



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.8368 OF 2023

Swati Sachin Balge,  
Age : 26 Years, Occu. : Household,  
R/o Tajnapur, Tq. Shevgaon,  
District Ahmednagar.

... **Petitioner.**

Versus

1. Appasaheb Kisan Veer,  
Age : 37 years, Occu. Agricultural,  
R/o Tajnapur, Tq. Shevgaon,  
District Ahmednagar.
2. District Collector, Ahmednagar,  
District Ahmednagar.
3. Commissioner,  
Nashik Division, Nashik.
4. Gramsevak,  
Grampanchayat, Tajnapur,  
Tq. Shevgaon, District Ahmednagar. ... **Respondents.**

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Advocate for the Petitioner : Mr. Joshi Ajinkya Anand.  
Advocate for Respondent No.1 : Mr. Somnath Nagode h/f  
Mr. S. S. Jadhav.  
AGP for Respondents-State : Mrs. R. R. Tandale.

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**CORAM : S. G. MEHARE, J.**  
**DATE : 20.02.2024**

**ORAL JUDGMENT :-**

1. Rule. By consent it was heard finally, and the Rule made returnable forthwith.

2. The petitioner and respondent No.1 were elected members of the Village Panchayat, Tajnapur. Respondent No.1 had applied under Sections 14(1)(j-3) and 16 of the Maharashtra Village Panchayats Act ("Panchayats Act" for short) to declare the petitioner disqualified to be a member of the village panchayat as she had encroached upon the Government land. The Collector directed the Village Development Officer to submit the factual report. He had inspected the spot in Village Gram Panchayat, Nagalwadi and Village Panchayat, Tajnapur. On the same day, he inspected the houses of three Village Panchayat members of Tajnapur and submitted the report to the Collector on 25.01.2022.

3. Respondent No.1 complained that the petitioner resides with her father-in-law and husband jointly in the house constructed on encroached government land. Their house was numbered as property No.203. It was also the case that after the inspection was done, an illegal resolution was passed, transferring house No.203 in the name of Subhadra Navnath Khedkar. It is not valid unless the Chief Executive Officer approves such a resolution under Section 56(2) of the Panchayats Act. The Village Panchayat has no power to transfer the Government land. He also submitted that after the action

was proposed against her, she segregated her name from the joint family ration card of her father-in-law.

4. Learned counsel for the petitioner would submit that the spot inspection report of the VDO is vague. It is not in clear words that at the time of his inspection, the petitioner and husband were residing in that house. He did not give the notice before the inspection. It is unclear that local inquiry means (*Sthanik* inquiry). The application of the father-in-law of the petitioner dated 08.11.2020 for mutation in Namuna-8 about house No.203 contends that his name was incorrectly recorded in Namuna-8. It is a property of Subhadrabai. It is a litigation created by the opponent. She is residing with her husband in house property No.137. To bolster his argument, he relied on the electric bill issued in the name of her father-in-law's house No.137. He also relied on the tax receipt of house No.137. He submits that she never resided in house No.203. She was living with her family in house No.137, which was constructed on a private plot. She is not the encroacher.

5. To bolster his argument that the principles of natural justice have not been followed, he relied on the case of ***Subhash Krushnarao Khartadkar Vs. Divisional Commissioner;***

*2022 DGLS (Bom.) 2894*. Further, he relied on the case of *Savita w/o Premdas Jadhav Vs. The Divisional Commissioner, Amravati Division and others in Writ Petition No.390 of 2022, dated 22.02.2023*, argued that the ratio of the case of *Janabai (supra)* would not straightway apply to the facts and circumstances of this case. She was never the beneficiary of the said house No.203. Her case is very specific that the father-in-law had applied to the Village Panchayat submitting that his name was incorrectly recorded in Form No.8 for house No.203. It was the property of Subhadrabai. He would submit that there was no cogent and reliable material before the authorities to believe that she had encroached upon the Government land and acquired the disqualification. He prayed to allow the writ petition.

6. Per contra, learned counsel for the contesting respondent and learned AGP would submit that after complaining about her, she had created a document to show that she was not residing in house No.203. She had no reason to segregate immediately from her father-in-law. House No.203 was constructed on Gut No.14 of the Government. They also referred to various papers in support of their contentions. Their main contention was that house property No.203 was hastily

transferred from the name of the father-in-law of the petitioner to one Subhadra. Subhadra had also filed a separate application. The father-in-law of the petitioner had no reason to file a fresh application for cancelling his name from Namuna-8 on 10.01.2021. They have referred to the findings of the Collector and the Additional Commissioner and pointed out that the hasty act of transferring a plot inter vivos is impermissible under Section 56(2) of the Panchayats Act.

7. The Collector, as well as the Additional Commissioner, held the petitioner encroacher residing with her father-in-law and husband in house No.203. The house was constructed on the Government land. Both authorities relied upon the inspection report of the Village Development Officer. They also noted the conduct of the petitioner changing or segregating her name from the ration card which was jointly with her father-in-law. They relied on the pronouncement of the Hon'ble Supreme Court in the case of *Janabai Vs. Additional Commissioner and others*, and applied the ratio laid down in that case. Both the authorities held her disqualified to continue as a member of the village panchayat.

8. The report of the Village Development Officer did not show that before the inspection of house No.203, the notice had been served upon the petitioner. The Collector, as well as the Additional Commissioner, relied on the said report. Except for the said report, there was no evidence showing that the family of the petitioner was the encroacher. There was nothing on record to show that any time before the Village Panchayat took action against the family of the petitioner for encroachment on the Government land. The petitioner or the Village Panchayat did not file the tax receipt of property No.203, standing in the name of the petitioner or her family.

