

**Nikita**

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

**WRIT PETITION NO.1917 OF 2024**

NIKITA  
KAILAS  
DARADE

Digitally signed  
by NIKITA  
KAILAS DARADE  
Date: 2024.02.16  
17:37:09 +0530

Vaibhavi Vishal Pimple

... Petitioner

**V/s.**

Ashok Baburav Vade and Ors.

... Respondents

Mr. Sanjiv Sawant a/w Ms.Bhakti Wast i/b Mr.  
Abhishek Deshmukh for the petitioner.

Mr. V. S. Nimbalkar, AGP for the State-Respondent Nos.  
2, 3, and 5.

Mr. Atul Damale, Sr. Adv. a/w Anish Khanderkar i/b  
Vasim Siddiqui for Respondent No.1.

**CORAM : AMIT BORKAR, J.**

**DATED : FEBRUARY 14, 2024**

**P.C.:**

**1.** The petitioner is challenging the order dated 29<sup>th</sup> January 2024, passed by the Commissioner confirming the order passed by the Collector disqualifying the petitioner in the exercise of power under Section 14(J)(3) by Maharashtra Grampanchayat Act, 1958 on the ground that the petitioner's mother-in-law encroached over the government plot.

**2.** Respondent No.1, filed a complaint before the Collector based on a notice issued by Tahsildar dated 27<sup>th</sup> December 2022 to the petitioner's mother-in-law committed encroachment over

Gairan Land. The reliance was also placed on the order passed by Tahsildar for the removal of said encroachment. The measurement of encroachment is to the extent of 3630 sq. mtrs which is reflected in the revenue record. According to the respondent, therefore, the mother-in-law and the petitioner belong to the same family and hence the petitioner is disqualified to continue as a member of Grampanchayat.

**3.** The petitioner contested the application by contending that the mother-in-law is not a part of the joint family of the petitioner. The ration Cards of the mother-in-law and the petitioner are separate. The petitioner did not receive notice of suo motu Public Interest Litigation No.2 of 2022.

**4.** The Collector disqualified the petitioner under Section 14-J(3) of the Maharashtra Grampanchayat Act, 1958. The Collector recorded a finding that the petitioner failed to prove that mother-in-law was residing separately and the petitioner is not concerned with the encroachment. The said order is confirmed by the Commissioner. Hence the present petition.

**5.** Learned counsel for the petitioner placed reliance on the ration card which contains the name of the petitioner, her husband and two children. Reliance was also placed on the tax receipts before the Collector. He also placed reliance on the certificate issued by Gramsevak dated 21<sup>st</sup> April 2023.

**6.** Learned Senior counsel on behalf of respondent No.1 supported the impugned orders. He submitted that in the absence of independent documents to show that the mother-in-law has

ceased to be a family member or she is residing separately the finding of fact recorded by the authorities below requires no interference.

**7.** Having considered the statement on behalf of both sides, in my opinion, the impugned order passed by both authorities does not suffer from any legal infirmity.

**8.** The Collector recorded a finding of encroachment by the petitioner's mother-in-law based on notice issued by Tahsildar dated 27<sup>th</sup> December 2022 for removal of encroachment; an order passed by the Tahsildar in exercise of power under Section 50 of the Maharashtra Land Revenue Code, 1966 directing removal of encroachment over the government land. He also records a finding of fact that in the register of payment of taxes encroached portion to the extent of 3630 sq. mtrs over Survey No.160 is in the name of the petitioner's mother-in-law. Therefore the finding of the fact recorded by the Collector that the petitioner's mother-in-law encroached over the government land is based on materials on record.

**9.** The bone of the contention is whether the petitioner's mother-in-law is the family member of the petitioner. For the adjudication of the said issue, the defence raised by the petitioner needs to be considered. According to the petitioner, her mother-in-law resides separately from the petitioner. In support of her contention, she placed reliance on Ration Cards and tax receipts also the report submitted by Gramsevak which contains a statement that Smt. Megha Pimple is the mother-in-law of the

petitioner and she is a part of the family of petitioner. It also contains a recital that encroachment over Survey No.160 by the mother-in-law has not been regularized. It also contains the statement that property No. 526 was owned by the petitioner's husband which is, thereafter, transferred in favour of the mother-in-law of the petitioner. No other independent documents were produced by the petitioner to substantiate her defence that the mother-in-law ceased to be a family member or was residing separately from the petitioner. Therefore the finding recorded by the Collector that petitioner failed to prove that her mother-in-law resided separately does not suffer from legal infirmity.

**10.** It is generally true that in disqualification proceedings, the entire burden of proof to prove disqualification is on the person who is applying for disqualification. Once such a person proves the factum of disqualification, which in the facts of the case, is encroachment committed by a family member, it is for the elected person to prove that such family member ceased to be a family member.

**11.** It is well settled that provisions of the Indian Evidence Act, 1872 are not strictly applicable to the proceedings of disqualification. The general and broad principles of the Evidence Act would apply to proceedings of disqualification. The general principle is that it is the person who alleges has to prove his case. In the present case, once the applicant before the Collector proves encroachment by a family member, it is for the elected person to prove that the family member has ceased to be a family member. Therefore, it was also for the petitioner to produce documents to

prove the fact that the mother-in-law ceased to be a family member. Therefore, in my opinion, the findings recorded by the authorities below that the petitioner has failed to produce material on record to show that her mother-in-law ceased to be a family member does not require any interference.

**12.** Hence, the writ petition is dismissed. No costs.

**(AMIT BORKAR, J.)**