

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

WRIT PETITION NO. 6309 OF 2025

Haridas Bhagwan Kolekar ...Petitioner

Versus

The Additional Divisional Commissioner,
Pune Division and ors. ...Respondents

SANTOSH
SUBHASH
KULKARNI

Mr. Neha Kokare, for the Petitioner.

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SANTOSH SUBHASH
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**CORAM: N. J. JAMADAR, J.
DATED: 26th SEPTEMBER, 2025**

Order:-

1. Heard the learned Counsel for the petitioner.
2. This petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of a judgment and order dated 10th October, 2024 passed by the Additional Divisional Commissioner, Pune, in Village Panchayat Appeal No.13 of 2023, whereby the appeal preferred by the Petitioner under Section 16(2) of the Maharashtra Village Panchayats Act 1959 ("the Act, 1959") came to be dismissed by affirming the judgment and order dated 2nd June, 2023 passed by the District Collector, Pune, in Village Panchayat Dispute No.SR/86/2021, thereby dismissing the dispute raised by the petitioner seeking disqualification of Respondent No.4 under the provisions of

Section 14(1)(j-3) for having allegedly committed encroachment upon the Government land.

3. In the election held for Pithewadi Village Panchayat, Taluka Indapur, in the year 2021, Respondent No.4 came to be elected as a member of the Village Panchayat and, subsequently, assumed the office of Sarpanch. The Petitioner filed Dispute Application No.SR/86/2021 under Section 14 (1) (j-3) of the Act, 1959, alleging that the father of Respondent No.4 has illegally encroached upon the land bearing Gat No.306/2 (Old Gat No. 442) and constructed two houses thereon, bearing Houses No.175 and 176.

4. The District Collector, Pune - (R2), post hearing of the said Dispute Application, was persuaded to return the findings that the report submitted by the Tahsildar and Block Development Officer, Indapur, did not indicate that, the father of Respondent No.4 had committed encroachment over the Government land. The property bearing Houses No.175 and 176 was allotted to the father of Respondent No.4 under Resolution passed by the Village Panchayat and he had constructed the houses under, "Yashwant Nivara Gharkul", (Housing Scheme).

5. Being aggrieved, the Petitioner preferred an appeal under Section 16(2) of the Act, 1959, before the Divisional

Commissioner. By the impugned order, the appeal came to the dismissed. The Appellate Authority concurred with the view of the District Collector that, there was no material to show that, the father of the Respondent No.4 had committed encroachment over the Government land.

6. Being further aggrieved, the Petitioner has filed this Petition.

7. Miss. Neha Kokare, the learned Counsel for the Petitioner, would submit that both the Authorities have recorded erroneous findings, despite there being material to show that the father of Respondent No.4 had committed the encroachment i.e. panchnama dated 6th August, 2021 and the report of the Circle Officer, Bawda, Miss. Kokare would further urge that the Authorities erred in holding that, the subject land was allotted to the father of Respondent No.4, in the year 1993, in the absence of the sanction of the Chief Executive Officer for such disposal of the Village Panchayat property. Therefore, the impugned orders are required to be interfered with. To lend support to these submissions, Miss. Kokare placed reliance on a judgment of this Court in the case of *Sanjay Shivaji Patil Jharekar vs. the State of Maharashtra*¹.

1 WP/ 6111/2024, dated 28th January, 2025.

8. I have perused the material on record. The panchnama dated 6th August, 2021 and the report dated 11th August, 2021 submitted by the Circle Officer, Bawda, to the Tahsildar Indapur, appeared to be equivocal. Thus, vide communication dated 23rd November, 2021, the Circle Officer, Bawda was directed to submit report on specific points, namely; (i) whether Respondent No.4 had himself committed encroachment, (ii) whether any member of Respondent No.4's family had committed any encroachment and (iii) whether any notice was given to the Respondent to remove the encroachment in accordance with the provisions of Sections 52, 53 and 54 of the Act 1959. Thereupon, the Circle Officer, Bawda, as well as Tahsildar, Indapur, have submitted negative reports. It was noted that, the father of Respondent No.4 was allotted a Gharkul (House) in the extended gaathan area.

9. The District Collector as well as the Divisional Commissioner have further noted that, the father of Respondent No.4 had constructed the house on the land which was allotted to him under, "Yashwant Nivara Scheme". Neither there was record to show encroachment nor any notice was given to Respondent No.4 or any of his family members to remove the encroachment under Sections 52, 53 and 54 of the Act 1959.

10. The aforesaid findings of facts are borne out by the record.
11. The endeavor of Miss. Kapare to place reliance on the decision in the case of *Sanjay Jharekar* (supra) does not advance the cause of the petitioner, as in the said case, the elected member therein had relied upon a document purported to be a Rent Agreement, the tenure of which had admittedly come to an end and, yet, the elected member continued to occupy the said premises.
12. In the case at hand, the very fact that, the father of Respond No.4 has committed encroachment on the Government land could not be objectively demonstrated. Conversely, no action was initiated against the father of Respondent No.4 for having committed encroachment over the Government land by issuing notice under Sections 52, 53 and 54 of the Act, 1959. Nor the encroachment allegedly committed by the father of Respondent No.4 was shown in the Encroachment Book.
13. Therefore, in exercise of the writ jurisdiction, this Court does not find any justifiable reason to entertain the petition against the concurrent orders passed by the Authorities under the Act, 1959, especially, having regard to the care and circumspection that is required to be observed when an elected

representative is to be unseated. It is well settled, the grounds which entail the disqualification must be firmly established and the procedure for removal of an elected representative is also required to be scrupulously followed. An elected representative cannot be disqualified or removed from office on mere surmises and conjectures.

14. Hence, the petition stands dismissed.

[N. J. JAMADAR, J.]