



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

WRIT PETITION NO. 5247 OF 2024

Keshav Irabaji Taru

VERSUS

The State Of Maharashtra Through Its Secretary And Others

Mr. M. R. Jamdhade, Advocate for Petitioner

Mr. S. N. Kendre, AGP for Respondent Nos. 1 to 4/State

Mr. S. B. Pulkundwar, Advocate for Respondent No. 5

CORAM : R. M. JOSHI, J.

DATE : 18th March, 2025

PER COURT :-

1. This petition takes exception to the order dated 13.02.2024 passed by Collector, Nanded in the proceedings of disqualification under Section 14(1)(j-3) of Maharashtra Village Panchayats Act (for short "**the Act**") disqualifying the petitioner from the post of Sarpanch and confirmation of the said order by the Additional Divisional Commissioner, Chatrapati Sambhaji Nagar, in Appeal No. 2024/GP/Appeal-1/CR-21 dated 22.05.2024.

2. The facts as they appear from the record indicate that the petitioner who belongs to Scheduled Caste Community and elected as a Sarpanch on the reserved post in Gram Panchayat Election of Village Malkoutha, Tq. Mudkhed, Dist. Nanded. According to petitioner, Respondent No. 7 belongs to the Politically Rival Group. There is also

grievance that this respondent created various obstacles in the way of petitioner to get elected. Respondent No. 7 filed an application under Section 14(j-3) of the Act for disqualification of the petitioner from continuing as a Sarpanch with the allegation that his father has encroached upon the Government land and constructed a Gharkul by taking benefit of the scheme under Pantpradhan Gharkul Yojana without obtaining permission from the Respondent No. 4 i.e., Assistant Engineer, Public Works Department (for short "**PWD**"). This proceeding was entertained by the Collector, Nanded under Section 16 of the Act. A report was called from the Executive Assistant Engineer, Grade – 1, PWD, Mudkhed. Ascertaining the allegation with regard to the encroachment and occupation of the encroached premises, parties were heard. Collector, by order dated 13.02.2024 held that encroachment caused by the family member of the petitioner is established and, therefore, disqualified him from the post of Sarpanch. Being aggrieved by the said order, appeal came to be filed under Section 16 Sub-section 2 of the Act before the Additional Divisional Commissioner, Chatrapati Sambhaji Nagar unsuccessfully. Hence, this petition.

3. Learned counsel for the Petitioner submits that there is only one charge/allegation against petitioner is about encroachment of the Government land has contemplated under Section 14(1) (j-3). It is her

submission that there is allegation of encroachment being made against the father of the petitioner. She drew attention of the Court to the report submitted before the Collector which indicates that the petitioner is not residing in the allegedly encroached premise on the Government land. It is her submission that the Collector has committed error in not considering the said fact and it committed further error in contending that there ought to have been partition deed executed between the parties in order to execute the petitioner from the record of disqualification.

4. Learned counsel for Respondent No. 7 and learned AGP supported the impugned order. It is their contention that there is evidence on record to indicate that encroachment being done by the father of the petitioner on the Government land. It is submitted that the petitioner while being Sarpanch has helped his father in getting premise in the pantpradhan Gharkul Yojana and instead of carrying out construction on 269 sq. ft. more construction has been done. To support his submission, learned counsel for Respondent No. 7 has placed reliance on the judgment of Nagpur High Court in case of **Sau. Lalita Dilip Khandalkar Vs. Additional Commissioner, Amravati & Ors** **2019(6) ALL MR 261.** Further, he placed reliance on the judgment of this Court in case of **Ashabai Laxman Gawanda Vs. Additional**

Commissioner, Amravati & Others (2005 (4) BCR 335) which pertains to the proceedings under Section 14 (1) (g) not on 14 (1) (j-3).

5. There cannot be any dispute made with regard to the law settled by the Hon'ble Supreme Court in case of **Janabai Vs. Additional Commissioner and others in Civil Appeal No. 6832 of 2018** that even if the member or the office bearer of the Gram Panchayat has not himself carried out the encroachment on the Government land however, if he remains in occupation of the encroached property is said to be in conflict of interest. It is thus, clear that only in case of member of Gram Panchayat, it is found to be in occupation of the encroached property and encroachment of which is not caused by himself, the record of the disqualification would get attracted against him under Section 14(1)(j-3) of the Act. Here, in this case, as it appears from the order passed by the Collector that there was evidence to indicate that the alleged encroachment has not been caused in Gut No. 80 by the petitioner but it is said to have been done by his father. In such circumstances, there ought to have been evidence to indicate that petitioner is residing in the said premises which is allegedly encroached on the Government land. Leave apart, such evidence, in fact there is positive evidence to indicate that the petitioner is residing in House No. 3, which is a different premises than the allegedly encroached premises.

6. In such circumstances, by following judgment of the Hon'ble Supreme Court in case of Janabai (cited supra), no disqualification ought to have been attached to the petitioner. Collector has held that there is no partition deed filed on record and, therefore, the case of the petitioner was not accepted. Collector has committed serious error in making said observations. It was for the Collector only to see whether the encroachment has been done by the member of Gram Panchayat or such member is in occupation at the encroached property. Once, findings are recorded, there is no such encroachment made by him or he is not get engaged property, question of disqualifying him from the post of Sarpanch under Section 14(1)(j-3) read with 60 of the Act does not arise. The appellate Authority also has failed to take into consideration these material aspects.

7. In so far as the allegations against the petitioner with regard to the breach of Section 14(1)(g) is concerned, admittedly there is no charge against him in this regard. Hence, question of this Court considering the submission made by the learned counsel for Respondent No. 7 in this regard, does not arise. Finally, it is sought to be argued that pursuant to the disqualification, the Election of the Sarpanch has already taken place and another person is elected as a Sarpanch. Needless to say, once disqualification is revoked, petitioner is deemed to have been

restored on the post of Sarpanch. Any other actions taken subsequently would render inconsequential.

8. In view of above, the impugned orders cannot sustain and as such set aside. Petitioner is restored on the post of Sarpanch.

9. Learned counsel for Respondent No. 7 seeks staying of this order for a period of 4 weeks. Learned counsel for the Petitioner records objection. Ordinarily, this Court would not have refused to stay order passed by this Court. However, in the present case, the order passed by the Collector is in complete violation of the position of law and the judgment of the Hon'ble Supreme Court. Hence, stay is refused.

(R. M. JOSHI, J.)

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