



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

WRIT PETITION NO. 3630 OF 2024

Sindhubai w/o. Dadasaheb Shinde,
Age 60 years, Occu. Sarpanch,
R/o. At Murma, Post Pachod,
Taluka Paithan, District Aurangabad

.. Petitioner
(Original Applicant)

Versus

1. The Additional Divisional Commissioner-2,
Aurangabad
2. The District Collector,
Aurangabad, District Aurangabad
3. The Village Development Officer,
Grampanchayat Murma,
Taluka Paithan, District Aurangabad
4. Gopichand s/o. Dagadu Aher,
Age 42 yeears, Occu. Social Worker,
R/o. At Murma, Post Pachod, Taluka Paithan,
District Aurangabad

.. Respondents
(Original Respondents)

Mr. R. V. Gore, Advocate for the Petitioner;
Mr. P. D. Patil, A.G.P. for Respondents No.1 and 2;
Mr. V. H. Pathade, Advocate for Respondent No.3;
Mr. Y. V. Kakade, Advocate holding for Mr. S. A. Nandure, Advocate
for Respondent No.4

CORAM : S. G. MEHARE, J.

DATE : 03-05-2024

PER COURT :-

1. Heard the learned counsel for the petitioner, the learned
A.G.P. for respondents No.1 and 2 and the learned counsels for
respondents No.3 and 4.

2. The petitioner was elected as Member of Village Panchayat, Murma on 15.12.2020. Respondent No.4 had filed a complaint under Section 14(1)(j-3) and 16 of the Maharashtra Village Panchayats Act, 1959 (for short, "the Act") to respondent No.2 / the Collector alleging that the petitioner's husband has encroached upon the Government land bearing Gut No.251 and 237 of the village and she was residing with her husband in the said house property.

3. Respondent No.2 directed to make inquiry. The concerned Officer made inquiry. The Tahsildar, Paithan referred to the inquiry made by Gramsevak, who had opined that at this juncture in Village Panchayat record, there is no name of the petitioner and her husband showing possession of Government land. In other words, it has been contended that presently the record of Village Panchayat does not show that the petitioner and her husband are possessing the Government property.

4. The petitioner was served with notice. She appeared before respondent No.2/the Collector. However, she did not file her written statement. Since she failed to conduct the proceeding, respondent No.2, by order dated 01.01.2024, allowed the application filed by respondent No.4 and declared the petitioner to be disqualified to continue as a Member of Village Panchayat, under Section 14(1)(J)(3) and 16 of the Act.

5. Against the said order, the petitioner preferred an appeal before respondent No.1/ Additional Commissioner-2, Aurangabad. Respondent No.1 also believed the material placed on record and dismissed her appeal.

6. The bone of contention of the petitioner is that after the spot inspection was done, respondent No.2/the Collector did not issue her a fresh notice. Her husband was attending the proceeding. However, he died during pendency of the case before respondent No.2. Therefore, no opportunity has been granted to the petitioner to rebut the allegations levelled against her.

7. Referring to the report of the Gramsevak and the Tahsildar, learned counsel for the petitioner submits that at the relevant time, there was no encroachment on the Government land. One document of 2000 in which the name of husband of the petitioner was shown as possessor of the Government land was produced. He submits that a new document i.e. sale deed of the house property No.249 was placed first time before respondent No.1. She had no opportunity to rebut the validity of that document. It may be a created document. The inquiry under Sections 14(1)(j-3) and 16 of the Act, is a summary inquiry. In a summary inquiry, the legality and validity of such document cannot be adjudicated. He lastly submits that both judgments are against the law and not following the principle of natural justice; hence, liable to set aside.

8. Learned counsel for respondent No.4 submits that the learned counsel for the petitioner has not read the report completely. In the report of the Circle Officer addressed to Tahsildar, it has been specifically mentioned that Online Namuna-8 and the tax assessment register for the property No.251 was produced. The Government was the owner of that property and the husband of the petitioner was possessing that property. That was the evidence against the petitioner. He also referred to the Gram Panchayat's record and submits that it clearly establish that there was an encroachment on the Government land. The husband of the petitioner created the document/agreement to evade her disqualification. This document has been created after the election of the petitioner as a Member. Sufficient opportunity was granted to the petitioner, but she voluntarily did not file written statement. Once the notice is served, there is no provision to issue notice again and again to the parties. It is the party to appear before the authority on each date. He also submitted that the petitioner did not produce evidence in rebuttal showing that she is not residing on the disputed property. Therefore, an adverse inference may be drawn.

9. In reply, the learned counsel for the petitioner submits that there was no evidence, whether the petitioner was sharing the Government property with her husband. Therefore, the view in the case of **Janabai Rathod** would not be helpful.

10. Perused the papers placed on record.

11. The Grampanchayat maintained the record of the properties and also the record of possessors of the properties for the purpose of assessing the tax. Namuna-8 of house property No.251 issued on 28.08.2023 clearly shows that the husband of the petitioner was in possession of the Government land. This was the possession of 2023.

12. So far as house property No.237 is concerned, the village panchayat's record/Namuna-8 shows that it was the Government property and possessed by the deceased husband of the petitioner. That apart, one another Namuna-8 about house No.251 shows that one Siddheshwar Manohar Gore was the possessor of said property. The document of sale deed/agreement was executed by the husband of the petitioner in favour of Siddheshwar, who was admittedly his son-in-law. This document dated 26.12.2022 is apparently after the election of the petitioner as a Member of Village Panchayat. In the report of Gramsevak, he simply said that on the day of inspection, the Village Panchayat has no record showing that the petitioner or her husband was possessing the Government land. However, the document placed on record clearly indicates that he had encroached upon the Government land and with ill intention, probably to evade the disqualification, executed sale deed/agreement, dated 26.12.2022 in favour of son-in-law, transferring the house property which is

owned by the Government.

13. Learned counsel for respondent No.4 was right in submitting that the private party has no right to sell or transfer the Government land.

14. Law does not provide for inviting the litigant again and again by issuance of notice by the authority. Therefore, there is no substance in the submission of the learned counsel for the petitioner that after inspection of spot, respondent No.2/Collector did not issue her a fresh notice. It seems that her deceased husband was attending the proceeding. Probably, he may be acting as a proxy member of the Village Panchayat for and on behalf of his wife. It is presumed, unless contrary is proved, that husband and wife resides under one roof. The petitioner did not produce the evidence in rebuttal that she never shared the house property with husband and she was residing at another place which was not the Government land.

15. Considering the facts of the case and the relevant provisions of law, the Court is of the view that there is no error of law in the findings and the impugned judgments and orders. The petition being devoid of substance stands dismissed.

16. No order as to costs.

(S. G. MEHARE, J.)