IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1486 OF 2026

Krushna S/o Sahebrao Gavande,
Age : 45 years, Occu. Agril & Social Worker,
R/o Pokhari Haveli, Tal. Sangamner.
District Ahilyanagar. … **Petitioner**

Versus

1. The Additional Divisional Commissioner,
Nashik Division, Nashik.
District Nashik.

2. The Collector,
Ahilyanagar, Dist. Ahilyanagar.

3. Alka Sopan Daye,
Age: 57 years, Occu: Agril & Household,
R/o. Pokhari Haveli, Tal. Sangamner, Dist. Ahilyanagar.
Through its Chief Engineer.

4. The Grampanchayat,
Mouje Pokhari Haveli,
Grampanchayat Office,
Through its Gramsevak.

5. The Gramsevak,
Mouje Pokhari Haveli,
Tal. Sangamner, Dist. Ahilyanagar.

6. Tukaram s/o. Dhondiba Gavahe,
Age: 60 years, Occu: Agril,
R/o. Pokhari Haveli, Tal. Sangamner,
Dist. Ahilyanagar. … **Respondents**

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Advocate for the Petitioner : Mr. R. A. Tambe.
AGP for Respondents/State : Mr. K. S. Patil.
Advocate for Respondent Nos.3 to 6 : Mr. S. G. Sonawane.
...

CORAM : MANJUSHA A. DESHPANDE, J.

RESERVED ON : 29.10.2026
PRONOUNCED ON : 05.11.2026

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard with the consent of the respective parties.

2. The petitioner had filed an application against respondent No.3 claiming that, she is disqualified to hold the post of a Sarpanch in view of Section 14(1)(j-3) read with Section 16 of the Maharashtra Village Panchayats Act, 1959 (hereinafter referred to as “Act of 1959”). The petitioner had filed Gram Panchayat Application No.7 of 2023 against respondent No.3 seeking her disqualification under Section 14(1)(j-3) of the Act of 1959. It was specifically contended that, Gut No.374 is the land that belongs to the Government on which there is an entry of Gram Panchayat property No.711 from the year 2006 to 2023. This entry stands in the name of son of respondent No.3 namely Arvind Sopan Daye. It is claimed by the petitioner that, respondent No.3 taking advantage of her position as a Sarpanch has misused the position by encroaching the Government land through her son.

After filing of the dispute by the petitioner, respondent No.3 has filed her reply contending that, the Gram Panchayat record is erroneous and there is no encroachment committed either by her or by her family members. It was contended that, in response to the notice dated 11.11.2022 issued by the Tahsildar, Sangamner, for removal of encroachment, her son has replied on 15.11.2022 informing the Tahsildar that, he has not encroached on any Government land and the entry under his name in the Gram Panchayat property is illegal and there is no construction made on the property. It was claimed that, the complaint filed by the petitioner was politically motivated and intended to harass respondent No.3.

3. On the basis of the communication issued by the Tahsildar, Sangamner, the BDO, Panchayat Samiti, Sangamner has submitted a report to the Tahsildar informing that, from the year 2005 to 2023 there is an entry under the name of son of respondent No.3 in respect of Gram Panchayat property No.711 showing construction with bricks and tin. Contrary to the record when the spot inspection was conducted on 15.12.2023, no construction was found on the site at Gut No.374.

4. It is submitted that respondent No.2/Collector after taking into consideration the report submitted by the BDO has allowed the application filed by the petitioner declaring that, respondent No.3 is disqualified from holding the post of Sarpanch. This order is passed by the Collector on 20.02.2025 allowing the application disqualifying respondent No.3 from being member of Pokhari Haveli on the basis of village record No.8 for the year 2006-2006 to 2023. The aforementioned decision was based on the decision of the Hon'ble Supreme Court in ***Janabai Vs. Additional Commissioner and others in Civil Appeal No.6832 of 2018, decided on 19.09.2018***. The Collector has relied on the record to hold respondent No.3 is disqualified for holding the post of Sarpanch. As per the report submitted by the BDO, the record discloses that, since the year 2012-2013 to 2015-2016 and upto 2023 in Namuna 8 of the property in the village Pokhari Haveli of Taluka Sangamner, name of 'Arvind Sopan Daye' was disclosed for continuous period. Even though no construction was seen on the property when the inspection was conducted on 15.12.2023. The record discloses the, name of son of respondent No.3 as occupier of the land owned by the Government.

