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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5631 OF 2025

Sonali Anant Khedekar

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

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GANESH
KULKARNI

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Mr. C.G. Gavnekar i/by Mr. Vaibhav V. Ugle for the
petitioner.

Ms. S.S. Bhende, AGP for respondent Nos.1 to 3-State.

Mr. Drupad S. Patil with Mr. Balasaheb Ligade for
respondent No.4.

CORAM : AMIT BORKAR, J.

DATED : APRIL 28, 2025

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner, who is an elected Member of the Gram Panchayat, is challenging the judgment and orders passed by the Authorities under the Maharashtra Village Panchayats Act, 1959. The petitioner has been disqualified under Section 14(1)(j-3) of the said Act on the ground that her husband constructed a Well on a portion of Government-owned land.

2. The facts and circumstances giving rise to filing of the present writ petition are briefly stated thus: Respondent No.4 filed a dispute application before the Collector under Section 14(1)(j-3)

of the Maharashtra Village Panchayats Act, 1959 (“the said Act”). It was alleged that the petitioner was elected as a Member of the Gram Panchayat on 18 January 2021. However, prior to her election, the petitioner’s husband had constructed a Well on a land which had already been acquired by the Government. It was contended that despite being aware of the acquisition, the Well was constructed illegally on Government land. Further, it was stated that on 20 May 2016, the officer from the Irrigation Department had issued a notice to the petitioner’s husband, directing him to refill the Well and restore the land to its original position. Despite receipt of such notice, no steps were taken by the petitioner’s husband to comply with the directions. It was, therefore, contended that the petitioner stood disqualified under Section 14(1)(j-3) of the said Act.

3. The petitioner contested the application by filing her reply. She contended that the Well was constructed on land bearing Gat No.766, and at the time of construction, it was not clear whether the Well was located on Gat No.766/2 (which was Government land) or Gat No.766/1 (which was private land belonging to the petitioner’s husband). The petitioner submitted that only in the year 2023, upon the submission of a report by the District Inspector of Land Records (DILR), it was conclusively established that the Well was situated on Gat No.766/2, i.e., Government land. Therefore, it was her case that the construction of the Well was not made knowingly on Government land and that she should not be disqualified for an act which occurred in circumstances of uncertainty and without knowledge.

4. It is to be noted that earlier, the dispute had travelled to higher Authorities, and after one round of litigation, the matter was remanded back to the Collector for fresh decision. During the fresh proceedings, the Collector directed a re-measurement of the lands bearing Gat No.766/1 and Gat No.766/2 through the office of the District Inspector of Land Records (DILR). Upon conducting the measurement, the DILR submitted a report clearly stating that the Well in question was constructed over land bearing Gat No.766/2, which is Government-owned land.

5. The fact that the Well was constructed by the petitioner's husband is not disputed by either side. It is also not disputed that Gat No.766/2, where the Well stands, was acquired by the Government way back in the year 1983. From the record, it is further clear that in the year 2016, the concerned department, namely the Irrigation Department, issued a notice to the petitioner's husband and other persons, calling upon them to refill the Well and to restore the land to its original condition as it was prior to the construction. Based on the report submitted by the District Inspector of Land Records (DILR), the learned Collector concluded that the petitioner had incurred disqualification under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959. The said order of the Collector was confirmed by the learned Commissioner in appeal, who also placed reliance on the DILR report. Being aggrieved by these concurrent findings, the petitioner has approached this Court by filing the present writ petition.

6. Mr. Gavnekar, learned Advocate appearing for the petitioner, submitted that at the time of construction of the Well, the petitioner's husband was not aware that the land was Government-owned. He contended that it was only on 19 October 2023, after the Survey Officer carried out a fresh survey, that it became conclusively clear that the Well was located on Gat No.766/2, which belongs to the Government. He argued that till such survey, there was a genuine and bona fide dispute between the parties as to whether the Well was situated on Gat No.766/1 (private land) or Gat No.766/2 (Government land). He further submitted that the petitioner is an elected representative, and in such a situation, unless there is clear and conclusive material establishing disqualification, the election and mandate of an elected person should not be lightly interfered with.

7. On the other hand, Mr. Patil, learned Advocate for respondent No.4, strongly opposed the petition. He invited my attention to the communication issued by the Officer of the Irrigation Department way back in 2016, wherein the petitioner's husband and three other persons were informed that Gat No.766 had been partly acquired by the Government. The said communication specifically referred to the construction of Wells on the acquired portion, based on the map received from the Deputy Superintendent of Land Records. He pointed out that even in 2016, the location of the Well in question was shown on Gat No.766/2, which was Government-owned land.

