

2024:BHC-AS:42048



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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12002 OF 2023.

Ashwini Arvind Shirgave,
Age:33 years, Occ: Household,
R/o. Mudshingi, Tal. Karver,
District: Kolhapur

...Petitioner.

Versus

1.The Divisional Commissioner, Pune
Division, Pune

2. Collector Kolhapur,
Collector Office,

3.Ramchandra @ Rama Dattu Shirgave,
Age:66 years, Occ: Agriculture,
R/o. Mudshingi, Tal. Karver,
District: Kolhapur

4. Grampanchayat Mudshingi,
Through Gramsevak,
Mudshingi, Tal. Karver,
District: Kolhapur.

...Respondent.

Mr. S. R. Ganbavale i/b Mr. Ruturaj Pawar for the Petitioner.
Ms. M. S. Bane, AGP for the Respondent Nos.1 and 2.
Mr. Drupad Patil i/b Mr. Dheeraj Patil for the Respondent No.3.
Mr. Manoj A. Patil for the Respondent No.4.

Coram : Sharmila U. Deshmukh, J.

Reserved on : 12th September, 2024.

Pronounced on : 22nd October, 2024.

JUDGMENT :

1. By this petition, exception is taken to the order dated 8th September 2023 passed by Respondent No.1 in Appeal No.16 of 2023 dismissing the Appeal thereby upholding the order of Collector disqualifying the Petitioner from the post of *Sarpanch*.

2. The facts required to be expounded are that the Petitioner was elected as Sarpanch of Grampanchayat, Mudshingi on 9th February 2021. Complaint dated 26th August 2022 was lodged with the Grampanchayat by the Respondent No.3, who is the brother of father-in-law of the Petitioner, contending that Survey No.444 Plot No.14 was allotted to Respondent No.3 on 10th August 1982 in respect of which *Sanad* was issued in name of Respondent No 3 and possession panchnama was also executed. The Respondent No 3 is paying the assessment taxes and despite thereof, in respect of the said Plot, the name of Arvind Shirgave i.e. husband of the Petitioner has been inserted in Village Form No.8 for Property bearing No.1798-D for Assessment Year 2008-2012 which shows partly constructed house of 360 square feet and open area of 1155 square feet and 2145 square feet i.e. 3660 square feet. It was stated that if the actual spot is seen, the same is an open Plot and in the assessment there is substantial

change. It was stated that the amount of Rs.8,95,399/- has been shown deposited with the grampanchayat for which written explanation should be given. The said complaint gave details of assessment extract as under:

- १) अ. क्र. ३२६९ मिळकत नं. १८०५ अ रंजना कृष्णात शिरगावे. रामचंद्र दत्तु शिरगावे.
- २) अ. क्र. ३२७० मिळकत नं. १८०५ ब कुबेर दत्तु शिरगावे.
- ३) अ. क्र. ३२७१ मिळकत नं. १८०५ क आबासी दत्तु शिरगावे.
- ४) अ.क्र. ३०७१ मिळकत नं. १७९८ ड अरविंद कुबेर शिरगावे. सदर असेटमेंट कोणत्या ठरावाच्या आधारे तयार केला आहे त्याची नक्कल प्रत मिळावी त्याचबरोबर सदर कालावधी मध्ये जे ग्रामसेवक होते त्यांचे संपूर्ण नाव मिळावे.

3. It was further stated that the assessment of Property No.1798-D dated 6th October 2020 appears to have been prepared in the name of Arvind Kuber Shirgave and on 7th October 2022 assessment in respect of Property bearing No.1798-B is shown to be prepared in the name of Arvind Shirgave and sought written explanation as to how in the respect of one person two different assessments came to be prepared.

4. On 4th October 2022, notice came to be issued by the Collector under Section 14 (1)(j-3) of the Maharashtra Village Panchayats Act, 1959 (for short, "Panchayats Act") to the Petitioner and the grampanchayat calling them for hearing on 14th October 2022. On 18th

October 2022 communication was addressed by the Deputy Collector to the Gram Sevak intimating that the hearing was held on 14th October 2022 and to remain present for the hearing on 18th November, 2022 with the Suvey Map. Accordingly survey map was prepared which is annexed at page 85 of the petition.

