

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

WRIT PETITION NO. 9571 OF 2025

Ranjana W/o. Bharat Kanade,
Age - 35 years, Occu. Agril. (Sarpanch),
R/o. Kalegaon (Haveli), Post. Nalwandi,
Tq. & Dist. Beed.

..Petitioner

Versus

- 1) The State of Maharashtra,
Through Principal Secretary,
Rural Development Department,
Mantralaya, Madam Kama Road, Mumbai.
- 2) The Additional Commissioner,
Chhatrapati Sambhajinagar,
Tq. & Dist. Chhatrapati Sambhajinagar.
- 3) The District Collector, Beed,
Tq. & Dist. Beed.
- 4) The Gramsevak,
Village Panchayat,
Kalegaon (Haveli), Post. Nalwandi,
Tq. & Dist. Beed.
- 5) Chaurangnath S/o. Manikrao Pawar,
Age: 55 years, Occu. Agril. (Upsarpanch),
R/o. Kalegaon (Haveli), Post. Nalwandi,
Tq. & Dist. Beed

..Respondents

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Advocate for Petitioner : Mr. A.N. Nagargoje
Advocate for Respondent No.5 : Mr. S.G. Kawade
AGP for Respondent/State : Mr. S.P. Joshi

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : AUGUST 06, 2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with consent of parties.
2. The petitioner impugns order dated 15.07.2025 passed by the Additional Commissioner, Chhatrapati Sambhajinagar thereby

confirming order dated 20.02.2025 passed by the District Collector, Beed thereby declaring petitioner as disqualified to hold post of Sarpanch of Village Kalegaon (Haveli), Taluka and District Beed.

3. According to petitioner, the general elections of Village Panchayat were held in December 2022 in which petitioner is directly elected as Sarpanch from people in terms of Section 30A-1A of Maharashtra Village Panchayat Act, 1959. Respondent no.5 was Upsarpanch of Gram Panchayat. He raised the dispute bearing File No.2024/ G.B./ DESK-2/ Appeal-15/ PPR/ KV/ 323 before District Collector, Beed seeking disqualification of petitioner under Section 14 (1)(g) and 14 (1)(J-3) r/w 16 of Maharashtra Village Panchayat Act, 1959 ('the Act' for short). It is contention of respondent no.5 that husband of petitioner is an employee of Village Panchayat. As such, petitioner incurs disqualification under Section 14 (1)(g) of the Act. Similarly, respondent no.3 contends that husband of petitioner has constructed house by making encroachment on government land.

4. The petitioner appeared in dispute and opposed contentions of respondent no.5. The learned District Collector allowed the dispute and declared petitioner disqualified for both the aforesaid reasons. Aggrieved petitioner filed appeal before the Divisional Commissioner at Aurangabad under Section 16 of the Act. However, the learned Commissioner also confirmed the order of

District Collector and maintained disqualification against the petitioner.

5. Mr. A.N. Nagargoje, learned advocate appearing for petitioner assails disqualification order on two grounds. Firstly, he contends that there is no acceptable evidence to prove encroachment alleged to have made by petitioner's husband. Secondly, the alleged construction is made prior to election of petitioner as direct Sarpanch. The respondent was well aware about aforesaid fact. He never raised objection at the time of nomination of petitioner for election of Sarpanch nor had he filed election petition under Section 15 of the Act. According to Mr. Nagargoje, if petitioner had incurred disqualification on account of encroachment on government land since before getting elected as Sarpanch and remedy of election petition was not availed, she cannot be disqualified subsequently in disqualification proceeding under Section 16 r/w 14 (1)(j-3) of the Act. In support of his submissions, he relies upon exposition of law laid down by Hon'ble Supreme Court in case of ***State of H.P. and Ors Vs. Surinder Singh Banolta reported in AIR 2007 SC 903*** and Manisha Ravindra Panpatil Vs. The State of Maharashtra and Ors in Civil Appeal No.10913 of 2024 decided on 27.09.2024.

6. Learned advocates appearing for respondents supports the impugned order contending that petitioner herself has admitted encroachment and on her motion Gram Panchayat passed a resolution

for removal of such encroachment. Therefore, in view of the law laid down by the Hon'ble Supreme Court in case of *Janabai Vs. Additional Commissioner reported in 2015 (5) Mh.L.J. 921*, the petitioner is rightly disqualified.

