



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 2097 of 2024

Aarti W/o Diwakar Tekam

Versus

The Divisional Commissioner, Amravati Division and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M.A.Sable, Advocate for the petitioner.

Shri K.R.Lule, AGP for the respondent nos. 1 to 3 & 6.

Shri N.A.Gawande, Advocate for the respondent no.8.

CORAM : ANIL S. KILOR, J.

DATED : 1st APRIL, 2024.

Heard learned counsel for the respective parties.

2. This matter pertains to disqualification as Sarpanch of Village Panchayat Karajgaon, under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959 (in short hereinafter referred as "Act, 1959").

3. The petitioner has been disqualified by the Additional Collector vide order dated 10th March, 2023 which is confirmed by the Additional Commissioner, Amravati vide impugned order dated 15th March, 2024,

on the ground that the petitioner is residing in a joint family with her father-in-law Ramoji who has encroached upon a Government Land.

4. The learned counsel for the petitioner argues that nowhere in the inquiry report of the Extension Officer, Panchayat Samiti Warud, a final conclusion was recorded that, Ramuji Tekam has encroached upon any government land. It is submitted that despite this fact both the authorities below without any evidence recorded the findings that the petitioner has encroached upon the Government Land and disqualified her under Section 14(1)(j-3) of the Act, 1959.

5. On the other hand, Shri Gawande, learned counsel for the respondent no.8, the complainant who filed the proceedings of disqualification against the petitioner submits that, there is Sidha Patrika (ration card) which is sufficient to establish the fact that she incurs disqualification on the ground that there is an encroachment made by her father-in-law.

6. It is submitted that both the authorities have rightly arrived at a conclusion that the petitioner is residing in a joint family of Ramuji Tekam and Deepak Tekam who have encroached upon the government land.

7. Shri Gawande, learned counsel for the respondent no.8 has placed reliance upon the various observations made by the Additional Collector, Amravati and the Divisional Commissioner, Amravati to convince this Court that the findings are based on record and no error has been committed by both the authorities below.

8. Shri Lule, learned Assistant Government Pleader supports the order passed by both the authorities below and prays for dismissal of the present writ petition.

9. It is a settled law that in the matter of disqualification a casual approach cannot be permitted for the reason that because of such disqualification not only the elected member but the whole constituency suffers.

10. In the present matter, the whole controversy revolves around a question, whether the petitioner occupies the house alleged to have constructed on the encroached land of the Government.

11. It is the case of the respondent no.8 that the petitioner is residing in a joint family of Ramuji who has encroached upon the Government Land.

12. The report of the Extension Officer shows two different properties one in the name of Ramuji and

another in the name of Deepak, the brother-in-law of the petitioner. Thus, the burden lies on the respondent no.8 being complainant to establish a fact that the petitioner has occupied the encroached land.

13. In the circumstances, the document Siddha Patrika only shows that under the Public Distribution System, the family possessed single card.

14. However, if there are two different houses one in the name of Ramoji and another in the name of Deepak, in absence of any report against Ramoji that he has encroached upon the Government Land, the petitioner cannot be held disqualified under Section 14(1)(j-3) of the Act, 1959 on the ground that she has encroached upon the Government Land.

15. Though there are allegations that the petitioner is residing with her brother-in-law Deepak who alleged have encroached upon a Government Land, there is no document or inquiry report establishing the said fact.

16. In the circumstances, in absence of any cogent evidence which would lead to such a harsh action of disqualification, the disqualification of the petitioner is unwarranted. Accordingly, I pass the following order.

i. The writ petition is partly allowed;

- ii. The order dated 15th March, 2024 passed by the respondent no.1 - the Divisional Commissioner, Amravati and the order dated 10th March, 2023 passed by the respondent no.2 - the Additional Collector, Amravati are hereby quashed and set aside;
- iii. The Additional Collector, Amravati is at liberty to call the report afresh, if he intends to proceed in the matter afresh.

[ANIL S. KILOR, J.]