

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10149 OF 2024

Smt. Kirti Tukaram Sonatakke **...Petitioner**

V/s.

State of Maharashtra and Ors. **...Respondents**

Mr. Bhalchandra Shinde with *Mr. Sohel Mujawar for the Petitioner.*

Mr. Y.D. Patil, AGP for Respondent Nos.1 to 3-State.

Mr. Shardul Diwan i/b. *Mr. Rahul S. Kadam for Respondent Nos.4 and 5.*

CORAM: SANDEEP V. MARNE, J.

Dated: 19 March 2025.

Oral Order:

1) **Rule.** *Rule* is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for final disposal.

2) Petitioner is a woman, who has succeeded in getting elected as a Member of Grampanchayat of village-Reda, Taluka - Indapur, Pune. The elections were held in January-2021 and by now, the elected body has functioned for over four years. Respondent No.5 is another woman elected member of same

Grampanchayat, who has been made consistent efforts for removal of not just the Petitioner, but also the elected Sarpanch of Grampanchayat. She, along with Respondent No. 4, filed proceedings before the Collector under the provisions of Sections 14(1)(j-3), 14(1)(j-5) and 10-1A of the Maharashtra Village Panchayats Act, 1959 (**Village Panchayats Act**) seeking disqualification of the Petitioner from acting as member of Grampanchayat. The main allegation levelled for securing Petitioner's disqualification was that her father-in-law has encroached upon government land. It was alleged by Respondent Nos. 4 and 5 that Petitioner was also residing in the same encroached property and accordingly her disqualification was sought. Respondent No.5 also initiated separate proceedings for removal of Sarpanch of the Grampanchayat. This Court set aside the orders passed for removal of Sarpanch on 26 February 2025 in Writ Petition No.12386 of 2024. It appears that immediately after this Court passed order dated 26 February 2025, requisition for adopting no confidence motion against the said Sarpanch has been submitted before the Tehsildar on 5 March 2025 and Respondent Nos.4 and 5 are amongst the signatories to the said requisition. Be that as it may. So far as the present Petition is concerned, the same relates to disqualification of the Petitioner from acting as a Member under provisions of Section 14(1)(j-3) of the Village Panchayats Act. The Collector has accepted the complaint filed by Respondent Nos. 4 and 5 by seeking to connect Petitioner to the house constructed by her father-in-law in encroached portion of government land and has

accordingly proceeded to disqualify the Petitioner by order dated 6 December 2023. The Additional Divisional Commissioner, Pune Division, Pune, has confirmed the order passed by the Collector. The orders passed by the Collector and the Divisional Commissioner are subject matter of challenge in the present Petition.

3) In ***Manisha Ravindra Panpatil V/s. The State of Maharashtra and ors.***¹ the Hon'ble Apex Court has taken note of systematic efforts made for unseating duly elected woman members and Sarpanch of Grampanchayat. It would be apposite to reproduce findings recorded by the Apex Court in paragraphs 5 to 10 of the said order:

5. This seems to us a classic case where the residents of the village could not reconcile with the fact that the appellant, being a woman, was nevertheless elected to the office of the Sarpanch of their village. They were perhaps further unable to come to terms with the reality that a female Sarpanch would make decisions on their behalf de jure and that they would have to abide by her directions.

6. It is patently obvious that these were the primary motivations which led the private respondents to initiate their orchestrated efforts towards the removal of the appellant, from her duly elected position. Having found no instance of professional misconduct on the part of the appellant that they could etch away at, the private respondents instead embarked on a mission to cast aspersions upon the appellant, by any means necessary. This initiative was undertaken by them, with the intention of securing her removal from public office.

7. Though the private respondents grasped at straws in their bid to evict the appellant from her position, their cause was perhaps aided by the mechanical and summary orders

¹ Civil Appeal No.10913 of 2024, decided on 27 September 2024

passed by government authorities, at various levels. These orders were passed in a lackadaisical manner, without making any effort towards conducting a fact-finding exercise, so as to confirm whether the allegations levied by the private respondents were sufficiently made out. There is nothing on record to suggest that any objection of the appellant's family having encroached upon government land was ever raised when she filed her nomination papers.