5. *Vide* reply dated 29th May 2023, the Petitioner contended that the complaint filed by Respondent No.3 has not stated about the boundaries of Plot No 14 and there is no clarity as to from which side the encroachment is alleged to be carried out. It was contended that the Property mentioned in the application by Respondent No.3 is not government land but additional gavthan land and that the information about wrong assessment by grampanchayat came to the knowledge of the Petitioner's husband in the month of November 2020 and immediately thereafter an application was moved for deleting the name of the Petitioner's husband from the assessment extract. Subsequently, due to COVID-19 pandemic, the application remained pending and on 30th June 2022, the assessment was cancelled and the name of Petitioner's husband came to be deleted from the Plot No.14. It was further contended that there is no encroachment on Plot 14 and that in the encroachment list of the year 2000-2020 name of the Petitioner's husband is not mentioned. Gramsevak by certificate dated 10th March 2023 has certified that

there is no noting of the name of the Petitioner's husband in respect of additional *gavthan* land survey No.444 Property No.1805. The official measurement carried out does not depict any encroachment. The Respondent No.3 by affidavit dated 16th March 2000 had included the name of the family members in the assessment extract and have obtained loan on the subject Property.

6. After hearing the parties, the Collector *vide* order dated 16th June 2023 allowed the application of Respondent No.3. The Collector observed that additional *gairan* land survey No.444 was divided into Plots which were allotted on 29th August 1978 and Plot No.14 was allotted to Respondent No.3 as per the list prepared by the Sub-Divisional officer on 11th June 1981. It further held that as per the certificate of the gramsevak dated 10th March 2023 there is no noting of the name of the Petitioner's husband in respect of Survey No.444 on Property 1805-D, however, the assessment extract of 10th September 2022 reflects the name of the Petitioner's husband. The noting of the family members is shown from 1998 in respect of subject Property as also the encumbrances created by the Petitioner's father-in-law. It further held that there is special noting that survey No.444 is government land and the same has not come in possession of the Petitioner by accepted procedure and there has been encroachment on the government land. It further held that the

encroachment has to be seen on the date of filing of the nomination. It was held that Property No.1805 is situated in survey No.444 about which the Petitioner had knowledge and as they are not in occupation by procedure known to law, there is encroachment. It was further held that presently on Property bearing No.1805-D, there is no noting but in respect of 1805-B name of the father-in-law and mother-in-law of the Petitioner are noted. As per the measurement map prepared by the Deputy Director of land records, the subject Property is shown and there is encroachment on government land. The Collector therefore disqualified the Petitioner under Section 14(1)(j-3) of the Panchayats Act.

7. Appeal came to be filed before the Divisional Commissioner and *vide* impugned order dated 8th September 2023, the Appellate Authority held that Respondent 3 was allotted 1 Are land as per 7/12 extract and the Property No.1805-D, as per the village form showing the Property of the Petitioner's husband, was 3660 square feet which is in excess of 1 Are land. It further held that additional *gavthan* Gat No.444 is government land and therefore the argument of the Petitioner that the Property is part of Plot No.14 cannot be accepted. The Appellate Authority further held that apart from the Property which was allotted, additional area is in possession of the Petitioner's family and therefore same amounts to encroachment on government

land. It further held that the Petitioners have admitted the possession of 1805-D and the same is part of Gat No.444 which has not been allotted to Petitioner's husband or her family members and on these findings rejected the appeal.

8. Heard Mr. S. R. Ganbavale for the Petitioner, Ms. M. S. Bane, AGP for the Respondent Nos.1 and 2, Mr. Drupad Patil for the Respondent No.3 and Mr. Manoj A. Patil for the Respondent No.4.

