



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

**WRIT PETITION NO. 5507 OF 2023**

Kiranbai Vinod Borse  
Age 29 years, Occu: Agri  
R/o Kawthi, Post Mehergaon  
Tq. & Dist. Dhule

... **Petitioner**

**VERSUS**

1. The Additional Commissioner,  
Nashik Division, Nashik
2. The Collector, Dhule,  
District Dhule
3. The Election Officer,  
Grampanchayat, Kawthi  
Tq. & Dist. Dhule
4. The Grampanchayat, Kawthi  
At Kawthi, Post Mehergaon  
Tq. & Dist. Dhule
5. Supudu Pandit Shinde (Patil)  
R/o Kawthi, Post Mehergaon  
Tq. & Dist. Dhule

... **Respondents**

Mr. N. L. Chaudhari, Advocate for the Petitioner,  
Mr. D. B. Bhange, AGP for Respondent Nos. 1 to 3  
Mr. Akshay R. Dhore h/for Mr. V. B. Patil, Advocate for Respondent No.5.

**CORAM : Y. G. KHOBRADE, J.**

**Dated : 18th September, 2024**

**JUDGMENT**

1. Rule. Rule made returnable forthwith. By consent of the parties, the matter is heard finally at the stage of admission.

2. By the present Petition under Articles 226 and 227 of the Constitution of India, the Petitioner set out prayer clause (B) as under:

*"(B) By issuing a writ of certiorari or any other appropriate writ, order or directions, the impugned judgment and order dated 7th September, 2022 passed by the learned Additional Commissioner, Nashik in Grampanchayat Appeal No. 46 of 2022 as well as judgment and order dated 14th March, 2022 passed by the learned Collector, Dhule in Grampanchayat Dispute No. 39 of 2021 be quashed and set aside. Consequently, the appeal filed by the petitioner bearing Appeal No. 46 of 2022 be allowed and for that purpose necessary directions be issued."*

3. The learned counsel appearing for the Petitioner canvassed in vehemence that, the Petitioner got elected as a Member of Grampanchayat, Kawthi Tq. & Dist. Dhule on 15th January, 2021. Subsequently, Respondent No.5 raised Grampanchayat Dispute No.39 of 2021 before Respondent No.2- Collector, Dhule, under sections 14(j-3) and 16 of the Maharashtra Village Panchayats Act, 1958 ( for short, 'the Village Panchayats Act') on ground that the Petitioner's father-in-law made encroachment over the Grampanchayat land bearing Property No.810 Sr. No 891. The Petitioner is a member of a jointly family of her father-in-law and cohabiting with her husband in the house constructed on the Grampanchayat land. The Petitioner is having a joint ration card

with her husband, children and her father-in-law. Therefore, as per provisions of Section 14(j-3) of the Village Panchayats Act, the Petitioner is disqualified as a Member of the Grampanchayat.

4. The learned Advocate for the Petitioner further canvassed that on 14.03.2022, Respondent No.2 passed the judgment and order without considering the fact that Respondent No.5 has lodged a frivolous complaint out of political rivalry though the Petitioner residing separately from her father-in-law since past more than 8-10 years and the Petitioner is having separate ration card. The learned counsel for the Petitioner submits that, since past 13 years, the Petitioner's father-in-law is in possession of the land and residing separately being a exclusive owner of the alleged encroached land and the Petitioner is residing with her husband on Property No. 392 recorded on Village Form No.8 and having separate ration card since 2018. However, Respondent No. 2-Collector failed to consider the factual matrix and passed the Judgment dated 14.03.2022, thereby disqualified the Petitioner. Being aggrieved by the Judgment dated 14.03.2022, the Petitioner has filed an Appeal No. 46 of 2022 before the appellant authority i.e. Respondent No.1-Additional Commissioner, Nashik Division. On 07.09.2022, Respondent No.1 passed the impugned Judgment and confirmed the findings recorded by Respondent No. 2 without considering the documents produced by the

Petitioner. Therefore, the Petitioner prayed to quash and set aside the order dated 07.09.2022 passed by Respondent No.1 and order dated 14.03.2022 passed by Respondent No.2.

5. Per contra, the learned AGP and the Advocate appearing for Respondent No.5 supported the concurrent findings recorded by Respondent Nos. 1 and 2 and canvassed that Shriram Atmaram Borse (Patil), father-in-law of the Petitioner, encroached upon the Grampanchayat Property No. 810 Sr. No. 891. The Petitioner alongwith her husband and father-in-law, being a joint family, are residing on the said property, therefore, the Petitioner was declared disqualified under section 14(j-3) of the Village Panchayats Act. Therefore, findings recorded by both the authorities below does not suffers any infirmities and no substantial grounds for interference, hence, prayed for dismissal of the Petition.

