



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

Writ Petition (WP) No. 2389 of 2023

Nivrutti Chatrapati Kesharkhane

Versus

The Additional Commissioner, Amravati Division, Amravati 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 T.U.Tathod, Advocate for the petitioner.

Ms. Mrunal Naik, AGP for the respondent nos. 1 and 2
/State.

Shri S.M.Vaishnav, Advocate for the respondent no.4.

CORAM : ANIL S. KILOR, J.

DATED : 2nd APRIL, 2024.

Heard.

2. This matter pertains to disqualification of the petitioner as a Sarpanch, Gram Panchayat Shirpur under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959.

3. The Additional Collector, Amravati vide order dated 4th November, 2022 as well as the Additional Commissioner, Amravati vide order dated 29th March, 2023, have held against the petitioner and disqualified him on the ground that his father has made encroachment upon the Government Land.

4. It is the specific case of the petitioner that the allegation about the encroachment is not against the petitioner but it is against the father of the petitioner.

5. It is further case of the petitioner that documents namely 7/12 extract, ration card and Gaon Namuna 8 filed on record by the petitioner to show that he is not residing with the father who has made alleged encroachment over the Government Land, have not been considered.

6. Thus, it is submitted that despite the Additional Collector, has accepted the fact that he is residing separately from his father, it has wrongly held that when the father of the petitioner has encroached upon the Government Land, the petitioner would incur disqualification.

7. In the judgment of Janabai Vs. Additional Commissioner and others¹, the Hon'ble Supreme Court of the India has held that if a member remains in occupation of an encroached property, he/she has a conflict of interest.

8. Thus, the condition is that elected member must be in occupation of the encroached property. However, in this case there is no such findings recorded

1 2018(5) Mh.L.J 921

by both the authorities below against the petitioner that he is in occupation of land allegedly encroached.

9. In the circumstances, I am of the opinion that both the authorities have not considered the case of the petitioner in right perspective and erroneously held that he has encroached upon the Government Land and disqualified him.

10. In that view of the matter, the present matter needs to be remanded back to the Collector for deciding it afresh after hearing both the parties. Accordingly, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The order dated 29th March, 2023 passed by the Additional Commissioner, Amravati Division, Amravati and order dated 4th November, 2022 passed by the Additional Collector, Amravati, are hereby quashed and set aside;
- iii. The matter is remanded back to the Additional Collector, Amravati to decide the same afresh after hearing both the parties.
- iv. The parties are directed to appear before the Additional Collector, Amravati on **25th April, 2024** at 12 noon and thereupon the Additional Collector, Amravati shall decide the matter afresh within a period of two months from the date of appearance of the parties;

[ANIL S. KILOR, J.]