9. Mr. Ganbavale, would submit that Respondent No.3 has adopted varying stands in different proceedings. Pointing out to the first complaint filed with the grampanchayat on 26th August 2022, he submits that the complaint of Respondent No.3 was that Respondent 3 was allotted Plot No.14 out of survey No.444 and assessment extract in respect of Property No 1798-D shows the name of Petitioner's husband. He would further point out that the complaint states that the assessment extract shows house admeasuring 360 feet, whereas on actual site the same is open land. He would submit that in the dispute filed before the Collector, the Respondent No.3's case is that survey No.444 is owned by the State Government and as per the *sanad* at Sr. No.163 Plot No.14 admeasuring about 3.5 guntha was allotted to Respondent No.3 on 10th August 1982 and the Petitioner's husband in collusion with the grampanchayat has encroached into the Respondent No.3's Property allotted by the State

Government and got prepared assessment extract. He would further submit that the assessment extract produced by Respondent No.3 which is at page 71 shows the entire area of 1805-D as 3660 square feet whereas the same if considered in juxta-position with the assessment extract obtained by the Petitioner at page 106 shows that name of the Petitioner's husband being bracketed in the assessment extract. He therefore submits that the assessment extract produced by Respondent No.3 to show name of the Petitioner's husband is forged document. Pointing out to the assessment extract remark at page No.106 which refers to Grampanchayat Resolution dated 30th June 2022, he submits the same is by reason of application filed in the year 2020 for removing the name of the Petitioner's husband from the assessment extract which was even prior to the election.

10. He would further submit that though the finding of the Divisional Commissioner is that about 1 Guntha was allotted to Respondent No 3, the 7/12 extract would show that it is an approximate area. According to him, the area allotted admeasures .01 square meter. He would further submit that it has been contended by Respondent No.3 that he has been allotted 3.5 gunthas which is contrary to the 7/12 extract and the finding of the Divisional Commissioner is therefore fallacious. He points out to the assessment extract annexed at page 365 onwards for the period 2008-2012 and

would point out that at page 367 the name of the Petitioner's husband has been inserted in the assessment extract which is evident from the different hand-writing and from the fact that in all the previous pages, there are only 5 entries whereas at page 361 there are 6 entries by inserting subsequently the name of the Petitioner's husband. He submits that the fact that there has been interpolation is evident as the total water charges payable in respect of previous five entries is Rs.90/- whereas in respect of the Petitioner's husband, it is shown as Rs.180/- and the total is shown as Rs.450/- which is total of five entries at the rate of Rs 90/ and not six entries. He would further submit that the total of tax amount when considered in respect of five entries would be Rs.1,225/-, however if the name of the Petitioner's husband's is added, the total should have been increased to Rs.1,851/-, which is not so. He would further submit that the documents produced have not been dealt with by the Collector or by the Divisional Commissioner. He points out to the assessment extract for the year 1988-1989 to 1991-1992 which shows that the Plot No.14 was initially in the name of Respondent No.3 and thereafter for the period 1984 to 1998 is bifurcated in the name of the brothers of Respondent 3 into three parts which was pursuant to an affidavit filed by Respondent No.3 by including name of the brothers in the assessment extract. He submits that there is no such Property as

1805-D and that the Petitioner or family members have no connection with the suit Property 1805-D. He would further point out that by communication dated 7th May 2007, the Respondent No.3 has transferred Property 1805-A in the name of deceased brother's family. He submits that the Collector has held that the name of the family member appears in the noting since the year 1998, whereas at that time the Petitioner's husband was minor. He submits that the Tahsildar has filed an affidavit stating that the house was partitioned between Respondent No.3 and his brother and separate assessment extract 1805-A to C has been issued. He submits that the Tahsildar has stated that admittedly there is an encroachment beyond Plot No.14 and that the encroached Property is recorded as Property No.1805-D when the assessment extract does not state the same. He submits that there is no notice of encroachment issued to the Petitioner's husband. He submits that it is consistent case of Respondent No.3 that the Property which has been allotted is 3.5 gunthas and points out that even before the Apex Court in SLP filed the Respondent No 3, the case is that Plot No. 14 admeasuring 3.5 gunths was allotted to the Respondent No 3. In support, he relies upon the following decisions:

