

Mangala Balkrushna Uike,
Aged about 40 years, Occ. Household,
R/o. Amboda, Tq. Akot, District Akola

// VERSUS //

- (1) **Additional Commissioner,**
Amravati Division, Amravati
- (2) **The Collector,**
Akola
- (3) **The Tahsildar,**
Akot, Tq. Akot, District Akola
- (4) **Gram Panchayat,**
Amboda, Tq. Akot, District Akola,
Through its Secretary
- (5) **Circle Officer,**
Amboda, Tq. Akot, District Akola
- (6) **Shri Pravin Shrikrushna Baywar,**
Aged about 46 years, Occ. Agri. Member,
R/o. Amboda, Tq. Akot, District Akola

.... **RESPONDENT(S)**

Shri R.D. Karode, Advocate for the Petitioner(s)
Shri B.M. Lonare, AGP for the Respondent/State
Shri D.S. Patil, Advocate for the Respondent No. 6

CORAM : M.S. JAWALKAR, J.
FEBRUARY 07, 2025

ORAL JUDGMENT:-

(1) **RULE.** Rule made returnable forthwith. Heard finally by consent of learned Counsel for the respective parties.

(2) The Petitioner has challenged the order dated 19/05/2023 passed by the Respondent No. 2 – Collector, Akola in Case No. MVP-1959/Sec.14(1)(J-3)/Amboda/57/2022-23 and the order dated 23/02/2024 passed by the Respondent No. 1 – Additional Commissioner, Amravati in Case No. 306/MVP Act 1959 Sec.16(2)/Amboda-Akot-Akola/2023 by which the Petitioner was disqualified under Section 14(1)(J-3) of the Maharashtra Village Panchayats Act, 1959 (hereinafter referred to as “the said Act”) from the post of Member, Gram Panchayat.

(3) The Respondent No. 6 filed an Application under Section 14(1)(J-3) of the said Act before the Respondent No. 3 alleging that the husband of the Petitioner has encroached upon the Government land.

(4) Learned Counsel for the Petitioner contends that the property i.e. Plot No. 396 was the same Plot No. 13 allotted to the father-in-law of the Petitioner by the order dated 19/10/1972 passed by the Tahsildar in Case No. 15-16/72-73.

(5) As against this, the learned AGP as well as the learned Counsel for the Respondent No. 6 state that both the plots are different and in view of the entry in Gao Namuna-8 (Page No. 112) wherein against the Plot No. 396, the ownership of Government is shown and possession of husband of the Petitioner is shown. The Petitioner placed on record the communication from Secretary to the Collector (Page No. 26) stating that it is wrongly mentioned below the owner column as 'Government' and the copy of the said incorrect Gao Namuna-8 given to one Pravin Shrikrushna Baiwar on 17/02/2021 under his signature. Thereafter, he has corrected the entries and deleted the 'Government' and entered the name of 'Balkrishna Shrikrushna Uike', however, this letter appears to be issued on 09/11/2022 whereas the entries appear to be taken on 16/11/2021. There is contradictory statements as to whether the Plot No. 13 allotted to father-in-law of the Petitioner is the

same Plot i.e. Plot No. 396. There is nothing on record to show that the said plots were re-numbered by any of the Authority. It appears that in the order of the Collector (Page No. 59), there is suspicion about granting number 396. If there is any dispute about the boundaries of both the plots & dispute with regard to ascertaining as to which place is under encroachment, it would be appropriate to appoint TILR to measure the land by calling all the relevant documents from the concerned parties and also from the revenue office and to come to a specific conclusion. There has to be a conclusive finding and not only suspicion. It appears that the report is filed by Talathi and Circle Officer who are not the experts in measuring the land.

(6) Learned Counsel for the Petitioner, in support of his contentions, relied on the judgment of this Court in **Writ Petition No. 6618/2023 (Smt. Sheetal Rupesh Pethe vs. The Divisional Commissioner, Amravati Division, Amravati & others) decided on 24/06/2024**, wherein this Court, in Paragraph No. 11, has held 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.”

(7) The learned Counsel for the Petitioner also relied on the judgment of this Court in Writ Petition No. 7224/2023 (Meena Atish Mohod vs. Suresh Shankarrao Pawar & others) decided on 29/01/2025, wherein this Court in Paragraph Nos. 4 & 5 held as under:-

“4. Thus, the order impugned suffers from two illegalities, firstly, the Secretary is not an authority to carry out the measurements of the land that too without examining the documents of title and secondly, merely because the open land belonging to Government is used to access the house, that by itself, cannot be said to be an encroachment made by a person.

5. The elected member can not be sidelined on the basis of such an exercise. The action of disqualification is

a punitive action and has an adverse impact on peoples mandate. The standard of proof to substantiate allegation of encroachment ought to reasonably high. In the present case, there is no evidence about encroachment as alleged. The orders passed by the authorities below ignoring vital aspects are, therefore, unsustainable.”

(8) There is nothing on record placed either by the learned AGP or learned Counsel for the Respondent No. 6 to come to a conclusion that the Plot No. 13 allotted to the father-in-law of Petitioner is the same plot which is re-numbered as Plot No. 396. As such, thorough enquiry is required to be conducted by appointing TILR to measure the land. In my considered opinion, there is no sufficient evidence on record to substantiate the contention of the Respondent No. 6.

(9) In view of above position, I am satisfied that there is no sufficient evidence on record to come to a conclusion that the husband of the Petitioner has encroached upon the Government land. There has to be thorough enquiry about the encroachment. For that reason, it is necessary to carry out measurement by the Competent Authority i.e. TILR. As such, both the impugned order dated 19/05/2023 passed by the

Respondent No. 2 – Collector, Akola and the order dated 23/02/2024 passed by the Respondent No. 1 – Additional Commissioner, Amravati are liable to be quashed and set aside.

(10) Hence, I proceed to pass following order:-

ORDER

(a) The Writ Petition is **allowed**.

(b) The order dated 19/05/2023 passed by the Respondent No. 2 – Collector, Akola in Case No. MVP-1959/Sec.14(1)(J-3)/Amboda/57/2022-23 and the order dated 23/02/2024 passed by the Respondent No. 1 – Additional Commissioner, Amravati in Case No. 306/MVP Act 1959 Sec.16(2)/Amboda-Akot-Akola/2023 are hereby quashed and set aside.

(c) The matter is remitted back to the Respondent No. 2 – Collector, Akola for fresh decision with direction to get the land measured through the Competent Authority i.e. TILR, who in turn, shall verify the documents of title

as well as any order of re-numbering of the plots and the factual position on the plots i.e. Plot Nos. 13 and 396 along with their four boundaries and submit a report to the Respondent No. 2 – Collector.

(d) This exercise of carrying out inspection and submitting the report to the Respondent No. 2 – Collector shall be done within a period of one month from the date of the receipt of copy of this judgment.

(e) Thereafter, the Respondent No. 2 – Collector shall take decision in the matter within a period of 15 days.

With the above observations, the Petition stands **disposed of**. Pending Application(s), if any, stand(s) **disposed of**.

(M.S. JAWALKAR, J.)