

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION No.8120 OF 2025

Ushabai Santosh Wagh
Age: 37 years, Occu.: - Sarpanch
of Grampanchyat Salve,
R/o- Grampanchayat House No. 376,
Salve, Tq. Shindkheda, District- Dhule. ..Petitioner

VERSUS

1. The Collector, Dhule
Tq. & District- Dhule
2. The Divisional Commissioner
Nashik.
3. The Grampanchyat Salve
Tq- Shindkheda, District- Dhule
Through the Gramsevak
4. Ramesh Khanderao Shinde
Age-Major. Occc-R/o- Salve,
Tq- Shindkheda, District- Dhule ..Respondents

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Advocate for the Petitioner : Mr. M.S. Shah
AGP for Respondent/State : Mr. S.P. Joshi
Advocate for Respondent No.4 : Mr. M.V. Bhamre

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : JULY 14, 2025

PRONOUNCED ON : AUGUST 01, 2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally
with consent of parties.

2. The petitioner impugns order dated 23.06.2025 passed by Divisional Commissioner, Nashik in Gram Panchayat Appeal No.37 of 2025 upholding judgment and order dated 06.02.2025, passed by District Collector, Dhule in Dispute Application No.03 of 2024, thereby declaring petitioner disqualified to hold the post of Member and Sarpanch of Village Salve, Taluka Shindkheda, District Dhule.

3. Brief facts giving rise to present petition can be stated as under :

The petitioner has been elected as Sarpanch of Village Panchayat in the year 2023. Respondent no.3 filed a Dispute Application No.03 of 2024 before District Collector, Dhule, alleging disqualification of petitioner under Section 14 (1)(J-3) of Maharashtra Village Panchayat Act, 1958 ('Act of 1958' for short) and sought her removal from the post of Sarpanch and Member of Village Panchayat on the ground that father-in-law of petitioner has raised excess construction and encroached over government land. The learned Collector issued notice. The petitioner responded to said notice and filed her reply denying allegations of encroachment. She explained that Property No.357 was allotted to father-in-law under village extension scheme in the year 1976. The plot ad-measuring 50 x 30 is in his possession and he has raised construction of 40 x 12 over said plot. Petitioner has specifically pleaded that she is separately residing along with her husband since last 12 years in a

rented house and she is unconcern with construction raised by her father-in-law. In support of her contentions, she has placed on record notarized lease agreement and copy of ration card depicting her separate residence. The learned Collector relied upon report of Block Development Officer and observed that father-in-law of petitioner has raised total construction of 1545 sq.ft. beyond plot area within his ownership. Eventually, passed the order of disqualification. The learned Divisional Commissioner confirmed said order of District Collector in Gram Panchayat Appeal No.37 of 2025 filed by petitioner.

4. Mr. M.S. Shah, learned advocate appearing for petitioner assails impugned order on two counts. According to him, petitioner is a women, who has been elected as Sarpanch, therefore, attempts are made to unseat her on the basis of false and frivolous allegations. He would submit that petitioner is residing separately from her father-in-law since more than 12 years, petitioner cannot be disqualified for his act. Mr. Shah would further submit a copy of ration card and lease agreement placed on record before Collector along with reply is completely ignored. He would further point out that there is no authentic material to depict that construction raised by father-in-law of petitioner is an encroachment on government land, which is essential requirement to attract disqualification under Section 14 (1) (J-3) of the Act of 1958.

5. Per contra, Mr. M.V. Bhamre, learned advocate appearing for respondent no.4 relying upon the contents of affidavit in reply filed by respondent no.4 would urge that petitioner's father-in-law has caused excess construction of about 580 sq.ft. than the area of his plot as per record of Village Panchayat. The photographs indicate that toilet and bathroom which was in existence at the time of filing complaint is now removed. In support of his submissions, he relies upon judgment of this Court in case of ***Sandip Ganpatrao Bhadade and Ors Vs. Additional Commissioner, Amravati Division, Amravati and Ors reported in 2017 (1) Mh.L.J. 79.***

