
(2024) 04 BOM CK 0022

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 13206 Of 2023

Rekha

APPELLANT

Vs

State Of Maharashtra
And Others

RESPONDENT

Date of Decision: April 3, 2024

Acts Referred:

- Maharashtra Village Panchayat Act, 1958 - Section 14(1) (J3)

Hon'ble Judges: S.G. Mehare, J

Bench: Single Bench

Advocate: Patil Nileshsingh J, M.L. Sangit, S.B. Pulkundwar

Final Decision: Disposed Of

Judgement

S.G. Mehare, J

1. Rule. Rule made returnable forthwith and heard finally with the consent of parties.

2. Respondent no.5 was served, but he did not appear. Hence, proceeded ex-parte against him.

3. The petitioner was the Sarpanch of Village Panchayat. She was removed under Section 14 (1) (J-3) of the Maharashtra Village Panchayat Act,

1958 (â€ˆAct of 1958â€ˆ™ for short). It was alleged against her that her family had encroached upon the land adjacent to their property, No.169. The

Block Development Officer had measured the plot/property No.169 and recorded the finding that 96 sq. ft. land adjacent to the house of the

petitionerâ€™s family was encroached. They have constructed the washroom and wall compound on encroached land. It was an encroachment on

the public road. Based upon the report of the Block Development Officer, the District Collector declared her disqualified from continuing as a member

of the Panchayat under Section 14 (1) (J-3) of the Act of 1958. She had preferred an appeal before the Additional Commissioner, Aurangabad. He

upheld the judgment and order of the Collector.

4. Learned counsel for the petitioner has vehemently argued that before the so-called measurement of her plot, no notice was served upon her. She

did not know when her house was measured. There was no encroachment as alleged. She also does not know who has measured the plot. Unless the

notice for inspection of the house property is given, the order declaring her disqualified from continuing as a Panchayat member is bad in law.

Therefore, the petition may kindly be allowed. Learned counsel for the petitioner relied on the case of *Sau. Lalita Dilip Khandalkar Vs. Additional*

Commissioner, Amravati and Others, 2019 (6) ALL MR 261.

5. The learned AGP and the counsel for respondent no.3 vehemently argued that prima facie evidence was collected against the petitioner that her

family members, where she resides have encroached upon the Government land. Her defence that she was separated from her family was

unfounded. It was an afterthought defence. She was correctly declared disqualified based on the report of the Block Development Officer. There are

two consecutive judgments against her. Hence, her petition may be dismissed.

6. A small question is whether the issuance of inspection and measurement notice upon the petitioner was obligatory. Except for the report of the

Block Development Officer, there was no map showing the encroachment. The respondents have no material to show that a notice was served upon

her before inspection and measurement of her land. This Court, in the case of *Sau. Lalita* (supra) has held that the order passed on the basis of

inspection and measurement of land, which was carried out in the absence of a member is not good ground to disqualify the member. It was

necessary that members should be given ample opportunity to remain present during the spot inspection and measurement to raise objections, if any.

Since no notice was served upon the petitioner in that case, this Court quashed and set aside the order of the Collector and the Commissioner. The

Court directed a fresh spot inspection and measurement of the property of the Village Panchayat member and remitted the matter to the Additional

Collector. The ratio laid down in the said case is squarely applicable to the case at hand.

7. It has been informed to the Court that during the pendency of this petition, the post of Sarpanch has been filled. By order dated 20.10.2023 this

Court had protected the petitioner and observed that the elections held to the post of Sarpanch would be subject to the final outcome of the present

writ petition. Since this Court is going to quash and set aside the impugned judgments and orders, it is having an effect on the election of a new

Sarpanch. The petitioner would resume the charge of Sarpanch till the fresh decision of the Collector as directed by this Court. If the order of the

Collector would be in her favour, she would continue to hold the office of Sarpanch till she is entitled to hold the said office.

8. For the above reasons the impugned judgments and orders of the Collector and the Additional Commissioner are quashed and set aside.

9. It is directed that a fresh spot inspection and measurement of the property be undertaken under the orders of the Collector for further inquiry. The

petitioner should be given notice of carrying out the measurement and inspection. After the report of the inspection is obtained, the parties should be

given the opportunity to lead evidence in the context of such exercise of spot inspection and measurement that the Collector shall proceed to decide

the petition.

10. The Collector shall endeavour to dispose of the disqualification application within three months from today.

11. The petitioner is directed to appear before the Collector on 10.04.2024.

12. Writ Petition stands disposed of. No order as to costs.

13. Rule is made absolute in the above terms.