

VRJ

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

WRIT PETITION NO.3755 OF 2024

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Anita Ganpat Sawant

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Sanjay Patil for the petitioner.

Mr. P. G. Sawant, AGP for the State/respondent Nos.1
to 4.**CORAM : AMIT BORKAR, J.****DATED : MARCH 18, 2024****P.C.:**

1. The challenge in this writ petition is to the order passed by the authorities under the provisions of the Maharashtra Village Panchayat Act, 1958, thereby disqualifying the petitioner under section 14(1)(j-3) of the Maharashtra Village Panchayat Act, 1958 on the ground that the petitioner constructed over the government land.

2. The petitioner was elected as member of Gram Panchayat Behere, Taluka Kalyan, District Thane. One Ashok Ratambe filed an application before the Additional Collector alleging that the petitioner has constructed over government land Gat No.6 unauthorizedly and, therefore, she had disqualified herself. According to the complainant, the house property is a permanent

structure admeasuring 600 sq.ft. and is allotted property No.34B.

3. Learned advocate for the petitioner contested the application by contending that no evidence was placed on record to show that the petitioner encroached over the government land. The petitioner is not residing in the construction allegedly carried out over the government land. The complainant had filed such complaint against other persons which were withdrawn and the intention of the complainant was mala fide.

4. The Block Development Officer, Panchayat Samiti submitted its report stating that the record available with the Gram Panchayat indicates construction carried out in the year 2001 admeasuring 600 sq.ft. On inquiry with the petitioner, she stated that she is not aware of such house and she is not residing in such house.

5. The Collector relying on the report of Court Commissioner in Regular Civil Suit No.202 of 2014, which indicated that the construction was in Gat No.6, recorded a finding that the construction is on the government land and disqualified the petitioner.

6. The petitioner challenged the order of the Collector before the Additional Commissioner. The Additional Commissioner relying on the report of the Court Commissioner in Regular Civil Suit No.202 of 2014, which indicated encroachment over Gat No.6, confirmed the finding.

7. Learned advocate for the petitioner submitted that the alleged construction was carried out by petitioner's husband. The

petitioner is not using the said construction for her residence and, therefore, she cannot be disqualified.

8. However, the Apex Court in **Janabai vs. Additional Commissioner and Others** reported in (2018) 18 SCC 196, has held that the Gram Panchayat member whose family member carried out unauthorized construction can be disqualified as such unauthorized construction would be the reason for non-performance of statutory duties cast on the member of Gram Panchayat. Therefore, even if the unauthorized construction is carried out by the petitioner's family member, the authorities below have rightly disqualified the petitioner. Hence, no interference is called for.

9. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)