



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.12333 OF 2023**

Sahila Shaikh Mohamad Hanif,
Age: 44 yrs, Occu: Household,
R/o. Sompuri, Tq. Paithan,
Dist. Aurangabad.

..Petitioner

Versus

1. The Additional Divisional Commissioner-2
Divisional Commissioner, Office,
At Aurangabad, Tq. & Dist. Aurangabad.
2. The District Collector,
District Collector Office,
Aurangabad Tq. & Dist. Aurangabad.
3. Pathan Shabana Rakibkhan
Age:- 29 years, Occu:- Sarpanch,
R/o. Sompuri, Tq. Paithan,
Dist. Aurangabad
4. Shaikh Anis Shaikh Rashid,
Age:- 50 years, Occu:- Agril,
R/o. Sompuri, Tq. Paithan,
Dist. Aurangabad

..Respondents

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Mr. C. V. Bodkhe h/f Mr. R. V. Gore, Advocate for Petitioner.

Mr. A. S. Shinde, AGP for Respondent Nos.1 and 2.

Mr. S. P. Sonwane h/f Mr. S. S. Thombre, Advocate for Respondent No.3.

Mr. Imran Khan Gaffar Khan Durrani, Advocate for Respondent No.4.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 02nd AUGUST 2024.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner impugns judgment and order dated 02.03.2023 passed by the Additional Divisional Commissioner-2, Aurangabad in Appeal No.2022/Grampanchayat/Appeal.2/CR.111 as well as judgment and order dated 26.08.2022 passed by the District Collector in Case No.२०२१/सा.प्र./ग्रापंअ/सोमपूरी/पैठण/कलम १४ (१) (ज-३)/सीआर कं.९९.

3. The petitioner filed proceeding under Section 14(1)(J-3) read with 16 of the Maharashtra Village Panchayat Act, 1958 alleging that respondent no.3 has been elected as member of village panchayat during general election of 2021. She resides alongwith her husband Rakibkhan Rashid Khan at village Sompuri in a house, which is constructed on Government land. The husband of respondent no.3 has obtained benefit under Swachh Bharat Mission (Rural) and got constructed personal toilet on Government land. Till election of respondent no.3, her family was residing on encroached area from Gut No.1. Consequently, respondent no.3 has incurred disqualification in terms of Section 14(1)(J-3) of the Maharashtra Village Panchayat Act. In pursuance of aforesaid application, notice was served upon respondent no.3, he denied the allegations of encroachment and contends that benefit of Swachh Bharat Mission has been taken by her husband in the year 2016-2017 i.e. much prior to general election of 2021. Her brother-in-law is residing separately. She resides in house at Gut No.121 i.e. private land, which has been purchased under Agreement to Sale dated 13.12.2018. The relevant entries are taken in grampanchayat record.

4. It appears that, Tahsildar, Paithan submitted his report dated 01.07.2021 stating that respondent has not made encroachment on Government land. The report specifies that brother-in-law of respondent no.3 has made construction on

Government land situated at Gut No.1. However, respondent no.3 is unconcerned with such construction. The District Collector after considering the relevant material arrived at finding that respondent no.3 resides in private property at Gut No.121/2 within gavthan area. Similarly, report of Tahsildar, Paithan dated 01.07.2021 and Village Development Officer dated 02.12.2021 support version of respondent no.3. Consequently, rejected Application No.99/2021 filed by petitioner. In Appeal Additional Divisional Commissioner concurred with aforesaid findings observing that there is no evidence to indicate that respondent no.3 or her family member resides on Government land from Gut No.1. Infact, they are residing in private property. It is also observed that husband of the respondent no.3 took benefit of Government scheme for construction of toilet in the year 2017-2018, but they are residing separately from her brother-in-law since before election. Consequently, dismissed the Appeal and concurred with the findings of District Magistrate.

5. Mr. Bodkhe, learned Advocate appearing for the petitioner urges that the affidavit filed by husband of respondent no.3 clearly states that he is residing on encroached land and claimed benefit of scheme for personal toilet while confirming that he has constructed toilet on Government land in the year 2016-2017.

6. Perusal of the said affidavit shows that benefit of such scheme was taken in the year 2018, only for the purpose of construction and use of toilet on the Government land. However, there is nothing to indicate that at the time of election or thereafter, respondent no.3 continues in possession and use of such toilet.

7. Per contra, evidence on record shows that respondent no.3 has purchased a plot in the year 2017, raised construction on said property and residing alongwith her family in private property. The report of Government Authorities supports the case of respondent no.3. Consequently, concurrent findings of facts recorded negating the case of petitioner regarding encroachment of respondent no.3 on Government land need not be disturbed.

8. In that view of the matter, there no substance in writ petition. Hence, Writ Petition stands dismissed.

9. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2024