

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

WRIT PETITION NO. 9859 OF 2024

Arun Vishvanath Potdar	...Petitioner
Versus	
Harun Harendra Chavan & Others	...Respondents

Mr. Rahul P. Kasbekar for the Petitioner.

Mr. J. P. Patil, A.G.P. for the Respondent Nos.3 to 5 – State.

CORAM	:	AVINASH G. GHAROTE, J.
DATE	:	16th JULY 2024

P.C.:

1. Heard Mr. Rahul Kasbekar, learned counsel for the petitioner.

2. The petition questions the order dated 08.04.2024 passed by the Additional Commissioner in appeal, rejecting the application for grant of stay to the order of disqualification dated 31.01.2024 (Page-55) passed by the learned Collector on the ground that no material has been placed on record to indicate that the petitioner is living independent with her brother in law, Sanjay Mukund Potdar, who is claimed to have encroached in land admeasuring 20X20 bearing property No.911 as recorded in

the form 8A for the Village Gaganbawada for the year 2020-2021 (Page-21). Learned counsel for the petitioner invites my attention to the order dated 31.01.2024 in which the Collector himself has recorded that in the survey for the year 2011-2012 by the State, the name of the family of the petitioner has been recorded separately from that of the family of the said Sanjay Mukund Potdar. He also records that. there are different rations cards, issued to the family of the petitioner and that of Sanjay Mukund Potdar, which according to him indicates, the separation of the status of the joint family. This according to him was sufficient material to indicate that the petitioner and the Sanjay Mukund Potdar did not form a joint family. He further contends that in light of what has been held by the Hon'ble Apex Court in **Janabai Vs. Additional Commissioner and Ors**¹. the plea of disqualification on account of encroachment has to be based upon material indicating joint residence. Since the aforesaid documents, indicating separation have not been considered. He submits, that the impugned order suffers from a patent illegality affecting the right of the petitioner, stood continue as democratically elected candidate.

1 AIR 2018 SC 5068

3. A perusal of the impugned order dated 08.04.2021 does not indicate, that the material placed before the Collector as recorded by him in his order dated 31.01.2024 (Page-55) has been considered, in view of which, issue notice for final disposal, returnable on 29th July, 2024.

4. Learned A.G.P. waives notice for respondents Nos. 3, 4 &

5. Learned A.G.P. further acknowledges receipt of the copy. The petitioner to serve the other respondents, by the returnable date.

(AVINASH G. GHAROTE, J.)