5. Learned advocate for the petitioner Mr. Tambe submitted that, the Divisional Commissioner has wrongly refused to rely on the document and has completely relied on the inspection report which discloses that, there was no construction standing on the said property belonging to the Government when the panchnama was conducted on 15.12.2023. Thus, according to him, the order passed by the Divisional Commissioner which reversed the order passed by the Collector, Ahilyanagar deserves to be quashed and set aside. He has relied on the decision of this Court in case of ***Nikhil Uttam Undre Vs. State of Maharashtra and others in Writ Petition No.12614 of 2022, decided on 05.06.2023***. Wherein this Court has held that, the entries in the Inquiry Register that are taken in regular course of official business cannot be ignored. Relying on Section 53 of the Maharashtra Village Panchayats Act, this Court has held that, there is a distinction in the encroachment made over the public property and private property. In absence of any material to show that, the property entered in the Inquiry Register cannot be discarded by merely pointing out the alleged interaction by following the procedure.

6. Per contra, learned advocate appearing for the contesting respondents submitted that, the Divisional Commissioner, Nashik Division, Nashik has taken a correct view of the matter. In fact her son had already addressed an application to the Gram Sevak, Gram Panchayat Pokhari Haveli on 15.11.2022 informing that, his name is wrongly entered as a encroacher on the land which according to him is not owned by him. Therefore, the entry of encroachment made in his name is required to be removed from Namuna No.8. This application was filed on 15.11.2022 whereas the elections were conducted in December 2022 in which the respondent No.3 has been elected. It is submitted that, the report submitted by the BDO, Panchayat Samiti, if read in conjunction with the report of the Gramsevak, Pokhari Haveli, clearly reveals that, although the record pertaining to the year 2005-2006 contains an entry regarding the construction of a structure admeasuring 17 × 11 square feet on Government land, the said entry is accompanied by a bracketed endorsement expressly indicating that, the said entry has been cancelled. Thereafter, when the BDO has inspected the spot on 15.12.2023, he has categorically recorded that, there is no

construction on the spot as per the property record of the Gram Panchayat. During the inspection, the BDO was accompanied by local residents of the village when such inspection was conducted. He has categorically recorded that, he could not find any encroachment on the given land.

7. It is submitted that, merely because Gram Panchayat record discloses some entry in the name of her son, when no construction is found on the site, it is not appropriate to cancel her election to the post of Sarpanch.

8. I have heard the learned advocates for the respective parties and perused the documents with their assistance. Section 14 of the Maharashtra Village Panchayats Act provides for disqualification of a member of Panchayat. It lays down various grounds on which disqualification is incurred by a member. The case of the petitioner would be governed by Section 14(1)(j-3) of the Maharashtra Village Panchayats Act which is reproduced hereinunder and reads thus :

> *"14. (1) No person shall be a member of a panchayat, or continue as such, who—*
>
> *(a) .....*
>
> *(b) .....*

(c) .....

(d) .....

(e) .....

(f) .....

(g) .....

(h) .....

(i) .....

(j) .....

(j-1) .....

(j-2) .....

(j-3) has encroached upon the Government land or public property;"

9. There is no dispute about the fact that, as per Section 14(1)(j-3), a member of a Gram Panchayat incurs disqualification if he encroaches upon the Government land or on a public property. In the present case, the record of the village panchayat clearly discloses that, in the year 2005-2006, a construction admeasuring 17x11=187 sq.ft made with bricks and tin is shown to be standing under the name of son of the respondent No.3 namely Arvind Sopan Daye. This name i.e. Arvind Sopan Daye has continued from 2005-2006 to 2015-2016. According to the report of BDO, said entry in Namuna No.8 of the village was bracketed with an remark that the entry has been deleted. This entry has been made by the

Secretary of the Gram Panchayat. Although such entry has been taken in the register of Namuna 8, there is a remark that, this entry was not supported by any resolution of the Gram Panchayat.