1. Ravi Yashwant Bhoir vs. District Collector, Raigad and

Ors.,¹

2. Yunus Shah Anwar Shah vs. Additional Commissioner, Amravati and Ors.,²

3. Vijay Shrawan Shende and Ors. vs. State of Maharashtra and Ors.,³

4. Laxman Shrikrushna Jadhav vs. Tanaji Nana Ghodke,⁴

5. Yogesh Shriram Solanke vs. Divisional Commissioner,⁵

6. Kisan Laxman Navale vs. State of Maharashtra,⁶

7. Dattatray Sarjerao Shinde vs. Additional Commissioner, Pune and Ors.,⁷

8. Savita Premdas Jadhav vs. The Divisional Commissioner,⁸

9. Union of India and Ors. vs. N. Murugesan and Ors.,⁹

10. Pratibha Sanjay Hulle vs. Additional Collector, Latur and Ors.,¹⁰

11. *Per contra*, Mr. Patil learned counsel appearing for Respondent No.3 would submit that the decision relied upon by learned counsel for the Petitioner in the case of ***Pratibha Sanjay Hulle vs. Additional Collector (supra)*** was in respect of disqualification under Section 76

¹ (2012) 4 Supreme Court Cases 407;

² 2011(5) Mh. L. J. 249;

³ 2009 (5) Mh. L. J. 279;

⁴ AIRONLINE 2023 Bom 1703;

⁵ AIRONLINE 2023 Bom 1703;

⁶ WP No.12553/2023

⁷ WP No.2019 of 2024.

⁸ WP No.390/2022

⁹ (2022) Supreme Court Cases 25

¹⁰ 2010 (5) Mh. L. J.

of the Panchayats Act. He submits that as far as Plot No.14 is concerned the same was partitioned between Respondent No 3 and his two brothers and was divided into 14a, 14b and 14c which was thereafter numbered as 1793-A to 1793-C which was again renumbered as 1798-A to 1798-C and only in the year 2010 came to be numbered as 1805-A to 1805-C. He submits that as per the assessment extract of the said three Plots, the area aggregates about 360 square feet each plus open space and houses which is within one guntha which was allotted to Respondent No.3. He submits that in the year 2020, application was made by the Petitioner's husband to remove his name from the assessment record by showing it to be part of Plot No.14(D). He submits that though application was sought to be pressed to show deletion sought, subsequently assessment charges have been paid by Petitioner's husband which is for the year 2010, 2011, 2015, 2016, 2021 and 2022 which are at pages 244 to 246 in respect of Property No.1805-D and therefore it is evident that there is an existence of Property bearing 1805-D which is in possession of the Petitioner's husband in respect of which taxes were paid. He submits that as the Property allotted to Respondent No.3 comprising one guntha was divided into three parts allotted to Respondent No.3 and his brothers, it is evident that 1805-D is an encroached portion of survey No.444. He would further submit that the tax receipts shows

Property bearing No.1805-D and therefore there is no question of assessments not tallying as the receipts had been issued for payment of assessment tax. He would further point out that in Village form No.8 for the assessment year 2008-2012, Property 1798-D is shown in the name of the Petitioner's husband which is admeasuring about 3600 square feet which area is mentioned in the assessment book for the year 2015- 2016 to 2018-2019. He would further point out that the said fact has been taken into consideration by the Divisional Commissioner by holding that if Plot of land which was allotted to Petitioner was about one guntha, the assessment records of 1805-D which shows the area of 3600 square feet is admittedly exceeding the area of one guntha existing and therefore encroachment.

12. In rejoinder, Mr. Ganbavle would submit that in the first complaint filed by Respondent No.3 in the year 2022, it is stated that assessment for the year 2008- 2012 shows the name of the Petitioner's husband in respect of Property 1798-D. He submits that in 2010 when the Property was not numbered as 1805-D but was 1798-D, then the receipts issued in respect of tax assessment for the year 2010-2011 will not show the Property as 1805-D which is at page 246. He therefore submits that receipts which are produced on the record are forged. He would further point out that even in Village Form No.8

which is for 2008-2012, the Property number is shown as 1798-D which was therefore not numbered as 1805-D in the year 2010-2011 and therefore the tax receipts are apparently forged. He would further point out that in Village form No.8 produced by Respondent No.3 to show the Petitioner's husband's name in Property 1805-D, the house is shown to have been constructed in the year 1992 when the Petitioner's husband was about 8 years of age and it is therefore clear that there has been tampering with official records. He would further point out that the tax receipts produced on record is issued in joint names of the Petitioner's husband and Petitioner. He submits that the same could not have been done as the assessment extract shows only the name of the Petitioner and therefore there is no question of tax receipts being issued in the name of Petitioner as well.