7. Having considered submissions advanced, it can be observed that petitioner is a directly elected Sarpanch of Village Panchayat. In view of definition in Clause (11AAA) of Section 3 of Maharashtra Village Panchayat Act, the term "member" means as a person duly elected to the panchayat under Section 11, and it also includes a directly elected Sarpanch under Section 30A-1A. Therefore, the disqualification prescribed under Section 14 can be applied even in case of directly elected Sarpanch.

8. The dispute raised against the petitioner depicts that two independent disqualifications were attributed against her. First is under Section 14 (1)(g) and second is under Section 14 (1)(j-3). The order passed by District Collector records that land Gat No.529 is a government gairan land of Village Kalegaon (Haveli). House No.436 is constructed in that land by causing encroachment. The house is owned by husband of petitioner. Similarly in meeting dated 08.03.2024, the Village Panchayat passed a resolution in which the subject of removal of such encroachment was taken on agenda at Serial No.7 and it is resolved to remove encroachment of House No.436 made in Gat No.529. The aforesaid factual aspect is not

disputed before this Court. Similarly, respondent no.5 has filed affidavit in reply pointing out that House No.436 constructed on government land stands in the name of petitioner's husband. The area of construction is 1320 sq.ft. The petitioner could not bring the counter evidence to demolish the contents of aforesaid documentary evidence.

9. In light of aforesaid aspects of matter, the petitioner has been declared disqualified in terms of Section 14 (1)(j-3) of the Act. The aforesaid provision has been interpreted by Hon'ble Supreme Court in case of Janabai (supra). In para 29 of said judgment, the Hon'ble Supreme Court observed as under :

"29. We may note here with profit that the word 'person' as used in section 14(1)(j-3) is not to be so narrowly construed as a consequence of which the basic issue of "encroachment" in the context of disqualification becomes absolutely redundant. The legislative intendment, as we perceive, is that encroachment or unauthorized occupation has to be viewed very strictly and section 53, therefore, provides for imposition of daily fine. It is also to be borne in mind that it is the Panchayat that has been conferred with the power to remove the encroachment. It is the statutory obligation on the part of the Panchayat to protect the interest of the properties belonging to it. If a member remains in occupation of an encroached property, he/she has a conflict of interest. If an interpretation is placed that it is the first encroacher or the encroachment made by the person alone who would suffer a disqualification, it would lead to an absurdity. The concept of purposive interpretation would impel us to hold that when a

person shares an encroached property by residing there and there is continuance, he/she has to be treated as disqualified. Such an interpretation subserves the real warrant of the provision. Thus analysed, we are of the view that the decision in Sagar Pandurang Dhundare (supra) does not lay down the correct position of law and it is, accordingly, overruled.”

10. The aforesaid exposition of law clearly shows that even the encroachment made by family member of the elected representative, he will suffer disqualification. The concept of purposive interpretation is applied to hold that when a person shares an encroached property by residing there and there is continuance, he/she shall be treated as disqualified.

11. In case of State of H.P. and Ors (supra), the encroachment/construction was made by petitioner's husband since before her election and confirmed by competent authority, therefore, remedy was to raise the issue of disqualification at the time of nomination of election or by filing election petition in terms of Section 15 of the Act was available. However, the aforesaid contention cannot be accepted in facts of present case. In the said case, relying upon provisions of Himachal Pradesh Panchayati Raj Act, 1994 particularly Section 122 which prescribes disqualification against members of Panchayat, the Hon'ble Supreme Court observed that when a person is already declared as encroacher prior to the date on which he has been declared as elector, the question as to whether

he stood disqualified in terms of the provisions of Section 122 of the Act must be raised by way of election petition alone.

12. The issue whether petitioner's husband is an encroacher on government land is first time dealt upon in present dispute and the learned District Collector on inquiry into the matter declared the disqualification holding that the petitioner's husband is an encroacher on government land. The issue of encroachment by petitioner's husband was never cropped up in earlier proceeding or there is no formal declaration that could have been used to raise the objection to petitioner's nomination or file election petition in terms of Section 15 of the Act. Even otherwise, if there is continuance of encroachment, the disqualification will apply as long as the member of Village Panchayat holds the post and there can be recurring cause of action to raise the dispute as to disqualification before the Competent Authority.

13. In that view of matter, this Court finds that the law laid down in case of State of H.P (supra) cannot be applied in facts of this case.

14. Apart from disqualification under Section 14 (1)(j-3), petitioner is held disqualified under Clause (g) of Section 14 (1). However, no arguments are advanced in this regard. Therefore, this Court do not find any reason to discuss the aforesaid issue.

15. In result, writ petition sans merit, hence dismissed.

16. Rule is discharged.

(S.G. CHAPALGAONKAR, J.)