10. It also needs to be appreciated that although as per the documents on record, there appears to be a construction made on the land by encroaching on the land. However, when the visit was made to the actual spot on 15.12.2023, no such construction was seen on the actual site. Thus, the question that would arise for consideration is that, "whether only on the basis of the record of the Gram Panchayat, which discloses encroachment made by the son of respondent No.3 from 2005 to 2023 can the respondent No.3 who is a democratically elected Sarpanch of village be removed from the post of Sarpanch"?

11. This Court had an occasion to deal with similar situation in ***Writ Petition No.13601 of 2022 in case of Shivaji Kisan Kanherkar Vs. State of Maharashtra and others, decided on 25.10.2023***. wherein this Court has taken a view that, only on the strength of entries in the encroachment register and

ignoring the factual position at the site, a decision cannot be drawn based on surmises or conjectures. In the aforementioned case, the Tahsildar had submitted a report that, the alleged encroached land admeasuring 4R. was vacant and there was no construction on the site. This report was contrary to the record which disclosed that, *prima facie* there was an unauthorized construction on the Government land for the period of three years and the petitioner was made to pay penalty for the same. This Court has observed that, it is necessary to verify, "whether the unauthorized construction exists on the date of contest of election and the time when the complainant seeks disqualification of the Sarpanch, although the record disclosed that, there was an encroachment committed by the petitioner but, the report did not indicate existence of any house". Therefore, when a fresh report was called about existence of encroachment, the said report did not disclose any such construction made on the site. On the aforementioned facts of the case, this Court has taken a view that the standard of proof required for disqualify an elected member of Gram Panchayat is strict and more stringent. Thus order of Additional Divisional Commissioner was set aside for

being passed only on the strength of entries in the encroachment registered ignoring the factual position. In the present case also, as per the record as stated in the report by the BDO, there is an encroachment made on the Government land is Gut No.374 by constructing structure in bricks and tin. This entry of construction on the Government land is shown to be continued from 2013 to 2023. Although against the entry there is a remark that the same is relied by the District Collector, Ahilyanagar to disqualify the respondent ignoring the further contents of the report which stated that, when the inspection was conducted by the BDO along with residents of the village, no such construction was found on the site. Thus, the date on which the inspection was conducted on 15.12.2023 there was no encroachment on the land.

12. In this regard a profitable reference can be made to the decision of the Hon'ble Supreme Court which deals with the standard of proof required for removal of elected office bearer. The Hon'ble Supreme Court has held that, an elected member can be removed in exceptional circumstances in strict adherence to the statutory provisions by holding an inquiry, that meets the requirement of principles of natural justice, by

giving the incumbent an opportunity to defend himself. It is for the obvious reason that removal of an elected person casts a stigma upon her and takes away her valuable statutory rights. Not only the elected office bearer but even his constituency/electoral college is also deprived of the representation of the person of their choice. Since the elected member is elected by a large number of voters it has serious repercussions when she is removed. The relevant observations made by the Hon'ble Supreme Court in the judgment of ***Ravi Yashwant Bhoir Vs. District Collector, Raigad and others*** reported in ***2012 4 SCC 407*** the relevant paragraphs are reproduced hereinunder which reads thus :

> *"21. In State of Punjab v. Baldev Singh etc. AIR 1999 SC 2378, this Court considered the issue of removal of an elected office bearer and held that where the statutory provision has a very serious repercussions, it implicitly makes it imperative and obligatory on the part of the authority to have strict adherence to the statutory provisions. All the safeguards and protections provided under the statute have to be kept in mind while exercising such a power. The Court considering its earlier judgments in Mohinder Kumar v. State, Panaji, Goa (1998) 8 SCC 655; and Ali Mustafa Abdul Rehman Moosa v. State of Kerala, AIR 1995 SC 244, held as under:*

> *"It must be borne in mind that severer the punishment, greater has to be the care taken to see that all the safeguards provided in a statute are scrupulously followed."*

"24. Undoubtedly, any elected official in local self-government has to be put on a higher pedestal as against a government servant. If a temporary government employee cannot be removed on the ground of misconduct without holding a full fledged inquiry, it is difficult to imagine how an elected office bearer can be removed without holding a full fledged inquiry. In service jurisprudence, minor punishment is permissible to be imposed while holding the inquiry as per the procedure prescribed for it but for removal, termination or reduction in rank, a full fledged inquiry is required otherwise it will be violative of the provisions of Article 311 of the Constitution of India. The case is to be understood in an entirely different context as compared to the government employees, for the reason, that for the removal of the elected officials, a more stringent procedure and standard of proof is required." (Emphasize supplied)."

