V/s.

The State of Maharashtra, thru' ...Respondents
It's Secretary & Ors.

Mr. Ravindra S. Pachundkar for Petitioner.

Mr. S.D. Rayrikar, AGP for Respondent-State.

**CORAM: MADHAV J. JAMDAR, J.
DATE: 18th October 2023**

P.C.:

1. By these two Writ Petitions filed under Articles 226 and 227 of the Constitution of India, the Petitioners are challenging the legality and validity of order dated 10th March 2023 passed by the Collector, Pune in Gram Panchayat

Dispute Application No. 175/2021 as well as order dated 12th December 2023 passed by Additional Divisional Commissioner, Pune Division, Pune in Gram Panchayat Appeal No. 3 of 2023.

2. By the impugned order dated 10th March 2023, the Collector has disqualified the Petitioners as Members of Gram Panchayat, Kharewadi, Taluka Shirur, District Pune on the ground of disqualification available under the provisions of Maharashtra Village Panchayats Act, 1959 ("**said Act**") namely encroachment upon Government land or public property as provided under Section 14(1) (J-3) of the said Act. The said order of the Collector has been confirmed by the Additional Divisional Commissioner by order dated 12th October 2023.

3. It is the contention of Mr. Ravindra Pachundkar, learned Counsel appearing for the Petitioners that the proceedings are also filed against one Mrs. Rohini Pralhad Khaire and the proceedings are dismissed against her. She is the mother-in-law of the Petitioner-Vaishali Shahaji Khaire and therefore the same order should have been passed in case of the Petitioner-Vaishali.

4. It is his submission that as far as Petitioner- Jijabai Satish Khaire is concerned, she is residing at some other

address and is not residing with her mother-in-law, who has committed alleged encroachment.

5. As far as Petitioner-Vaishali Shahaji Khaire is concerned, both, the Collector as well as Additional Divisional Commissioner, Pune Division, Pune have found that the property No. 447 is the property of the State of Maharashtra and same has been encroached by Petitioner- Vaishali Khaire and her husband, Shahaji Khaire. Nothing is pointed out by the learned Counsel appearing for the Petitioners that the said finding is not in accordance with the evidence on record.

6. As far as Rohini Pralhad Khaire is concerned, the Collector has come to the conclusion that she cannot be disqualified as the encroachment is not proved in her case and therefore, the same order should have been passed in favour of the Petitioner- Vaishali Shahaji Khaire. However, it is to be noted that the allegation against said Rohini Pralhad Khaire is with respect to property bearing No. 11-02, 5/178 and the Collector recorded finding that the said property is the ownership property of said Rohini Pralhad Khaire. Therefore, she has not encroached the Government land. As far as the Petitioner- Vaishali Shahaji Khaire is concerned, the allegation is with respect to property bearing No. 447. Both the

authorities found that the said property is of Government of Maharashtra and Vaishali Shahaji Khaire and her husband, Shahaji Khaire have encroached upon the said property. Therefore, no interference is warranted under Articles 226 and 227 of the Constitution of India.

7. As far as the Petitioner-Jijabai Satish Khaire in Writ Petitioner No. 13042 of 2023, it is the contention of the learned Counsel appearing for the Petitioners that the alleged encroachment is by mother-in-law. It is his contention that she is staying separately at Samata Housing Society, Kharadi Road, Chandan Nagar, Pune- 14 and therefore, she cannot be held liable for the encroachment. Both the authorities have specifically recorded finding that as far as property No. 426 is concerned the record shows that the State Government is the owner of the said property and that the said property is a Gairan and one Shalubai Baburao Khaire has encroached upon the said land. Said Shalubai Khaire is the mother-in-law of the Petitioner-Jijabai Satish Khaire. It is the contention of Jijabai Satish Khaire that she is residing separately and not with her mother-in-law. Both the authorities have found that in the Ration Card WK No. 236652, the Petitioner- Jijabai Khaire's name is included along with name of her mother-in-law,

Shalubai. Apart from that, said Jijabai Khaire has filed an affidavit of residence and there she has given her address as that of her mother-in-law. The Ration Card pertaining to said address mentions the name of family members of Jijabai Satish Khaire and Shalan Khaire i.e. mother-in-law. Therefore, there is no substance in the contention of learned Counsel appearing for the Petitioner that said Jijabai is residing separately. Thus, it is clear that the Petitioner-Jijabai is the beneficiary of said encroachment. Accordingly, Writ Petition No. 13042 of 2023 too requires no interference by this Court under Articles 226 and 227 of the Constitution of India.

8. For above reasons, the Writ Petitions are dismissed, however, with no order as to costs.

(MADHAV J. JAMDAR, J.)