



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2194 OF 2024

Gangadhar Dashrath Mhaske

VERSUS

The State Of Maharashtra Through Its Secretary And
Others

WITH

WRIT PETITION NO. 2189 OF 2024

Chandrakala Bhausahab Khutekar

VERSUS

The State Of Maharashtra Through Its Secretary And
Others

- Mr. I. K. G. K. Durrani, Advocate for the Petitioners
- Mr. S. B. Jadhav, AGP for the Respondent Nos. 1 to 3/State
- Ms. V. A. Shinde, Advocate for the Respondent No. 4

CORAM : R. M. JOSHI, J
DATE : FEBRUARY 24, 2025

COMMON ORDER :

1. By consent of both sides, heard finally at the stage of admission.

2. These Petitions take exception to the orders passed by the Collector disqualifying the Petitioners from the Membership of the Grampanchayat under Section 14(1)(j-3) read with Section 16 of the Maharashtra Village Panchayats Act, 1959 (for short '**the Act**') for

causing encroachment on Government property.

3. Petitioners are elected members of Grampanchayat Katpur, Tq. Paithan, Dist. Chhatrapati Sambhajinagar. A complaint came to be made with the Collector about encroachment being caused by them on Government land and therefore, seeking disqualification under these provisions. The Block Development Officer (for short 'BDO') submitted report dated 23.08.2023 indicating the encroachment being done by some of the members of the Grampanchayat on the Government land. On the basis of the said report and after hearing both sides, Collector has passed order dated 23.08.2023 in proceeding bearing CR-49/2022 and disqualified Petitioner from membership of the Grampanchayat.

4. An appeal came to be preferred before the Divisional Commissioner under Section 16(2) of the Act taking exception to the order passed by the Collector unsuccessfully. Hence, these Petitions.

5. Learned Counsel for Petitioners submit that at the time of submission of report of BDO no notice was issued to the Petitioners and as such, there is non

compliance of principles of natural justice. It is his submission that in such circumstances, the report of the BDO deserves to be discarded so also orders passed by the Collector and Divisional Commissioner relying upon the said report deserves to be discarded. He placed reliance on the judgments of this Court in cases of Subhash Krushnarao Khartadkar vs. The Divisional Commissioner, Amravati and Others, Writ Petition No. 5722/2022 & Swati Sachin Balge vs. Appasaheb Kisan Veer and Others, Writ Petition No. 8368/2023. Apart from this, it is his submission that in the entire village the houses are situated on the land belonging to the Irrigation Department. According to him, as the Tahsildar had regularized one of such possession, Grampanchayat passed resolution for forwarding the proposal to the Government for regularization of the possession of the Petitioners as well as other holders of the land. It is his submission that had there been a notice before spot inspection by the BDO, the Petitioner would have been in a position to explain the nature of their possession. On these counts, Petitioners seeks interference in the impugned orders.

6. Learned Counsel for contesting Respondent and learned AGP supported the impugned orders by contending that Collector as well as Divisional Commissioner has rightly taken into consideration the entire material on record to hold that the it is the case of disqualification under Section 14(1)(j-3) of the Act.

7. At the outset, this Court would like to deal with the judgment cited in case of Swati Sachin Balge (supra). It is held therein that during the process of conducting spot inspection for ascertaining the alleged encroachment on the Government land, the elected representative had not received the notice and report was prepared behind his back. This observation is made by this Court in the light of the fact that there was no other material other than the spot inspection report of the BDO indicating the encroachment caused by the members of the Grampanchayat on the Government land. The instant case, however, there is no dispute about the fact that the resolution was passed by the Grampanchayat dated 22.11.2022 at Serial No. 174 for sending proposal to the Government for regularization of the encroached portion of the Government land. There

is further no denial of the fact that the Petitioners name were also included as one of the encroachers therein. In the light of these facts, and more particularly when it is not in dispute that Petitioners are residing in the said premises but as per their claim as tenants, the burden was on the Petitioners to substantiate the same. As rightly observed by the Collector in the order dated 23.08.2023, there was absolutely no material placed on record by the Petitioners in order to establish the said fact.

8. It is not only that there is no notice of the spot inspection issued to the Petitioner will become a ground for taking exception to the orders impugned but when other material is available on record, the Petitioners must show prejudice caused to them by non issuance of such notice. The reason therefor is that on the basis of report of BDO there is no automatic disqualification. The report of BDO is called by way assistance to enable Collector to decide the issue. In any case, the member gets an opportunity to deal with the said report during hearing of proceeding of disqualification.

9. Facts as indicated herein above more than sufficiently demonstrate that the Petitioners are encroachers on the Government land. Merely because the some resolution is passed by the Grampanchayat for seeking regularization of the said possession, it does not become authorize/regularized possession on the Government land by the Petitioners.

10. Similarly, because almost entire population of the said village resides on the land belonging to the Irrigation Department, it does not become a ground for condonation of the same from disqualification of the membership of the Petitioners. Section 14(1)(j-3) of the Act specifically provides that where there is encroachment caused by the elected members of the Grampanchayat on the Government land and the same is continued, it becomes disqualification to continue with the membership. Once such encroachment is established, the only inevitable order would be of disqualification of such person from membership of Grampanchayat.

11. Having regard to the facts of the case and in view of practically undisputed fact that the Petitioners are occupying the Government land

unauthorizedly and in encroachment thereof, this Court finds no reason or justification to cause interference in the impugned orders. In the result, Petitions stand dismissed.

(R. M. JOSHI, J.)