



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

<u>WRIT PETITION NO.5911/2022</u>	
<u>PETITIONER</u>	Ranjana W/o Eknath Gopkar Aged about 39 years Occ. : Household R/o Hathgaon Taluka Murtizapur, Dist. : Akola.
<u>...VERSUS...</u>	
<u>RESPONDENTS</u>	1. The Divisional Commissioner, Amravati Division, Amravati, Tq. and District Amravati. 2. Collector Amravati Akola, District Amravati Akola, Tq. and District Amravati Akola. (Amended as per Court's order dt. 6/3/2024) 3. Block Development Officer, Panchayat Samitee, Murtizapur, Tq. Murtizapur, District Akola. 4. Village Development Officer/Secretary, Gram Panchayat Hatgaon, Tq. Murtizapur, District Akola. 5. Sunil s/o Gnyandeo Goplar R/o Village Hatgaon, Tq. Murtizapur, District Akola.
Mr. P.S. Tiwari, Advocate for petitioner Mr. H.D. Futane, AGP for respondent nos.1 and 2 Mr. N.A. Gawande, Advocate for respondent no.5	

CORAM : BHARAT P. DESHPANDE, J.

DATE : 06/03/2024

ORAL JUDGMENT

1. Leave to correct the respondent no.2 by mentioning “Collector Akola District” in stead of “Amravati District” is granted. Amendment to be carried out forthwith.
2. Heard. Rule. Rule made returnable forthwith. Heard learned counsel for the parties by consent for final disposal.
3. The petitioner is an elected member of Grampanchayat, Hatgaon. The complaint was lodged by the respondent no.5 – Sunil Goplar with the respondent no.2 for the purpose of disqualification of the petitioner on the allegation that she encroached upon a Government land. Such application was under Section 14 (1) (j-3) of the Maharashtra Village Panchayats Act, 1959.
4. Learned counsel for the petitioner would submit that even though such complaint was lodged and inspection was carried out by the Secretary of the Village Panchayat, Hatgaon, Extension Officer, Murtizapur and Sectional Engineer, Panchayat Samiti, Murtizapur, such inspection was carried out without giving any intimation to the petitioner and the respondent no.5. Learned counsel for the petitioner would further submit that such report

nowhere discloses about any encroachment carried out by the petitioner on a Government land. He would submit that in Survey Record (Namuna-8) the name of the husband of petitioner is recorded in the occupant's column. Learned counsel for the petitioner would submit that this report has been considered by the authorities and accordingly the impugned order was passed.

5. Learned counsel for the petitioner while placing reliance on the decision in the case of *Sau. Lalita Dilip Khandalkar Vs. Additional Commissioner, Amravati and others 2019 (6) ALL MR 261*, would submit that this Court in a similar circumstance quashed and set aside such order on the ground that inspection was not carried out in presence of the petitioner and that such report was accepted by the authorities and used against the petitioner for issuing the order regarding disqualification.

6. Learned counsel for the respondent no.5 would submit that even said respondent no.5, who is the complainant, was not given any opportunity to remain present at the time of such inspection.

7. Learned Assistant Government Pleader appearing for the State on the basis of record placed in the present matter fairly admits

that no such opportunity was given to the petitioner and the respondent no.5 – complainant while conducting the inspection.

8. In the case of ***Sau. Lalita Dilip Khandalkar*** (supra) the learned Single Judge of this Court in paragraph 12 and 13 has clearly observed that an opportunity is required to be given to the petitioner to remain present at the time of inspection so as to consider whether there is an encroachment carried out by the petitioner on a Government land. Similarly, the report which is placed on record nowhere discloses that the structures mentioned therein are in fact existing on a Government land. The observations of the learned Single Judge of this Court in the case of ***Sau. Lalita Dilip Khandalkar*** (supra) are squarely applicable to the matter in hand. I am in full agreement with the said observations and accordingly it is clear that the impugned orders need to be quashed and set aside together with the inspection report. However, in order to decide the complaint filed by the respondent no.5, effectively, the concerned authority is required to be directed to conduct fresh inspection in presence of the petitioner and the respondent no.5 and thereafter submit the report to the concerned authority in order to decide the complaint lodged by the respondent no.5 afresh.

9. Accordingly the writ petition is partly allowed. The impugned orders along with inspection report dated 24/03/2022 are quashed and set aside. The complaint of the respondent no.5 shall be considered afresh by directing the concerned authority to carry out fresh inspection in presence of the petitioner and the respondent no.5 and thereafter to decide the matter afresh by giving opportunity to the petitioner and respondent no.5.

10. Needless to mention that this Court has not gone into merits of the present matter as well as the complaint lodged by the respondent no.5. The concerned authorities shall decide such complaint afresh and on its own merit, in accordance with law. The petitioner as well as respondent no.5 shall remain present before the Collector, Akola on 02/04/2024 at 11:00 a.m. The authorities are directed to decide such complaint within a period of three months from that date.

11. Rule is made absolute in the aforesaid terms. No order as to costs. The parties to act on the authenticated copy of this order.

(BHARAT P. DESHPANDE, J.)