



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

WRIT PETITION NO. 351 OF 2025

Asha Indradas Zilpe, Aged 50 years, Occ: Sarpanch,
R/o Itkheda, Tahsil Arjuni/Mor, District Gondia.

PETITIONER

VERSUS

1. The Additional Commissioner, Commissioner
Office Compound, Civil Lines, Nagpur.
2. The Collector, Gondia, Collector Office Compound,
Civil Lines, Gondia.
3. The Gram Panchayat, Itkheda, through its Secretary,
Itkheda, Tahsil Arjuni/Mor, District Gondia.
4. Talathi, Itkheda, Tahsil Arjuni/Mor, District Gondia.
5. Bharat Liladhar Anwale, Aged 41 years, Occ:
Agriculturist, R/o Itkheda, Tah.Arjuni/Mor,
District Gondia.

RESPONDENTS

Shri H.D. Dangre, counsel for the petitioner.
Ms PT. Joshi, Assistant Government Pleader for the respondent nos.1, 2 and 4.
Shri V.A. Patait, counsel for the respondent no.3.
Shri A.H. Matewar, counsel for the respondent no.5.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH ARGUMENTS WERE HEARD : MARCH 27, 2026

DATE ON WHICH JUDGMENT IS PRONOUNCED : MARCH 30, 2026

JUDGMENT

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

2. By this petition, the petitioner Sarpanch, has challenged the orders passed by the Collector as well as the Commissioner disqualifying her as Sarpanch of the Gram Panchayat under Section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959 (for short, 'the Act of 1959').

3. The petitioner was elected as Sarpanch of Gram Panchayat Itkheda, Tahasil Arjuni/Mor, District Gondia through direct election held on 18.12.2022. During the period of tenure of the petitioner, the respondent no.5 filed a complaint/application before Collector, Gondia seeking disqualification of the petitioner for having committed encroachment on the Government land bearing Gat no.308, which is in the name of Government of Maharashtra. After receiving this complaint, the Collector, Gondia directed the Talathi to submit an enquiry report in this regard and accordingly on 26.08.2024 a report came to be submitted. The proceedings were thereafter continued before the Collector in which the petitioner submitted his reply and by order dated 25.10.2024, the application filed by the respondent no.5 came to be allowed and the petitioner stood disqualified. Feeling aggrieved by this order, the petitioner filed an appeal before the respondent no.1-Additional Commissioner, Nagpur which came to be rejected by order dated 13.01.2025. Feeling aggrieved by both these orders, the petitioner has filed the instant petition.

4. Shri H.D. Dangre, learned counsel for petitioner submitted that the impugned orders passed by the Authorities are unsustainable since the same are based on a spot inspection report, which cannot at all be considered to be conclusive. He submitted that the spot inspection was conducted without any prior notice to the petitioner and further the spot inspection report dated 26.08.2024 does not at all mention any

encroachment having been committed by the petitioner. It is submitted that the said spot inspection report, although refers to Form-8 in which there is reference of Tanabai Kawadu Shastrakar, who is mother of the petitioner, the same cannot be made the basis to conclude that the petitioner has committed encroachment, so as to attract the disqualification. It is also submitted that the petitioner is residing separately from her mother and encroachment if any, by her mother cannot be attributed to the petitioner.

In support of his submissions, learned counsel for petitioner placed reliance on the judgments of the Coordinate Bench of this Court in *Sunil Dinkar Jagdale Versus State of Maharashtra & Others* [Writ Petition no.248 of 2020], dated 08.12.2020, *Akshay Jitendra Raut Versus Divisional Commissioner & Others* [Writ Petition no.2734 of 2022], *Santosh Ramesh Waghela & Others Santosh Sakharam Bhore & Others* [Writ Petition no.12495 of 2024], dated 14.01.2025 and the judgment of the Hon'ble Supreme Court in *Manisha Ravindra Panpatil Versus State of Maharashtra & Others* [2024 SCC OnLine SC 2690].

