



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

35 WRIT PETITION NO. 2151 OF 2023

SHINDU RAMESHWAR PAWAR
VERSUS
THE STATE OF MAHARASHTRA THROUGH PRINCIPAL SECRETARY AND
OTHERS
WITH
CIVIL APPLICATION NO. 15529 OF 2023

Mr.S.J. Pahilwan, Advocate for the petitioner.
Mr.S.P. Joshi, AGP for the respondent-State.
Mr.T.K. Rathod, Advocate for respondent Nos. 6 and 7.

CORAM : KISHORE C. SANT, J.
DATE : 29.01.2025

PC :-

01. Heard learned Advocates for the parties. This petition is taken up for final disposal at the stage of admission by consent.

02. The petitioner is elected as a member of the Grampanchayat. She is held to be disqualified under section 14(1) (J-3) of the Maharashtra Village Panchayats Act. Respondent No.7 had filed a complaint before the learned Collector, Jalna alleging that the petitioner is residing in a house in Survey No. 193 from village Hivra Roshangaon, Dist. Jalna. Said land is a Gayran land belonging to the Government. The learned Collector on receipt of the complaint, directed the Tahsildar

to submit a report. The Tahsildar, in turn, directed the Nayab Tahsildar and Talathi to submit a report. The Nayab Tahsildar and Talathi visited the spot and also drawn panchanama. On the basis of the panchanama, report was prepared and sent to the learned Collector. The learned Collector considered the said report and arrived at a conclusion that the petitioner has incurred disqualification and passed order.

03. The petitioner challenged the said order before the learned Divisional Commissioner, Aurangabad. The learned Additional Divisional Commissioner by the impugned order dated 22.08.2022, confirmed the order passed by the learned Collector and rejected the appeal.

04. Learned Advocate Mr. Pahilwan for the petitioner strenuously argued the matter. He submits that the report is prepared and sent to the learned Collector only on the basis of spot visit. No documentary record is produced before the learned Collector to show that the Survey No.193 is a Gayran land. He further submits that no notice was issued to the petitioner before the spot panchanama. He further submits that it was necessary for the Authorities to consider the aspect as to whether it is the petitioner herself, who has committed encroachment. In the present case, the allegation is that it is the husband of the petitioner,

who has committed encroachment. In support of his submission, he relies upon judgment delivered by this Court in **Writ Petition No. 9855 of 2013**, wherein this Court held that there must be an encroachment by particular individual to hold him disqualified. He further relied upon judgment in the case of **Ganesh Arun Chavan Vs. State of Maharashtra & Ors., reported in 2013 (2) Mh.L.J.955.**

05. Learned AGP opposes the petition. He submits that the Authorities have rightly passed the order. There is no dispute that the land Survey No. 193 is a Gayran land belonging to the Government. Now, in view of judgment in the case of **Janabai Vs. Additional Commissioner reported in AIR 2018 Supreme Court 5068**, it is now well settled that even any person elected resides with other member of the family, who has encroached upon Government land or public land, incurs disqualification. He, thus, prays for rejection of the writ petition.

06. Learned Advocate for respondent No.7 also opposes the petition.

07. After hearing the parties and after perusing the record, it is clearly seen that the petitioner is residing in the house in Survey No.

193. Though it is submitted that on the said land there are houses since last 20-25 years and the entries are taken in the Grampanchayat record, this Court finds that the said fact would not change nature of the land. The land still remains as Gayran land. So far as judgments relied upon by the petitioner are concerned, those judgments are prior to the judgment by the Hon'ble Apex Court in the case of **Janabai (supra)**. As on today, the judgment in the case of **Janabai (supra)** holds the ground.

08. In view of the above, this Court is not inclined to allow the petition. The petition, therefore, stands dismissed.

09. In view of disposal of the writ petition, pending civil application also stands disposed off.

[KISHORE C. SANT, J.]