6. Having considered submissions advanced and on perusal of documents tendered into service before this Court, it can be observed that petitioner is disqualified under Section 14 (1) (J-3) r/w 16 of the Act of 1958 from holding post of Member as well as Sarpanch of Village Panchayat. The gist of allegations against petitioner is that in year 1976 plot no.7 admeasuring 30 x 50 was allotted to Dipa Kadu Patil. The father-in-law of petitioner namely Bhagwan Dipa Patil inherited the aforesaid property and resides in house along with his son. Bhagwan Dipa Patil had actually received area admeasuring 15 x 50 sq.ft. in partition with his brother Devidas Dipa Patil. According to respondent/complainant, the father-in-law of petitioner is in possession of area admeasuring 40 x 12 + 40 x 12 sq.ft. and when the husband of petitioner was Up-sarpanch, the area

of plot has been illegally enhanced in Village Panchayat record. It is contention of complainant that plot no.6 which was in the name of Supdu Patil, but father-in-law of petitioner illegally acquired said property from Bhivsen Supdu.

7. The District Collector caused inquiry into the matter through the Block Development Officer and observed that although father-in-law of petitioner owns House No.397 having area of 960 sq.ft., on measurement area of construction it was found 1545 sq.ft. As such, there is excess construction of 585 sq.ft. The learned Divisional Commissioner also reiterated aforesaid observations and relying upon the law espoused in case of *Janabai Vs. Additional Commissioner and Others reported in 2018 AIR (SC) 5068*, affirmed the disqualification.

8. It is trite that elected representative cannot be removed by administrative action unless there is impeccable material constituting a disqualification. In present case, petitioner has specifically raised defence that she is not residing with her father-in-law and placed on record a copy of ration card which independently shows unit in name of her husband and two sons. The said ration card is issued on 30.01.2017. The copy of lease agreement between husband of petitioner and Suresh Bhata Patil dated 01.11.2018 shows that House Property No.376 is leased out in the name of petitioner's husband having constructed area of 40 x 18 sq.ft. The learned

Collector in his order simply observed that petitioner could not produce evidence that there is partition between her husband and father-in-law and therefore, relying upon the preposition of law which was in case of Janabai (supra) holds her disqualified. Surprisingly, there is no observation as to documents tendered in defence depicting separate residence of petitioner. The impugned order goes with presumption that petitioner resides in joint house with her father-in-law. The learned Collector observed that petitioner has failed to produce evidence that she is not residing with her father-in-law. Such observations cannot be countenanced. Pertinently, Block Development Officer's report nowhere throw light on defence of petitioner that she is separately residing in a rented premises. It only concentrates upon measurement of House No.397 owned by petitioner's father-in-law.

9. Even on careful reading of report of Extension Officer definite conclusion cannot be drawn that excess construction on house property no.397 is on government land. It does not show how government land is affected and how much construction area is actually encroachment on government land. The entire report simply suggest that there is excess construction of 585 sq.ft. In this background, the observations of Hon'ble Supreme Court in case of Janabai (supra) that if a member remains in occupation of an encroached property, he/she has a conflict of interest and even the encroachment made by a person and when a person shares an

encroached property by residing there, he/she has to be treated as disqualified cannot be applied against petitioner. In present case, there is nothing to show that petitioner is residing in a house along with her father-in-law or she is benefited out of such encroachment. On the contrary, there is material to hold that atleast from 2017 i.e. much prior to her election, she is residing separately. She along with her husband and children constitute a separate unit from her father-in-law. Therefore, even assuming that petitioner's father-in-law has caused encroachment on government land, petitioner who is a lady elected as Sarpanch would not have been disqualified.

10. In case of Keshav Irabaji Taru Vs. The State of Maharashtra and Others in Writ Petition No.5247 of 2024 dated 18.03.2025, after giving reference to the law laid down by Hon'ble Supreme Court in case of Janabai (supra), this Court observed in para 5 as under :

"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.”

11. In light of aforesaid observations, if facts of present case are appreciated, it is difficult to hold that petitioner has incurred disqualification, particularly in absence of material to indicate that she is residing along with her father-in-law in a house found to have excess construction, more so, in absence of evidence indicating such construction to be made on government land. In result, writ petition is allowed in terms of prayer clause (C) and (D).

12. Rule is made absolute in above terms.

(S.G. CHAPALGAONKAR, J.)