



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2168 OF 2023

KIRAN SHANKARRAO WAGHMARE

VERSUS

**THE STATE OF MAHARASHTRA THROUGH ITS ADDITIONAL
DIVISIONAL COMMISSIONER AND OTHERS**

...

Mr. Vijay Bhalerao Patil, Advocate for the Petitioner.

Mr. S. P. Joshi, AGP for Respondents-State.

Mr. A. B. Dhongade h/f Mr. Anil P. Basarkar, Advocate for
Respondent No.4.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 05th AUGUST, 2025.**

P.C.:-

1. The petitioner impugns order dated 08.03.2022 passed by District Collector, Nanded in Dispute No.93/2021 as well as order dated 15.11.2022 passed by Additional Divisional Commissioner, Aurangabad in Appeal No.37/2022, whereby petitioner's application to disqualify respondent no.4 under Section 14(J-3) of the Maharashtra Village Panchayat Act is rejected.

2. Mr. Vijay Patil, learned Advocate appearing for petitioner submits that petitioner had filed Dispute No.93/2021 before District Collector at Nanded contending that respondent no.4 is elected as Sarpanch. She has been residing in a house constructed on Government land. According to Mr. Patil, respondent no.4 has constructed house in Gut No.127 abutting to land owned by Irrigation Department. He invites attention of this Court to

Enquiry Report submitted by Extension Officer, Aurala, Taluka Naigaon, wherein there is specific stipulation that respondent no.4 has encroached upon land owned by Irrigation Department. He would further invite attention of this Court to spot panchanama, wherein stipulation is made regarding encroachment by respondent no.4. Mr. Patil also invites attention of this Court to office noting dated 26.05.2020 by Recovery Officer, Raher. According to Mr. Patil, aforesaid evidence is ignored by District Collector as well as Additional Divisional Commissioner while rejecting petitioner's claim for disqualification of respondent no.4.

3. Per contra, learned Advocate appearing for respondent no.4 supports impugned order.

4. Having considered submissions advanced, it can be observed that petitioner alleges disqualification against respondent no.4 on the ground that she is residing in house, which has been constructed by making encroachment on land owned by Irrigation Department. In support of his contentions report of Extension Officer, spot panchanama and notice issued by Irrigation Department is relied upon. Perusal of such documents would show that there is no independent record indicating exact area of encroachment in possession of respondent no.4 or her family members. It is not in dispute that land Gut No.127 admeasuring 65 R is owned by family of respondent no.4. However, it is sought

to be addressed that while making construction of house, encroachment is made on some part of land owned by Irrigation Department. In that case, encroachment could have been established only on the basis of report of measurement by Competent Authority, but except contention of Officers of Irrigation Department in their official noting, alleging encroachment at the hands of family members of respondent no.4, no other material is placed on record.

5. In case of ***Ravi Yashwant Bhoir Vs. The Collector, District Raigad & Ors.***¹, Supreme Court of India observed that in case of disqualification of elected representative, impeccable evidence needs to be brought on record. In present case, except evidence creating some possibilities of encroachment, no other concrete material could be brought on record, by which definite conclusion could have been drawn as to encroachment at the hands of respondent no.4 or her family members on Government land. The learned District Collector as well as Additional Divisional Commissioner have concurrently held in favour of respondent no.4 and accepted her defence that she has not encroached upon Government land. Findings so recorded by both Authorities need not be interfered in Writ jurisdiction of this Court in absence of impeccable material in support of alleged encroachment bringing disqualification to respondent no.4.

¹ (2012) 4 SCC 407.

6. In that view of the matter, writ petition sans merit. Hence, dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2025