



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

WRIT PETITION NO. 2782 OF 2023

(MRS. KIRAN SACHIN NAGRARE..VS.. STATE OF MAH. THR. REVENUE DEPT & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Amit Kinkhede, Advocate for Petitioner.
Shri Sachin Narale, A.G.P. for Respondent Nos.1, 2, 4 & 5.
Shri Sachin Walekar, Advocate for Respondent No.6.

CORAM : ANIL S. KILOR, J.
DATED : JANUARY 23, 2024.

1. Heard.
2. This matter pertains to disqualification of the petitioner as Sarpanch of Gram Panchayat, Panjri (Bk.).
3. The petitioner has been disqualified vide order dated 29/08/2022 by the Collector on the allegation that the petitioner is residing in a house which stands in the name of her father- in-law and the said house is constructed by encroaching the government land. The Collector, accordingly, passed the order disqualifying the petitioner under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959 on 29/08/2022, which was the subject matter of challenge in an appeal filed before the Additional Commissioner, who maintained the order of the Collector. Both these orders are under challenge in this writ petition.

4. The learned counsel for the petitioner has drawn attention of this Court to a document i.e. Possession Receipt of the house allotted in the name of the father-in-law of the petitioner vide letter dated 20/06/1984 issued by Talathi. The learned counsel for the petitioner states that the constructed house was given in possession of the father-in-law of the petitioner in the year 1984 and since then the father-in-law of the petitioner is residing in the said house. It is submitted that, since it was allotted by the Government it cannot be said that the house is an encroachment on the government land.

5. On the other hand, the learned A.G.P. submits that there is a report which supports the case of encroachment by the petitioner. It is submitted that except the Possession Letter no other documents are produced to show that the said construction is not an encroachment on the Government land.

6. The learned counsel for the respondent No.6-complainant points out from the Tax Receipt that, the father-in-law of the petitioner and the petitioner carried out illegal construction on the Government land other than the house allotted in the year 1984. It is further pointed out that the Gram Panchayat has already issued a notice as regards the encroachment long back and as such there is a sufficient evidence as regards encroachment made by the father-in-law of the petitioner.

7. In light of the rival submissions, I have perused the record and the impugned orders.

8. Though the Collector, while passing the order dated 29/08/2022 has recorded the finding as regards the Possession Letter issued by the Talathi and handing over of possession of the house in dispute to the father-in-law of the petitioner on 20/06/1984, the same has been discarded for erroneous reasons that there is no document filed by the petitioner to show that the land was given on lease by the Revenue Department or the encroachment was regularized.

9. There is no finding in the impugned order that, the father-in-law of the petitioner or the petitioner has made any construction on the government land other than the house allotted to the father-in-law of the petitioner. Thus, there is no evidence available on record to show that there is any additional construction made by the petitioner or her father-in-law on the Government land. As far as house which was allotted by the Talathi to the father-in-law of the petitioner is concerned, it cannot be said that it is an encroachment over the government land.

10. In the circumstances, until the material on record is properly examined and appreciated and unless authority reaches with certainly on any conclusion as regards encroachment, the disqualification is erroneous

and unwarranted. The Additional Commissioner has failed to appreciate and consider the above referred aspects of the matter and illegally upheld the order of the Collector. Therefore, the matter needs to be remanded back to the Collector for making fresh inquiry and deciding the same afresh.

11. At this stage, the learned counsel for the petitioner strongly opposed for remand of the matter and for this purpose he has placed reliance on the following judgments of the Hon'ble Supreme Court of India :

- a) *Union of India ..vs.. Devjee Mishra*, reported in (2016) 10 SCC 445;
- b) *Sankaran Pillai ..vs.. V. P. Venguduswami*, reported in (1999) 6 SCC 396;
- c) *Bhagwan Sahai Todwal ..vs.. State of Rajasthan*, reported in (2010) 15 SCC 749;
- d) *M.S.Jagadambal ..vs. S.I. Education Trust*, reported in 1998 (Supp) SCC 144;

12. Considering the fact that this matter pertains to disqualification. Any person if found to be in illegal and unauthorized possession of the land owned by the Government by making encroachment such person cannot be, in any case, permitted to continue to hold the elected post like Sarpanch. Therefore, as the petition is allowed on a technical ground that matter was not properly examined and considered by the Collector, it is

necessary to revisit the complete evidence and record clear findings either way on the issue involved. Hence, the judgments cited by the learned counsel for the petitioner is of no help to the petitioner in the peculiar facts of the present case.

13. Accordingly, I pass the following order :

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 24/03/2023 passed by the Additional Commissioner, Nagpur and the order dated 29/08/2022 passed by the Collector, Nagpur are hereby quashed and set aside.
- iii) The matter is remanded back to the Collector, Nagpur for fresh inquiry and to decide the matter afresh after hearing both the parties.

The Writ Petition is **disposed of** accordingly.
No order as to costs.

JUDGE