



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1966 OF 2024

Fulwati Baburao Pawar,
Aged 45 years, Occ.–Household,
R/o. Taroda Khu.
Taluka – Jalgaon Jamod,
District – Buldhana.

.... **PETITIONER**

// **VERSUS** //

- 1) Additional Commissioner,
Amravati Division, District – Amravati.
- 2) Additional Collector,
District – Buldhana.
- 3) Ulhas Ambadas Jhate,
Aged about 50 years, Occ.-Service,
R/o. Taroda Bu., Post : Wadshingi,
Taluka – Jalgaon Jamod,
District – Buldhana.

R.No.4 and 5
deleted as per
Court's order
dated 16.04.2024.

- 4) ~~Baburao Haribhau Pawar,
Aged about 47 years, Occ.-Service,
R/o. Taroda Khu., Taluka Jalgaon
Jamod, District – Buldhana.~~
- 5) ~~Alukhi J. Haribhau Pawar,
Aged about 52 years, Occ.-Service,
R/o. Taroda Bu., Post – Wadshingi,
Taluka – Jalgaon Jamod, District-Buldhana.~~

Name of R.Nos.
4, 5 and 6 is
mentioned as per
Court's order
dated 4.2.2025.

- 6) Village Development Officer,
Gram Panchayat Kurangad Khu.,
Taluka-Jalgaon Jamod, District-Buldhana. **RESPONDENTS**

Mr. J. B. Gandhi, Advocate for the Petitioner.
Ms. Soniya Thakur, Assistant Government Pleader for
respondent Nos.1 and 2.
Mr. R. D. Karode, Advocate for the Respondent No.3.

CORAM : SMT. M.S. JAWALKAR, J.
DATE : JANUARY 29, 2025.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.

2. The Petitioner is challenging the order dated 05.03.2024, passed by the respondent No.1 – Additional Commissioner, Amravati Division, Amravati in *Appeal No.100/BVP-16(2)/Kurangad/Dist. Buldhana/2023* and also order dated 27.10.2023, passed by the respondent No.2 - Additional Collector, Buldhana in Gram Panchayat Case No. Section 14(1)(J-3)/Kurangad Khu./149/2022-23.

3. The respondent No.3 had filed an application for disqualification of petitioner Fulwati Pawar, elected 'Sarpanch', on the ground that she and her husband were encroached on the Government land. On the said complaint, the petitioner filed her due reply to the complaint and specifically submitted that the said houses are constructed under the "Indira Gandhi Aawas Yogaja". In view of that respondent No.2 directed the Tahsildar to conduct the spot inspection. As per direction, the Circle Officer and Talathi were directed to inspect the spot with due notice to the parties and submitted report. It appears that the spot inspection was carried out by the Talathi in presence of Circle Officer and respective parties and submitted his report on

06.02.2023. On the basis of that report, the respondent No.2 - Additional Collector, Buldhana passed the order dated 27.10.2023 in *Gram Panchayat Case No. Section 14(1)(J-3)/Kurangad Khu./149/2022-23*, allowed the application filed by respondent No.3 and the petitioner herein was disqualified for remainder period. The said order was challenged by the petitioner before the respondent No.1 in *Appeal No.100/BVP-16(2)/Kurangad/Dist. Buldhana/2023*, the said appeal was dismissed by order dated 05.03.2024 and upheld the order passed by respondent No.2.

4. Both the learned Authorities below have failed to verify the fact that the revenue entry of “Gao-Namuna 8” shows that, there is a note in remark column, the house is under the “Indira Gandhi Aawas Scheme” and as per Gram Panchayat Resolution No.9, dated 17.02.2006. In view of this document submitted by the petitioner, it was incumbent on the Authorities below to verify the contents from its record. Moreover, in the Inspection Report, there is no mention or reference of the house on Gat No.54. It is alleged to be Government land and “F” Class land. Moreover, there is no any measurement about the construction of house or about the specification of alleged encroachment. It appears that there are houses adjacent to the house of petitioner. Thus, it is occupied by the villagers. Therefore, the conclusion drawn by the Talathi that there is encroachment of

Government land appears to be without any documentary evidence on record. The most important aspect is that the said inspection ought to have been carried out by the 'Taluka Inspector' of Land Records.

5. The learned Counsel for the petitioner is relied on the judgment passed by this Court in **Writ Petition No.6618/2023**, (*Smt. Sheetal Rupesh Pethe Vs. The Divisional Commissioner, Amravati Division, Amravati and others*), decided on **24th June, 2024**, para 11 of the said judgment reads as under :

“11. In the present case, firstly the Secretary and Talathi are not the persons empowered or expert to carry out measurement of the land or demarcate the encroachment. The appropriate authority is Taluka Inspector of Land Records. The authorities below ought to have called from the Petitioner the documents of title and further ought to have examined lay-out map, the location of the surrounding plots and upon proper verification and measurement by appropriate authority, should draw an inference of encroachment in such cases.”

6. The learned Authorities below failed to consider these facts. Even question put to the learned Assistant Government Pleader that, whether there is mention of any Gat Number of Government land in the Report, the learned Assistant Government Pleader fairly conceded that there is no such mention. The houses are existing on the said Government land in Gat No.54, there is no satisfactory answer to

this. It needs to always be kept in mind by the Authorities below that by disqualifying a person, who is elected member and Sarpanch of the Gram-panchayat also affects fundamental right of common people who voted for them. Without any thorough inquiry, no decision should be taken of disqualification of such member as it affects the rights of people also. It is expected that the learned Authorities will reconsider the issue, in light of the documents placed on record and thorough inquiry would be made in respect of the above documents as well as the documents which are not on record.

7. As such, the Writ Petition is **allowed**.

8. The order dated 05.03.2024, passed by the respondent No.1 – Additional Commissioner, Amravati Division, Amravati in *Appeal No.100/BVP-16(2)/Kurangad/Dist. Buldhana/2023* and also order dated 27.10.2023, passed by the respondent No.2 - Additional Collector, Buldhana in *Gram Panchayat Case No. Section 14(1)(J-3)/Kurangad Khu./149/2022-23*, are hereby set aside. The Report of Talathi dated 06.02.2023 is also set aside.

9. The matter is remitted back to the respondent No.2 – the Additional Collector, District Buldhana to decide the complaint afresh, in view of the observations made above.

10. The Additional Collector, District Buldhana further directed to appoint the 'Taluka Inspector of Land Records' for measurement to ascertain encroached area.

11. The Additional Collector, District Buldhana is hereby directed to decide the complaint, as early as possible, preferably within a period of two months.

12. The Writ Petition stands disposed of in the above terms. No costs.

(SMT. M.S. JAWALKAR, J.)

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