



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 7224 of 2023

Meena Atish Mohod,
Aged 31, Sarpanch Gram Panchayat,
Shirkhed, R/o Shirkhed, Tq. Morshi,
Distt. Amravati.

.... Petitioner

- VERSUS -

(1) Suresh S/o Shankarrao Pawar.
Aged about 45, R/o Shirkhed,
Tq. Morshi, Distt. Amravati.

(2) Additional Commissioner,
Amravati Division, Amravati,
Tq. & Distt. Amravati.

(3) Additional Collector,
Amravati, Tq. & Distt. Amravati.

(4) The Secretary
Gram Panchayat, Shirkhed,
Tq. Morshi, Distt. Amravati.

.... Respondents

Mr. K. P Mahalle, Advocate for the petitioner
Mr. S. S. Shingane, Advocate for respondent no. 1
Mrs. M. A. Barabde, A.G.P for respondent nos. 2 and 3
None for respondent no. 4

CORAM : ANIL L. PANSARE J.

DATED : 18-06-2024

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with
consent of learned counsel appearing for the parties.

2. The challenge is to the order dated 10-10-2023 passed by the learned Additional Commissioner, Amravati Division, Amravati in Appeal No. 43-BVP 16(2)/Shirkhed/2023 as also order dated 20-4-2023 passed by learned Additional Collector, Amravati in Gram Panchayat Case No. Section 14(1)(j-3)/Shirkhed-15/2021-22. The authorities below have declared the petitioner as disqualified from being member of Gram Panchayat, Shirkhed, Taluka Morshi, Distt. Amravati on the ground that she has encroached upon the Government land in terms of Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958 (hereinafter referred to as “the Act of 1958”).

3. Having heard both sides, it is evident that the authorities below have neither sought the document of title from the petitioner nor have they examined the same. The petitioner is blamed to have encroached on the basis of panchanama dated 14-1-2022. The panchanama has been drawn by Secretary of Gram Panchayat in the presence of Talathi, Shirkhed, In-charge Head Master of the Zilla Parishad School, Police Patil, Shirkhed, Village Development Officer and Peon of Gram Panchayat, Shirkhed as also the petitioner. The sketch map is drawn by the Secretary indicating the petitioner’s house and surrounding area. To the South of the petitioner’s house is a house of one Renuka

Dhoke. To the East and North is a road and to the West is an open space. The allegation is that the petitioner is using the open space to approach her house. The map indicates that there is a door opening towards open land. In that sense, the petitioner is using the open land situated towards western side to approach her house. Just because that portion of land is being used, one cannot really infer that the petitioner has encroached upon the said land.

4. Thus, the order impugned suffers from two illegalities, firstly, the Secretary is not an authority to carry out the measurements of the land that too without examining the documents of title and secondly, merely because the open land belonging to Government is used to access the house, that by itself, cannot be said to be an encroachment made by a person.

5. The elected member can not be sidelined on the basis of such an exercise. The action of disqualification is a punitive action and has an adverse impact on peoples mandate. The standard of proof to substantiate allegation of encroachment ought to reasonably high. In the present case, there is no evidence about encroachment as alleged. The orders passed by the authorities below ignoring vital aspects are, therefore, unsustainable.

6. Accordingly, the order dated 10-10-2023 passed by the Additional Commissioner, Amravati Division, Amravati in Appeal No. 43-BVP 16(2)/Shirkhed/2023 as also the order dated 20-4-2023 passed by the Additional Collector, Amravati in Gram Panchayat Case No. Section 14(1)(j-3)/Shirkhed-15/2021-22 are quashed and set aside.

7. Rule is made absolute in above terms.

(Anil L. Pansare, J.)

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