

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.856 OF 2025

Sadashiv Margendra Kadam
V/S

....Petitioner

State of Maharashtra & Ors.

....Respondents

Mr. Dhairyasheel V. Sutar with Ms. Kavita Vijapure and
Ms. Latika Kabad *for the Petitioner.*

Mr. S.D. Rayrikar, AGP *for Respondent Nos.1 to 4/State.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 23 JANUARY 2025.**

P.C.:

1. The Petition challenges the order dated 7 November 2024 passed by the Additional Divisional Commissioner, Pune Division dismissing Appeal preferred by the Petitioner against order dated 11 May 2023 passed by Collector, Kolhapur. By order dated 11 May 2023, the Collector has allowed dispute application preferred by Respondent No.6 and has disqualified the Petitioner under provisions of section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959 (**the Act**).

2. I have heard Mr. Sutar, the learned counsel appearing for Petitioner and Mr. Rayrikar, the learned AGP appearing for Respondent Nos.1 to 4/State.

3. After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that Respondent No.6 filed the dispute application before the Collector seeking Petitioner's disqualification alleging that Petitioner encroached upon neighboring government land by creating an extension to his house in City Survey No.101 on southern side. The Petitioner filed reply denying the allegation. In his reply, the Petitioner did not raise a plea that there was partition of house property at City Survey No.101 and that in pursuance of such partition, three separate assessments were created bearing house Nos.430/1, 430/2 and 430/3 in favour of the three brothers. It is only after measurements were conducted by the office of the Deputy Superintendent of Land Records that encroachment committed by the Petitioner on open space abutting the road (belonging to government) on southern side of CTS No.101 came to light. Petitioner not only disputed the said measurements but also filed Affidavit of one Shri Manohar Satyappa Kamble stating that there was partition between the three brothers in the year 2012 and accordingly in the Gram Panchayat records three separate assessments bearing house property Nos.430/1, 430/2 and 430/3 were created and that Petitioner is the owner only in respect of house property bearing No.430/3. The person swearing the Affidavit further contended that Petitioner's brothers having interest in house property Nos.430/1 and 430/2 rented out their portion to Shri Manohar Satyappa Kamble, who constructed cattle shed in the open space abutting the premises in his possession. In my view, in subsequent improvement sought

to be done by the Petitioner to his defence by filing Affidavit of Shri Manohar Satyappa Kamble is clearly mischievous. He never claimed in his reply to the dispute application that there was any partition of CTS No.101. The photographs show existence of only single house at CTS No.101. How three separate assessments can be done in respect of the single house is incomprehensible. Assuming that the same can be done there is nothing on record to indicate that the house has been physically partitioned and that the Petitioner does not have any right, title or interest in respect of 2/3 of the house. In absence of any proof of partition and Petitioner being resident of house constructed on CTS No.101, he must face the consequences of carrying out construction in open space belonging to Government. The Collector and the Additional Divisional Commissioner have concurrently held that the Petitioner has encroached upon Government land. I am unable to trace any patent error in such concurrent findings. Writ Petition is devoid of merits and is accordingly **dismissed**.

(SANDEEP V. MARNE, J.)

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