9. The burden was on the petitioner to prove the encroachment. As per the Government Resolution dated 06.12.2017, there shall be entry Namuna-8 at least for assessing the taxes. Had there been any encroachment of the petitioner's family on property No.203, the Village Panchayat must have some record. The Village Panchayat maintains such a record. Respondent No.1 or the Village Panchayat Officer could produce such documents. Seeking the disqualification of any person is a serious matter. The publicly elected members cannot be easily thrown unless strict proof is produced.

10. In the case of *Subhash (supra)*, the Court referred to the findings of the case of ***Lalita Dilip Khandalkar Vs. Additional Commissioner, Amravati Division and others; 2019 ALL MR (6) 261***. In that case also, it was found that during the process of conducting spot inspection, in the backdrop of a similar allegation of encroaching on Government land, the elected representative was not put to notice and that the report was prepared behind back. It was specifically held in the said judgment that when the report rendered adverse findings, that fact that it was prepared without notice to the petitioner therein completely vitiated the said report, and such exercise could not be held basis for disqualifying the elected representative.

11. For everything to be done against a person, the Rule of natural justice is the opportunity of hearing. When the serious allegations of becoming disqualified have been levelled, the authorities should be more cautious and diligent. However, unfortunately, the VDO did not follow the principles of natural justice. His report does not reflect when he visited the so-called property No.203, he had not served the notices upon the petitioner or her family members. He formed an opinion of encroachment on the basis of local inquiry. There is nothing

with whom he enquired about the residence of the petitioner in that house. His report does not reflect who was living in the house No.203. He had mixed two/three facts together and submitted a vague report. The VDO is the Officer of the Village Panchayat, so he was armed with the Village Panchayat record. He maintains the village panchayat record. He is a public servant. In such a serious matter, his report must be supported by the record maintained in the discharge of his official duty, which had relevance. No such exercise was done. Had the report of the VDO been supported by the record of the Village Panchayat, it would have been admitted as evidence. Unfortunately, neither the Collector nor the Additional Collector applied their mind to read the report of the VDO properly about the encroachment of the petitioner. It seems that they have mechanically believed the report of the VDO. The petitioner has produced the documents showing that she was residing in another house. However, neither authority discussed those documents. That again shows the non-application of the mind. Both authorities have drawn an inference from a resolution of Village Panchayat dated 23.02.2021, deleting the name of her father-in-law from house property No.203 and recording it in the name of Subhadrabai. Indeed, private persons cannot transfer the Village Panchayat

land inter vivos unless the Chief Executive Officer of Zilla Parishad approves it under Section 56(2) of the Panchayats Act.

12. As far as the transfer of house property No.203 in the name of Subhadrabai is concerned, the reasons for transferring or inserting her name in Namuna 8 for house property No.203 were significant. The petitioner contended that her father-in-law admitted that his name was incorrectly recorded in the Village Panchayat Record and it was the house of Subhadrabai. He had applied to the Village Panchayat long before to delete his name from property No.203. In such circumstances, it would be difficult to accept the finding of both authorities that it is a transfer of Government land in contravention of Section 56(2) of the Panchayats Act. Nothing was on record pointing out that the said transfer was for consideration. Therefore, these circumstances could not be said to be against the petitioner. Why she had changed or segregated her ration card has also not been properly discussed.

13. The primary issue was whether the petitioner was living with her inlaws in the house allegedly constructed on Government land by the encroachment. There was no cogent

and reliable evidence against the petitioner with the Village Panchayat. Record from the village panchayat is not coming forward. Admittedly, the house property No.203 has been constructed on Government land. However, unless it is established that the returned candidate is the beneficiary of such encroachment, he/she cannot be held disqualified. Based on the facts and observations recorded by this Court in the case of *Savita (supra)*, the Court is of the view that both authorities have incorrectly applied the ratio laid down by the Hon'ble Supreme Court in the case of *Janabai (supra)*.

14. Two cogent conclusions could be drawn from the facts and material on record. Firstly, the principles of natural justice issuing the notice before the inspection have not been followed. Secondly, there was no cogent and reliable evidence to believe that the petitioner encroached upon Government land and that she was the beneficiary of any such encroachment. In the facts and circumstances of the case, the ratio laid down in the case of *Savita* and *Subhash (supra)* is squarely applicable to the case at hand.

15. The Hon'ble Supreme Court in the case of ***Ravi Yashwant Bhoir Vs. District Collector, Raigad; 2012 (4) SCC 407***, in paragraph No.34, has observed thus ;

*"34. In a democratic institution like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice, and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office bearer sought to be removed."*

16. The ratio in the above case was that a democratically elected person should not be disqualified, and his election should not be set aside unless the procedure known to law is followed strictly. It has been observed above that there was no strict proof of encroachment, and the applicant was enjoying the benefits of the encroached property.

17. As discussed above, in the absence of a notice to the petitioner and evidence of encroachment upon the Government land, both authorities erred in disqualifying the petitioner from continuing as a member of the village panchayat, and it is against the settled law discussed above.

18. For the above reasons, the Court concluded that both orders are illegal and liable to be quashed and set aside. Hence, the following order :

**ORDER**

- (i) The writ petition is allowed.
- (ii) The order of the District Collector, Ahmednagar, passed in Village Panchayat Dispute Case No.43 of 2021, dated 13.10.2022, and the order of the Additional Commissioner, Nashik, passed in Village Panchayat Appeal No.164 of 2022, dated 26.06.2023, stand quashed and set aside.
- (iii) No order as to costs.
- (iv) Rule made absolute in the above terms.

**(S. G. MEHARE, J.)**

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vmk/-