



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.4228/2024

Sau Darshana w/o Nandu Marbade,
aged about 30 years, Occ. Sarpanch,
R/o. Talegaon Thakur, Taluka Tiosa,
District Amravati.

... PETITIONER

...VERSUS...

1. Additional Commissioner, Amravati
Division Amravati.
2. Additional Collector, Amravati,
District Amravati.
3. Gram Panchayat Talegaon Thakur,
Through its Secretary, Taluka Tiosa,
District Amravati.
4. Sau Anita Dilip Wankhede,
Aged about 44 years, Occ.
Housewife, R/o. Talegaon
Thakur, Taluka Tiosa,
District Amravati.

...RESPONDENTS

Shri S.S. Dhengale, Advocate for petitioner
Ms Deepa Charlewar, AGP for respondent Nos.1 and 2
Shri A.P. Barahate, Advocate for respondent No.3
Shri P.A. Kadu, Advocate for respondent No.4

CORAM : SMT. M. S. JAWALKAR, J.

DATED : 20/01/2025

ORAL JUDGMENT

. Heard learned Counsel for petitioner and learned Counsel for respondents and learned A.G.P for respondents/State.

2. Perused the record and proceedings and citations relied on. The petitioner herein challenging the order dated 10.07.2024 passed by respondent No.1 Additional Commissioner, Amravati Division, Amravati in Appeal No.107/BVP/16 (2)/Talegaon Thakur/2023, under Section 14 (1) (j-3), thereby disqualifying the petitioner from the post of Sarpanch, on the ground of encroachment. The petitioner came to be elected in the general election of 2020 of Gram Panchayat Talegaon Thakur from Ward No.5 from the reserved category of Schedule Caste filed her nomination on 28.12.2020.

3. The respondent No.4 has filed application under Section 14 (1) (j) of the Maharashtra Village Panchayat Act for

disqualification of petitioner on the ground of encroachment by falsely alleging that husband of the petitioner has encroached upon the Government land and constructed house thereon. The respondent No.2- Collector has passed order on 10.11.2023, thereby disqualifying the petitioner as a member and Sarpanch of Gram Panchayat Talegaon Thakur. The petitioner has preferred appeal before the respondent No.1- Additional Commissioner Amravati, Division Amravati. There was interim stay during the pendency of appeal. The respondent No.1- Additional Commissioner, Amravati Division, Amravati passed order on **10.07.2024**, thereby disqualifying the petitioner from the post of Sarpanch, on the ground of encroachment.

4. I have gone through the order passed by the respondent No.1, it appears that ample opportunity was granted to the petitioner to produce on record the documents showing her entitlement or her husband's entitlement to construct house on Government land i.e. Survey No.6. It is the contention of the petitioner that in view of the election, the said entry is taken in Form A as Nandu Bhagwan Marbade, however, no document in

relation to entitlement is placed on record. It is not the case that no opportunity was granted to the petitioner to substantiate her claim that the said land was allotted for construction of house.

5. Learned Counsel for the petitioner repeatedly pointed out that from Survey No.6, 1 hector land acquired for extension of Gaothan, as there are 70 huts needs to be allotted to the villagers as per their requirements. It appears from the record that husband of petitioner paid tax in respect of house No.1807. There is a report placed by Village Development Officer, Gram Panchayat, Talegaon Thakur, as per directions issued by Collector Amravati. However again application moved by the petitioner on 22.03.2022, by which it was prayed to re-inspect through Secretary. Accordingly, inspection was carried out and it is specifically observed by Village Development Officer, Gram Panchayat, Talegaon Thakur, that said Nandu Bhagwan Marbade/Darshana is having construction of 285 sq.ft. and having vacant land admeasuring 615 sq.ft. over the Government land Survey No.6.

6. It is also observed that as per the record of Sub

Divisional Officer, neither the non-applicant nor Gram Panchayat or with any other person, there is any certificate or document of transfer of questioned land available on record. The petitioner again moved an application on 11.01.2023, carried out inspection in presence of Circle Officer, Tahsildar, President of Tantamukti, Talathi, Police Patil and Secretary of Gram Panchayat. Accordingly, spot inspection was again carried out on 27.04.2023 in presence of all the authorities and the petitioner herself. In this report also, it was observed that on the Government land Survey No.6, there is construction by the petitioner. Thus at the request of petitioner, thrice spot inspection was carried out in presence of various authorities.

7. The petitioner has also granted opportunity in this petition also to place on record the documents of entitlement of the petitioner to hold that land. In paragraph No.6 of the petition, on the one hand, petitioner admitted that house of the petitioner is situated in Survey No.6 of the village Talegaon Thakur. She claimed that as per order dated 04.03.1991 in remark column, Survey No.6 came to be acquired for extension of Gaothan. In paragraph No.8 of

the petition, contrary statement is made that petitioner is residing at property No.1520, which is owned by Bhagwan Ramrao Marbade, who is father-in-law of the petitioner and the petitioner cannot be disqualified when she is not residing in the house under encroachment. However record shows otherwise Gao Namuna 8 on page 56, shows that petitioner is leaving with her husband in house No.1807, Survey No.6 is Government land.

8. The learned Counsel for the petitioner relied on *Ravi Yashwant Bhoir Vs. District Collector, Raigad and others (2012) 4 SCC 407* and also judgment in the *Writ Petition No.7059/2022, Gajanan s/o Vilas Shelwade Vs. Additional Commissioner, Amravati Division, Amravati* dated 09.01.2023, wherein the judgment in *Ravi Yashwant Bhoir (supra)* is relied on paragraph Nos. 34, 35, 36, 37, are reproduced below:

“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 & Ors. v. Debi Ghosal & Ors., AIR 1982 SC 983; Mohan Lal Tripathi v. District Magistrate, Rai Bareilly & Ors., AIR 1993 SC 2042; and Ram Beti etc. etc. v. District Panchayat Rajadhikari & Ors., AIR 1998 SC 1222).*

36. *In view of the above, the law on the issue stands crystallized 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."

However, facts involved in ***Ravi Yashwant Bhoir (supra)***, are distinguishable as opportunity of hearing was denied to the petitioner. In view of this, other judgments cited by the petitioner has also no application in the present set of facts.

9. In the said matter, the complainant wanted to rely upon some new grounds and, therefore, the appellant raised the objection. The Hon'ble Chief Minister directed the Secretary to fix the date of hearing, however, no date of hearing was fixed and the impugned order dated 21.03.2009 has been passed without offering any opportunity of hearing to the appellant. As such, the order came to be passed in utter disregard of the principle of natural

justice. However in the present matter, there is no such claim that no opportunity was granted to the petitioner.

10. On the contrary, the record shows that as per request of petitioner, spot inspection was carried out thrice. Due hearing was granted to the petitioner before Additional Commissioner as well as Additional Collector. After going through the documents on record and orders passed, I do not see any reason to interfere in the order passed by the lower authorities. Even in present petition also, the petitioner has given an opportunity to produce documents allotting land to the petitioner or her husband from acquired land of Survey No.6. However no document is placed on record. The petition needs to be dismissed. No order as to costs.

R.S. Sahare

(Smt. M.S. Jawalkar, J.)