By pointing out the legal position as clarified in the above mentioned judgments, he submitted that the conclusions about encroachment by the petitioner on the Government land are without any basis and not at all sufficient to disqualify the petitioner under Section 14(1)(j-3) of the Act of 1959. By referring to the judgment in *Sunil Dinkar Jagdale* (supra), he submitted that the fact of residence of the

petitioner being separate from her mother ought to have been given due importance. By relying on the judgment in ***Akshay Jitendra Raut*** (supra), he submitted that the enquiry report based on the enquiry conducted in absence of the petitioner, which is the basis of disqualification, required to be discarded being superficial in nature. By highlighting the legal position from the judgment of the Coordinate Bench in ***Santosh Ramesh Waghela & Others*** (supra), he submitted that the findings recorded by the Authorities on the basis of some encroachment alleged to have been committed by the petitioner's mother, cannot attract disqualification under Section 14(1)(j-3) of the Act of 1959. He submitted that the consequence of disqualification being drastic, required concrete and conclusive material and strict adherence to the procedural compliance. In view of the exposition of law as laid down by Hon'ble Supreme Court in ***Manisha Ravindra Panpatil*** (supra), he submitted that the petitioner being an elected woman representative from rural area, the decision of disqualification could not have been taken on the basis of a superficial enquiry, that too carried out without any prior notice to the petitioner.

5. As against this, the learned Assistant Government Pleader as well as Shri V.A. Patait, learned counsel for respondent no.3 and Shri A.H. Matetwar, learned counsel for the respondent no.5 opposed the petition and supported the impugned orders. The respondents submitted that the impugned orders are passed by the Authorities by considering the spot inspection report dated 26.08.2024, which clearly reveal that an

encroachment is committed on land bearing Gat no.308 by the petitioner's mother so also the fact of construction of a wall on the Government land by encroaching an area admeasuring about 0.04 HR is clear from the spot inspection report. They also submitted that the entry in Form-8 is sufficient to draw inference about encroachment on the Government land and further in view of encroachment by the petitioner's husband viz. Indradas Zilpe, the impugned orders disqualifying the petitioner need no interference on any count. They submitted that the petitioner and her husband have acted in collusion with their mother and recorded the mother's name to conceal the encroachment by the petitioner and in view of this conduct, the petitioner stood disqualified.

6. Rival contentions, thus, fall for my consideration.

7. It has to be noted that the decision about disqualification of the petitioner is based on the spot inspection report dated 26.08.2024, which was carried out by the Talathi. The spot inspection report refers to presence of several persons, who have also put their signatures, however, it does not show presence of the petitioner or her husband. Neither does it show that they were given any prior notice before spot inspection. Even the reply of the Government in this regard does not specifically mention that any prior notice was served upon the petitioner before the spot inspection was conducted. As such, the spot inspection report on the basis of which the inferences are drawn appear to have been prepared without

complying the procedural requirements about effecting service of notice upon the persons concerned.

8. Apart from this, the spot inspection report only mentions about some encroachment by construction of a wall carried out by the petitioner's mother Tanabai Shastrakar on land bearing Gat no.308 and it does not specifically record any encroachment being carried out by the petitioner or her husband. The petitioner has categorically stated that she is not residing on the said property and she is residing along with her husband in house no.644. Further, there is nothing on record to show that the petitioner is residing on the land bearing Gat no.308. The petitioner has also specifically averred that her Ration Card is separate from her mother Tanabai Shastrakar and there is nothing on record to establish that the encroachment alleged to have been committed by the petitioner's mother can be attributed to the petitioner.

9. It is also crucial to note that although there is reference to Form-8 in the spot inspection report showing some encroachment by the petitioner's mother, there is also a clear observation based on record of the Talathi Office that there is no entry of encroachment by the petitioner or her husband on property bearing Gat no.308. As such, there is clear variance about the alleged encroachment in the spot inspection report at different places.

10. Pertinent to note, the Authorities have drawn inferences on the basis of the above mentioned spot inspection report, which does not appear to be conclusive and reliable in all respects. As the spot inspection report appears to have been prepared without any notice upon the petitioner and in view of the variance about the details of encroachment, the same cannot be considered to be conclusive in all respects for drawing inference about encroachment by the petitioner on the Government land so as to attract disqualification under Section 14(1)(j-3) of the Act of 1959.