8. At this juncture, we would like to note that the vagaries of the present factual matrix is far from unique and is unfortunately somewhat of a norm. While there is no doubt in our mind that the private respondents may have operated in a discriminatory manner, what is more worrying is the casual approach adopted by government authorities in summarily removing an elected representative. This is all the more concerning when the representative in question is a woman and elected in the reservation quota, thereby indicating a systemic pattern of prejudicial treatment, permeating through all levels of administrative functioning.

9. This scenario gets further exacerbated when we as a country are attempting realize the progressive goal of gender parity and women empowerment across all spheres, including public offices and most importantly adequate women representative in the elected bodies, such instances at the grass-root level cast a heavy shadow on any headway that we may have achieved.

10. That being said and having regard to the facts and circumstances of the case at hand, we see no credible and convincing material on record to substantiate the private respondents' allegations of encroachment of government land by the appellant before or post her election as Sarpanch. All that we would like to reiterate is that the matter of removal of an elected public representative should not be treated so lightly, especially when it concerns women belonging to rural areas. It must be acknowledged that these women who succeed in occupying such public offices, do so only after significant struggle.

4) In the present case also, Petitioner is a woman member of Grampanchayat having elected against post reserved for OBC category. She has functioned as a member almost

throughout her tenure, which is likely to come to an end in less than one year. On account of Petitioner's disqualification, election will have to be now held for filling up the vacancy and the elected candidate will be able to function for less than a year. Petitioner has taken a specific stand that she does not reside in the house of her father-in-law. She has relied upon rent agreement dated 29 December 2020 executed in the name of her husband in respect of an altogether different house property. True it is that there are some inconsistencies in the covenants of the said rent agreement, which refers to use of the premises for residential purposes at some places, while suggesting commercial use in some of the covenants. Petitioner has also relied upon copy of the ration card, which shows separation from the unit of father-in-law in the year 2014.

5) In my view, there is no concrete proof to arrive at a definitive conclusion that Petitioner was an ordinary resident of the house constructed by her father-in-law on encroached land at the time of filing of the nomination papers or that she continues to reside in the same. What is sought to be created are mere surmises and conjectures by pointing out defects and inconsistencies in the rent agreement. Petitioner after all is a democratically elected member of a Grampanchayat and she cannot be unseated merely on the basis of surmises and conjectures. In ***Ravi Yashwant Bhoir v. District Collector, Raigad and others***², the Apex Court has held as under:

² (2012) 4 SCC 407

34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (vide *Jyoti Basu v. Debi Ghosal* [(1982) 1 SCC 691 : AIR 1982 SC 983] , *Mohan Lal Tripathi v. District Magistrate, Rae Bareilly* [(1992) 4 SCC 80 : AIR 1993 SC 2042] and *Ram Beti v. District Panchayat Raj Adhikari* [(1998) 1 SCC 680 : AIR 1998 SC 1222]).

36. In view of the above, the law on the issue stands crystallised to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/electoral college is also deprived of representation by the person of their choice.

37. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like “no confidence motion”, etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period.

6) Respondent Nos. 4 and 5 appear to have been making consistent efforts against elected members/Sarpanch possibly for political reasons. This Court cannot turn blind eye to the consistent efforts made to unseat democratically elected member of Grampanchayat, particularly when Petitioner happens to be a woman having elected through reserved category. This Court would also take into consideration peculiar circumstances where the remainder of tenure of the elected body is now less than one year.

7) In my view therefore, the Collector has erred in passing an order of disqualification against the Petitioner and the Additional Divisional Commissioner has erred in dismissing Petitioner's Appeal. Setting aside orders passed by the Collector and Additional Divisional Commissioner would ensure that a woman elected member of Grampanchayat would be in a position to serve for remainder of the term of elected body, which is now less than one year.

8) Considering these peculiar facts and circumstances of the present case, I am of the view that orders passed by the Collector and the Additional Divisional Commissioner are liable to be set aside. Petition accordingly succeeds. Order dated 6 December 2023 passed by the Collector and the order dated 12 June 2024 passed by the Additional Divisional Commissioner, Pune, are set aside.

9) Petition is allowed in above terms. Rule is made absolute. There shall be no orders as to costs.

10) After the order is pronounced, the learned counsel appearing for Respondent Nos.4 and 5 prays for stay of the order for a period of six weeks. Request is opposed by the learned counsel appearing for the Petitioner. Considering the findings recorded for allowing the Petition, I am not inclined to allow the request for stay. Request for stay is accordingly rejected.

[SANDEEP V. MARNE, J.]