



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

WRIT PETITION NO. 2674 OF 2025

Rajesh Wasudeo Kawthe, Aged about 48 years,
Occ: Agriculturist, R/o Wadholi, Gram Panchayat
Wadholi, Tehsil Gondpipri, District Chandrapur.

PETITIONER

VERSUS

1. Shyamrao Sakharan Sontakke, Aged about Major,
Occ: Retired, Occ: Agriculturist, R/o Wadholi Gram
Panchayat Wadholi, Tehsil Gondpipri, Dist. Chandrapur.
2. Additional Collector, Chandrapur, Tehsil and
District Chandrapur.
3. Additional Divisional Commissioner, Nagpur Division,
Civil Lines, Nagpur.
4. Tahsildar, Gondpipri, District Chandrapur.

RESPONDENTS

Shri N.R. Bhishikar, counsel for the petitioner.
Shri K.R. Kumar, Advocate with Shri S.S. Sanyal, counsel for the respondent no.1.
Shri N.S. Autkar, Assistant Government Pleader for the respondent nos.2 to 4.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH ARGUMENTS WERE HEARD : NOVEMBER 04, 2025

DATE ON WHICH JUDGMENT IS PRONOUNCED : DECEMBER 17, 2025

JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. By this petition, the petitioner has challenged the orders passed by the respondents disqualifying him under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1958 (for short, 'the Act of 1958').

3. The petitioner was elected as Member of Gram Panchayat Wadholi in January-2021 for a period of five years. The petitioner came to be elected as Sarpanch of the Gram Panchayat in February-2021.

4. On a complaint made by the respondent no.1 about encroachment by the petitioner on the Government land, proceedings were initiated and the respondent no.2 by order dated 22.11.2024 disqualified the petitioner under Section 14(1)(j-3) of the Act of 1958. In the appeal filed by the petitioner, the respondent no.3 by order dated 17.04.2025 upheld the said order and the petitioner has challenged both the orders by way of instant petition.

5. The main reason for disqualification of the petitioner is the alleged encroachment on land bearing Survey no.5. Both the Authorities have inferred about the petitioner's encroachment on land bearing Survey no.5 based on a joint measurement report. The learned counsel for the petitioner submitted that the petitioner's structure is standing on Survey no.7 which has no nexus with Survey no.5 and even the four boundaries of Survey no.5 are away from Survey no.7 and therefore he submitted that there is no encroachment rendering the petitioner disqualified under Section 14(1)(j-3) of the Act of 1958. The counsel for the petitioner has relied on the judgment of the Co-ordinate Bench of this Court in ***Santosh Ramesh Waghela & Others Versus Santosh Sakharam Bhore & Others*** [(2025) 2 Mah LJ 743]. By relying on this judgment, he submitted that for arriving at the conclusion of disqualification of an elected Member, the degree of proof has to be beyond mere preponderance of probabilities. He submitted that in the instant case, there is no material to conclusively infer that the petitioner has committed encroached on any Government land and has incurred disqualification.

6. While opposing the petition, the counsel for the respondents submitted that both the Authorities have concurrently observed that the petitioner has made encroachment based on the report of joint measurement dated 21.03.2023. It is submitted that in view of the encroachment made by the petitioner on the Government land, he has incurred disqualification and by relying upon the position of law as laid down in *Jagpal Singh & Others Versus State of Punjab & Others* [(2011) 11 SCC 396], it is submitted that the encroachment on Gairan lands are illegal and the encroachers are not at all entitled for any regularization.

7. While considering the controversy involved in the instant petition, it has to be seen that the petitioner is the owner of a structure standing on Survey no.7. The complaint related to encroachment by the petitioner is with respect to structure standing on Survey no.5. The Authorities have inferred about encroachment on the basis of a report of joint measurement dated 21.03.2023 conducted by the Deputy Superintendent of Land Records, Gondpipri and Sub-Divisional Engineer of Public Works Department, Gondpipri showing some encroachment on land bearing Survey no.5. Pertinent to note, the Secretary of the Gram Panchayat has submitted an independent report observing clearly that land belonging to the petitioner is Survey no.7 and there is some dispute about ownership of the petitioner over land bearing Survey no.5. As such, there is no material to conclusively determine that the petitioner had encroached on the Government land.

8. The contentions canvassed by the respondent no.1 about encroachment committed by the petitioner on Government land and reliance placed on the judgment of the Hon'ble Supreme Court in *Jagpal Singh & Others* (supra) appears to be clearly misplaced since there is no material to conclude that the petitioner has made any encroachment on any Gairan land. Rather, the plot report of village Wadholi placed on record by the petitioner (at Page no. 45) is not disputed by the respondents which clearly shows the position that the land bearing Survey no.5 and Survey no.7 are situated far away from each other and there are several other plots of land in between these two survey numbers. There is no dispute that the petitioner's land is Survey no.7 and as such the inferences about disqualification of the petitioner on account of encroachment on Survey no.5 are without any basis. As regards the measurement map dated 14.03.2023 relied upon by the respondent no.3-Additional Divisional Commissioner in the impugned order, the contention of the learned counsel for the petitioner that the said measurement was done behind his back and without any notice upon the petitioner appears to be justified since the petitioners name is not mentioned in the list of persons who were present at the time of said measurement and there is no explanation from the respondents in this regard.

9. It has to be noted that the Authorities have inferred about encroachment by the petitioner by relying upon the joint measurement map which refers to encroachment on Survey no.5. Undisputedly, the petitioner is not owner of said land and he is owner of Survey no.7.

10. Apart from this, there is no other material to conclude about any encroachment by the petitioner and thus, the drastic decision to disqualify him as Member-Sarpanch of the Gram Panchayat is without any basis. The position of law is settled that a democratically elected member may not be removed in absence of clinching and conclusive evidence about encroachment. Reliance placed by the counsel for the petitioner on the judgment in *Santosh Ramesh Waghela & Others* [supra] is appropriate. The impugned orders are passed by the Authorities without considering the crucial aspect about absence of conclusive material and hence, do not stand to the scrutiny of law.

11. As such, the impugned orders require indulgence under Article 227 of the Constitution of India. Hence, the following order is passed:-

- I. The writ petition is allowed.
- II. The orders dated 22.11.2024 and 17.04.2025 passed by the respondent no.2-Additional Collector, Chandrapur and the respondent no.3-Additional Commissioner, Nagpur Division, Nagpur respectively are quashed and set aside.

12. Rule is made absolute in aforesaid terms with no order as to costs. The writ petition stands disposed of.

(PRAFULLA S. KHUBALKAR, J.)