11. In this regard, it is beneficial to refer to the position of law as laid down by the Coordinate Bench of this Court in ***Santosh Ramesh Waghela & Others*** (supra) in which an identical controversy, about disqualification of a Gram Panchayat member was decided by this Court. The pertinent observations recorded by this Court in paragraph 16 are relevant and the same are reproduced below:-

“16. The report of Circle Officer dated 22 February 2022 is not taken into consideration for the purpose of certifying legality of houses constructed by first Respondent's mother allegedly under NREP Housing Scheme. The report, however, cannot be ignored altogether while making an inquiry for disqualification of the first Respondent, who otherwise is a democratically elected Member and Sarpanch. Though the Circle Officer's Report and entries in the Grampanchayat Assessment records about construction of house under NREP Scheme may or may not be enough for permitting retention of the structures. However the said documents, in my view, are sufficient for quelling the allegation of encroachment for seeking disqualification of a democratically elected Member and Sarpanch under Section 14(1)(j-3) of the Village Panchayats Act. Therefore a conclusive

finding about first Respondent's mother encroaching upon government land for the purpose of attracting his disqualification under provisions of Section 14(1)(j-3) of the Act, cannot be recorded in the present case. For unseating a democratically elected Member or Sarpanch, concrete material must be produced and a conclusive finding must be recorded by the Collector about encroachment by him/her or by close members of the family. There is no room for suspicion, surmises or conjectures. Since the consequences of disqualification are severe, greater care must be taken by the Collector to ensure that concrete material is produced before him for recording conclusive finding of encroachment. Seeking disqualification of an elected Member or Sarpanch is a statutory remedy and not a common law remedy or a remedy in equity. Therefore, strict adherence to the statutory provisions is mandatory. A fortiori, the allegation leading to disqualification of elected Member or Sarpanch must be proved with concrete material, as opposed to the test of preponderance of probability.”

Further, the observations of Hon'ble Supreme Court in ***Manisha Ravindra Panpatil*** are also pertinent which deal with a similar case of disqualification of a woman Gram Panchayat member and observes that the matter of removal of an elected public representative, should not be treated lightly particularly when it concerns women belonging to rural areas.

12. In view of the above mentioned legal position, when the controversy involved in the instant petition is considered, it has to be noted that the inference about encroachment by the petitioner are based on the spot inspection report dated 26.08.2024, which cannot be considered as conclusive for the reasons recorded above. It has to be noted that the issue of disqualification of an elected representative has

drastic consequences not only for the remainder tenure, but also for subsequent period. Thus, after giving anxious consideration to the entire factual and legal aspects, I am of the firm opinion that the inference drawn by the respondent nos.1 and 2 in disqualifying the petitioner are highly disproportionate.

13. As regards the complaint lodged by the respondent no.5 and the contentious canvassed on behalf of the respondents that the petitioner and her husband have transferred the property in the name of petitioner's mother only to avoid disqualification, in absence of any conclusive material, no inferences can be drawn at this stage. It has to be noted that the respondents are entitled to investigate this aspect by following necessary procedure of an enquiry, spot punchnama or otherwise, of course after giving due notice and opportunity of hearing to the petitioner. The Authorities are entitled to conduct fresh enquiry, if any, on the basis of any other material showing encroachment by the petitioner or her husband. As such, the matter needs to be remanded to the respondent no.2-Collector Gondia, for considering the application filed by the respondent no.5 afresh and decide the same after giving due opportunity of hearing to the parties concerned.

14. In the light of above mentioned factual and legal aspects, the impugned orders passed by the respondent-Authorities does not stand to the scrutiny of law and deserve to be quashed and set aside. In absence of any concrete material available on record to conclusively establish the act

of encroachment by the petitioner, it would be improper to order disqualification of the petitioner, who is a democratically elected member and Sarpanch of the Gram Panchayat.

15. Hence, the writ petition is partly allowed. The impugned orders passed by the respondent nos.1 and 2 are quashed and set aside. The matter is remitted to the respondent no.2-Collector, Gondia for considering the application filed by the respondent no.5 and decide the same after giving due opportunity of hearing to the parties concerned. In view of above, pending civil applications are disposed of.

16. Rule is made absolute in above terms with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

APTE