



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

904 WRIT PETITION NO. 267 OF 2024

JAGDISH LAXMAN DODE

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS COLLECTOR
AND OTHERS

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Advocate for the Petitioner : Mr. Fulfagar Anuj Ajay

AGP for Respondent/State : Mr. V.S. Badakh

Advocate for Respondent no.4 : Mr. D.D. Pande

Advocate for Respondent no.3 : Mr. D.R. Kale & Mr. Y.H. Lagad

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CORAM : ROHIT W. JOSHI, J.

DATED : 18th June, 2025

PER COURT :

1. The present petitioner had made application to the Collector, Jalgaon stating that the husband of respondent no.3 had committed encroachment on government land, and therefore, respondent no.3, who is holding the office of Sarpanch of Gram Panchayat, Wanjole had incurred disqualification under Section 14(1) (j) of the Maharashtra Village Panchayat Act, 1959. The application filed by the petitioner came to be rejected and the appeal preferred by him is also dismissed. Against these concurrent findings, the present petitioner has approached this Court challenging the said orders. A prayer is also made to hold that respondent no.3 has incurred disqualification for holding post of Sarpanch of the Gram Panchayat.

2. The foundation of case of petitioner is a spot panchanama, which was drawn on 27.07.2022. The authorities have opted not to rely upon the said spot panchanama, since the same is conducted without notice to respondent no.3 or her husband. The learned counsel for the petitioner has drawn attention to the notice dated 25.09.2012, which is a notice issued by the Gram Panchayat to the husband of respondent no.3 for removal of encroachment. However, the particulars of the property on which the encroachment is allegedly made are not mentioned in the said notice. It is only stated that the husband of the petitioner had committed encroachment on some land of the Gram Panchayat. Likewise reliance is placed on extract of proceeding book relating to meeting held on 14.03.2017 in which the name of husband of respondent no.3 appears at sr. no.3 as one of the several encroachers, named in the said resolution. The learned advocate also places reliance on two inquiry reports dated 08.09.2022 and 08.11.2022.

3. The learned counsel for respondent no.3 contends that there is no material on record to indicate that the panchanama was drawn after serving notice either on respondent no.3 or her husband. As regards the proceeding book, he contends that the names are recorded in the proceeding book without any prior inquiry. As regards two inquiry reports, both reports were prepared on the basis of panchanama, which was drawn without notice to respondent no.3 and

her husband. This panchanama was prepared in their absence. The learned counsel for respondent no.3 has placed reliance on several authorities of this Court to contend that panchanama, which is prepared without notice to the concerned persons, cannot be used against him.

4. As against this, learned counsel for the petitioner places reliance on judgment of this Court dated 6th September, 2022 in the matter of ***Irshad Liyakat Mulani Vs. The Divisional Commissioner and others*** (Writ Petition No.5860/2022), wherein in similar set of facts, this Court had directed that the land on which encroachment was allegedly made by the candidate should be remeasured and fresh decision should be taken in the matter in accordance with law.

5. Having regard to the material on record, I am of the opinion that it will be expedient in the interest of justice that the same course is adopted as was adopted in the matter of ***Irshad Mulani***.

6. The petition is therefore partly allowed. The order dated 08.11.2023 passed by the Divisional Commissioner, Nashik in Grampanchayat Appeal No.48/2023 and order dated 03.03.2023 passed by the Collector, Jalgaon in Grampanchayat Vivad Application No.06/2023 are quashed and set aside. The Collector is directed to get

the land measured on which the husband of respondent no.3 has allegedly committed encroachment through the office of Superintendent of Land Records/Tahsil Inspector of Land Records and take appropriate decision in the matter thereafter.

7. Needless to mention that the measurement shall be carried out after issuing notice to respondent no.3 and her husband. The entire exercise be completed within four months from today.

8. The learned counsel for the petitioner makes a statement that the petitioner will bear charges for measurement. Fresh measurement will be conducted only if the petitioner deposits the measurement the charges.

[ROHIT W. JOSHI]
JUDGE

sga/