13. Considered the submissions and perused the record.

14. If the order of Collector dated 16th June, 2023 is perused, the Collector disqualifies the Petitioner on the ground of encroachment of Plot No 14 based on the assessment records of Property No 1805-D. It finds that the notings of the Petitioner's family members is since the year 1998 and that Gat NO 1805-B is in the name of the father in law and mother in law of the Petitioner.

15. The Appellate Authority accepts the encroachment on Gat NO 444 by noting that the Respondent No.3 was allotted area

admeasuring 1 Are as per 7/12 extract and as per the assessment extracts, the area of Property No 1805-D is admeasuring 3660 square feet, which is admitted to be in possession of the Petitioner's husband. By noting that Gat No 444 is government land and the area of the Plot allotted and the area in possession of the Petitioner's husband does not tally, the Appellate Authority has dismissed the Appeal.

16. As far as Gat No 1805-B is concerned, the same is not an issue as admittedly the Plot allotted to the Respondent No 3 was divided into three parts between the Respondent No 3 and his brothers.

17. The disqualification of the Petitioner has been ordered on the ground of encroachment by the Petitioner's husband on government land based on the assessment extract showing Property No1805-D in the name of Petitioner's husband as on 10th September, 2022. In the first complaint lodged by the Respondent No 3 on 26th August, 2022, the Respondent No.3 contends that in respect of the allotted Plot No. 14, Village Form 8- assessment record of Property 1798-D for the assessment year 2008-2012 shows name of the Petitioner's husband. It is the Respondent No 3's case that the Plot is an open Plot and despite thereof, the assessment extract shows half constructed house of 360 square feet and balance area as open space. In the Gram Panchayat dispute, the Respondent No.3 states that the Plot allotted

to him is 3.5 gunthas and in that Plot No 14, the Petitioner's husband has colluded with the Gramsevak and got the assessment records prepared and encroached upon the Plot allotted to the Respondent No. 3.

18. The allegation of the Respondent No.3 thus was of encroachment by the Petitioner's husband upon the Plot allotted to him. At the threshold considering the complaint, there was no question of application of Section 14(1)(j-3) which speaks of encroachment on government land. Although the 7/12 extract shows that the land allotted to Respondent No.3 is about 1 guntha, in the Grampanchayat Dispute filed before the Collector Respondent No.3 has stated that he has been allotted 3.5gunthas. Similarly in the SLP which was filed before the Apex Court, in the synopsis, it has been stated that Respondent No.3 in the year 1982 has been allotted 3.5 gunthas. Once the government land had been allotted to the Respondent No 3, the character of the land changes being in hands of private person and encroachment, if any, has to be removed by adopting appropriate civil remedy. The Appellate Authority has held that the Respondent No.3 was allotted 1 Are whereas the Respondent No.3 himself claims to have been allotted 3.5 gunthas. Going by the Respondent No.3's own contentions, the impugned order of Appellate Authority is rendered vulnerable.

19. Without noticing the contents of the complaint, the authorities have held that there is encroachment on government land by considering assessment records of Property No 1805-D. There appears to be considerable dispute about the assessment extract of Property No 1805-D. In this context, if we see the assessment extract certified by gramvikas adhikari and produced before the appellate authority, the assessment extract is for the year 2008-2012. As per assessment book, the Petitioner's husband name is at Serial No.3071 in respect of Property No.1798-D. It is evident to the naked eye that the handwriting as regards the said Serial number differs from the handwriting of previous serial numbers. Mr. Ganabavale is also right in pointing out that water charges in respect of first five items of the same page is shown at Rs.90/- and therefore total of the five items when multiplied with Rs 90/ is shown at Rs.450/-, whereas, against the name of Petitioner's husband the water charges is shown as Rs.180/- and if the same is added the total should be Rs.630/- and not Rs.450/-. Similarly , the assessment tax in respect of other 5 properties when added amounts to Rs.1,225/- and if the Petitioner's husband's tax would be added it would be Rs.1,851/-.