8. Mr. Patil further submitted that though a map prepared on 12 April 2016 was initially cancelled by order dated 10 July 2017,

subsequently, by order dated 21 July 2017, the earlier position showing the existence of the Well over Gat No.766/2 was restored. He, therefore, contended that it is not open for the petitioner now to argue that there was no knowledge of the Well being on Government land. He emphasized that Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959 does not require that the act must be done "knowingly" to attract disqualification. In his submission, once the fact of encroachment on Government land is established, disqualification follows automatically, irrespective of the knowledge or intention of the elected person. He submitted that the Authorities have correctly applied the law and rightly disqualified the petitioner.

9. Rival contentions now fall for consideration.

10. Upon careful perusal of the record, the following factual position clearly emerges: (i) that land bearing Gat No.766/2 is recorded as Government land; (ii) that the Well in question, constructed by the petitioner's husband, stands located on Gat No.766/2; (iii) that the existence of the Well over the said Government land continued till the date of passing of the impugned orders; and (iv) that the only defence raised on behalf of the petitioner is that her husband, at the time of construction of the Well, was under a bona fide impression that the portion of land belonged to private ownership, and that it was only in the year 2023, upon fresh measurement, that the true character of the land being Government property became evident. It is, therefore, contended that the petitioner should not be visited with the extreme consequence of disqualification in light of this bona fide

dispute regarding the nature of land and location of the Well.

11. However, I find merit in the submission advanced by Mr. Patil, learned Advocate for respondent No.4. The record would reveal that the Irrigation Department, by its letter dated 20 May 2016, had called upon four persons, including the petitioner's husband, categorically stating that the construction of the Well was made over land acquired for a percolation tank. The said communication made specific reference to the measurement prepared by the Deputy Superintendent of Land Records, which clearly indicated that the Well stood located within the acquired Government land. Though it is true that the initial map was cancelled by order dated 10 July 2017, it stands revived subsequently on 21 July 2017, reaffirming the position regarding existence of the Well over Gat No.766/2, being Government land. Thus, the plea of lack of knowledge raised on behalf of the petitioner cannot be accepted, as the material on record was sufficient to bring to the knowledge of the petitioner's husband the status of the land as Government property. It is further undisputed that the construction of the Well was indeed carried out on Gat No.766/2.

12. The statutory provision, namely Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959, merits close consideration. The plain language of the section provides that disqualification shall be incurred upon encroachment over Government land or public property. The provision is absolute in its terms. It does not predicate the necessity of "knowledge" or "intention" of the encroacher regarding the character of the land.

To import such a requirement of knowledge would amount to reading into the statute words which the Legislature, in its wisdom, has consciously omitted. Such a construction would be impermissible. It is well-settled that the Court must interpret the law as it stands and cannot supply omissions under the guise of interpretation. The Hon'ble Supreme Court in *Janabai v. Additional Commissioner and Others*, reported in 2018 (5) Mah.L.J. 921, has interpreted Section 14(1)(j-3) in light of the rule of purposive construction, upholding the object and spirit of the provision, which is to protect public property from unlawful occupation.

13. In view of the above legal position, I am of the firm opinion that if the contention advanced on behalf of the petitioner is accepted, namely, that unless knowledge of the status of land as Government property is established, no disqualification would ensue, it would defeat the very purpose of the legislation. It would open an avenue for elected representatives or their associates to conveniently claim ignorance regarding the ownership of the land, which is a matter of record and verification. Such a proposition would frustrate the intent of the statute and render the salutary provision of Section 14(1)(j-3) otiose and ineffective. The concept of "special knowledge" being exclusive to the encroacher would make enforcement of the provision practically impossible. The Court must, therefore, guard against adopting any interpretation that would weaken the legislative command or render it nugatory.

14. Upon overall consideration, I am satisfied that the findings recorded by the learned Collector and the learned Commissioner are based on due appreciation of relevant material, including the

report of the District Inspector of Land Records, which conclusively established the existence of the Well over Government land. The factum of construction by the petitioner's husband is also undisputed. The Authorities have correctly applied the law to the facts of the case. I find no perversity or illegality in the orders impugned. No case for interference under Article 227 of the Constitution of India is made out.

15. In the result, the writ petition fails and stands dismissed. There shall be no order as to costs.

(AMIT BORKAR, J.)