"28. 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 his choice. 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."

13. The panchnama dated 15.12.2023 clearly records that, there exists no construction on the land in Gut No.374 on property No.711. The inspection of the spot was conducted by the BDO alongwith the residents and panch witnesses. It is also recorded by the BDO that, although the record discloses the entry under the name of son of respondent No.3 till the year 2023, however, upon making inspection of the spot, there did not appear to be any construction on property No.711 and the land was found to be vacant. Hence, based on the entries on the records, it would not be appropriate to disqualify respondent No.3. More particularly, when it is a drastic action

taken against a democratically elected person, the allegations made about the encroachment are required to be proved strictly by producing evidence to that effect.

14. The petitioner is facing disqualification based on Section 14(1)(j-3) of the Act of 1959 which provides that if the member of a Panchayat encroaches upon the Government land or a public property he/she would incur disqualification to hold the post. Removal on the basis of such encroachment is required to be proved strictly, more particularly the encroachment should exists on the day when the issue of encroachment is raised by the objector and also the encroachment or unauthorized construction should exists on the date of contest of election when such complaint is filed against the petitioner seeking disqualification. If such disqualification is existing on the date on which the election is contested only in such circumstances, the stringent action like disqualification can be taken against a democratically elected Sarpanch of a village.

15. In the present case, the report of the BDO which is a fact finding report, reports that, the entry of the encroachment

made by the son of respondent No.3 in the Namuna No.8 of the village from 2012-2013 to 2015-2016 is found in the register. In the same register, there appears a bracketed portion which records that the entry has been cancelled. This remark has been made by the Secretary of the Village Panchayat. In this report, the BDO has informed that though in the register such entry is taken, the corresponding entry in the monthly meeting does not appear in the records. However, when he visited the spot on 15.12.2023, there was no construction on the allegedly encroached land in property No.711 of Gut No.374. Hence, during the actual spot inspection, there was no construction/encroachment found on the land as alleged in the complaint. When the fact finding report does not support the entries in the record, the coercive action penalizing a democratically elected Sarpanch cannot be taken merely on the basis of some record which is not supported by the fact finding report. It is the defence of the son of respondent No.3 that although he had not encroached upon the subject land, on receiving a notice from the Tahsildar he has immediately informed the Village Development Officer, Gram Panchayat, Pokhari by making an application on

11.11.2022 about the notice issued by the Tahsildar about the encroachment made by him which is not in existence and therefore, requesting to delete entry of such encroachment from namuna No.8. After which a panchnama was conducted on 19.04.2023, it is recorded in the panchnama that there is no construction of any house in Gut No.374. It is worthwhile to note that the elections for the post of Sarpanch was declared on 26.12.2022. The complaint/dispute application has been filed in the month of January 2023. The son of respondent No.3 Arvind Sopan Daye had already given an application on 11.11.2022 itself to the Village Development Officer to delete the entry of his name from the encroached land since he has not caused any encroachment. The inspection has been conducted on 19.04.2023 in presence of panchas where no such encroachment was found. Hence, the allegations made in the complaint are not substantiated by the actual report about the existence of such encroachment. Thus, considering the view taken by this Court in case of ***Shri. Santosh Ramesh Waghela and others Vs. Shri. Santosh Sakahram Bhore in Writ Petition No.12495 of 2024*** and *Shivaji Kisan Kanherkar (supra),* in absence of concrete material available on record

about the encroachment by son of respondent No.3 on the Government land, it would be impermissible to upheld disqualification of respondent No.3. The Divisional Commissioner has rightly passed order dated 30.09.2025 by refusing to allow the appeal filed by the petitioner. Thus, I do not find any case for interference made by the petitioner.

16. Hence, Writ Petition is dismissed and accordingly disposed of.

17. Rule is discharged.

(MANJUSHA A. DESHPANDE, J.)

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vmk/-