6. Needless to say that Respondent No.1 passed the impugned order dated 07.09.2022 and recorded concurrent findings that though the Petitioner produced the communication of the Gramsevak, Grampanchayat, Kawthi dated 30.04.2021 submitted to the Block Development Officer, Panchayat Samiti, Dhule, stating that Shriram Atmaram Borse (Patil), Sau. Kiranbai Vinod Borse (Petitioner) are residing separately. However, in the Ration Card No. 1378074 of Vinod Shriram

Borse (husband of the Petitioner) name of the the Petitioner is mentioned but it does not contain the name of her father in law Shriram Atmaram Borse. The Ration Card No. 850382 is standing in the name of Shriram Atmaram Borse, father-in-law of the Petitioner. This said ration card contains the name of the Petitioner at Serial No.7 and name of her husband at Serial No.6. The Petitioner failed to produce substantial evidence to prove that she is residing separately with her husband at the different address. Therefore, merely the Gramsevak, Grampanchayat, Kawthi issued a communication dated 30.04.2021 does not substantiate that the Petitioner is not member of joint family of her father-in-law and she is not residing in the house constructed on the encroached land.

7. Sec. 14(j-3) of the Maharashtra Village Panchayat Act provides Disqualification of the member of a Panchayat, if he has encroached upon the Government land or Public property.

8. In case of *Janabai Vs. Additional Commissioner and others ( Appeal (Civil ) No. 6832-2018)*, *AIR 2018 Supreme Court 5068*, the Hon'ble Supreme Court held that, every Member of the Panchayat and every officer and servant maintained by or being employed under the Panchayat shall be deemed to be a public servant for the purpose of Section 21 of the Indian Penal Code. Analyzing the various provisions, the learned Single Judge of this Court at Nagpur Bench in case of **Sandip**

**Ganpatrao Bhadade Vs. The Additional Commissioner, Amravati Division and others, 2017(1) Mh.L.J. 79, observed as under:**

*"13. The very object of introducing the provision of disqualification under Section 14(1)(j-3) of the said Act is to avoid the conflict of interest by prohibiting the persons, who are the encroachers upon the Government land or public property to get elected or continued as a member of the Panchayat, which is a democratically elected body of the villagers. It is beyond comprehension to assume that a person under statutory obligation or a duty to protect the Government land or public property from encroachment, commits an act of such encroachment. To permit a person, who proposes to become a member or becomes a member of the Panchayat to be the encroacher upon the Government land or public property, would be anathematic, acting in breach of statutory duty, exposing himself to prosecution under sub-sections (1) and (4) of Section 53, resulting ultimately in losing the protection under Section 180 read with Section 184 of the said Act. It is in this context that the text of disqualification under Section 14(1)(j-3) of the said Act is required to be analyzed and interpreted."*

*In **Devidas s/o Matiramji Surwade Vs. Additional Commissioner, Amravati and others**, 2013 (7) All MR 5, it has been held that, the term 'Person' has to include the legal heirs, if any, of the encroachers who continue to occupy the Government land. Emphasis has been laid on encroachment and continued encroachment. After the said Division Bench Judgment, number of learned single Judges have adopted a different approach without noticing the judgment which is against judicial discipline.*

29. We may note here with profit that the word 'person' as used in Section 14 (1) (j-3) is not to be so narrowly construed as a consequence of which the basic issue of 'encroachment' in the context of disqualification becomes absolutely redundant. The legislative intendment, as we perceive, is that encroachment or unauthorized occupation has to be viewed very strictly and Section 53, therefore, provides for imposition of daily fine. It is also to be borne in mind that it is the Panchayat that has been conferred with the power to remove the encroachment. It is the statutory obligation on the part of the Panchayat to protect the interest of the properties belonging to it. If a member remains in occupation of an encroached property, he/she has a conflict of interest. If an interpretation is placed that it is the first encroacher or the encroachment made by the person alone who would suffer a disqualification, it would lead to an absurdity. The concept of purposive interpretation would impel us to hold that when a person shares an encroached property by residing there and there is continuance, he/she has to be treated as disqualified."

9. In ***Santosh Maruti Walanj Vs. Manoj Sadashiv Jadhav, 2013 (2) Mh.LJ 68: 2013 (1) All MR 518***, it has been held that it is not only Government land on which the encroachment is found to be an act which disqualifies a person from being elected or continuing as member. An act of encroaching on public property equally invites similar consequences and a bar for being elected or continuing in office.

10. In the case in hand, it is not in dispute that, the

Petitioner is elected as a Member of Grampanchayat Kawathi in the election held in the month of January, 2021. The Petitioner herself produced Village Form-8 for the years 2016-2020 issued by the Grampanchayat, wherein Shriram Atmaram Patil, father-in-law of the Petitioner, is shown as encroacher. The Ration card No. 850382, issued by the District Civil Supply Officer in favour of Shriram Atmaram Borse, the father-in-law of the Petitioner, reflects entries of joint family member including name of the Petitioner, which shows that, the Petitioner residing along-with her husband and father-in-law under one roof.

11. No doubt the Petitioner produced Ration Card No. 1378074, which is standing in the name of husband of the Petitioner Vinod Shriram Borse, containing names of the Petitioner, and her two children Krishna and Yash, which shows that name of the Petitioner appearing in two ration cards in one and same village to take double benefits of civic supply. Though the Petitioner claimed that she is residing separately from her father-in-law but she failed to produce substantial document to that effect. Therefore, the concurrent findings recorded by both the authorities below do not appear to be perverse, bad in law and no interference is called for at the hands of this Court to disturb the same.

12. In view of the above, the Writ Petition is dismissed. No order as to costs. Rule is accordingly discharged.

( Y. G. KHOBRADE, J. )

JPChavan