20. The interpolation by way of subsequent insertion of the name of the Petitioner's husband is evident from the following:

(a) The water tax and Property tax of the previous five entries when

added, the total noted is correct. If the water tax and Property tax recorded in the name of the Petitioner's husband is added with the other notings, the same would exceed the total noted.

(b) On every previous page of assessment book, there are only five entries, whereas the page, noting the name of the Petitioner's husband has six entries.

(c) To the naked eye, it is clear that the handwriting in respect of notings of the Petitioner's husband is different from the handwriting of the same page.

21. It is therefore evident that the name of the Petitioner's husband has been inserted later in the assessment extract for the year 2008-2012. Assessment Extract shows that for the year 2008-2012 the Property was numbered as 1798-D whereas reliance placed by Mr. Patil on tax payment receipts at Page 244 to 246 of the Petition to show that the Property tax has been paid by the Petitioner's husband, would show that for the year 2010-2011 the tax receipt shows the Property number as 1805-D. If the assessment extract of year 2008-2012 shows the Property numbered as 1798 -D, the tax receipts for the same Property of year 2010-2011 could not be issued for Property No.1805-D.

22. Mr. Ganbavale has also rightly pointed out that the tax receipts have been issued in name of Petitioner and her husband jointly, which

could not be done, as the assessment extract is only in name of Petitioner's husband. It is therefore evident that the tax receipts which has been produced are forged receipts and have been fabricated only for the purpose of showing the Petitioner's husband's possession and occupation of Property No.1805-D. The existence of Property No.1805-D is thus doubtful. Even the survey map does not indicate existence of Property No.1805-D. The substratum of the complaint is encroachment by Petitioner's husband by showing assessment extract of Property 1805-D, which are forged and fabricated. Further there is also dispute about area of Plot No.14 allotted to Respondent No.3 as he claims to have been allotted 3.5 gunthas and if that is accepted and assuming arguendo that Petitioner's husband is in possession of Property No.1805-D in Plot No.14, the same would not be an encroachment. Considering the records, there is no clear cut case of encroachment made out.

23. It is not disputed that Plot No.14 was allotted to Respondent No.3, which was thereafter divided into three parts between Respondent No.3 and his two brothers. In the year 2020 even before the elections were contested by the Petitioner, the Petitioner's husband had addressed communication to the gramvikas adhikari for deletion of his name from Plot No.14 from the assessment book. There is no dispute that land bearing survey No.444 is government

land. What has been allotted to Respondent No.3 as evident from 7/12 extract is land admeasuring 1 guntha and the Property has thereafter been divided between Respondent No.3 and his brother which shows the area from the assessment extract to be around one guntha. Although it is sought to be contended by Mr. Ganbavale that what has been allotted is 1 square meter, the same is not acceptable upon reading of the 7/12 extract with the assessment records of the grampanchayat. It is therefore clear that as far as Plot No.14 is concerned the same is about 1 guntha.

24. Coming back to the Village form No.8, which shows the construction of the house admeasuring of about 360 square feet, the construction is shown of the year 1992, whereas, at that time the Petitioner's husband was about 8 years of age. In addition to that, it is Respondent No.3's own contention in the first complaint filed on 26th August, 2022, that although assessment shows construction of house, the entire land is an open space.

25. The Collector, without taking into consideration the documents produced on record which showed clear dispute as regards the Property 1805-D and the evident interpolation in the assessment records for the year 2008-2012 showing the name of Petitioner's husband in respect of Property 1798-D demonstrating no connect of Petitioner's husband with the alleged Property No.1805-D, has

ordered the disqualification. What was required to be considered is whether there is material on record to demonstrate that there has been an actual possession and occupation of Property 1805-D by the Petitioner's husband which is an encroachment on government land.

26. The measurement map which was directed to be produced does not refer to 1805-D and merely refers to the boundary marks of Plot No. 14. Apart from the alleged assessment records which cannot be relied upon, there was nothing to demonstrate that Property bearing 1805-D was government land in the occupation and possession of the Petitioner's husband and that Petitioner continued to be the beneficiary of the encroachment.

27. The Collector's order though refers to the report of the Gramsevak dated 10th March 2023 that the name of the Petitioner's husband is not recorded in respect of 1805-D, relies upon the assessment extract of 10th September 2022 showing the name of the Petitioner's husband. That is without noticing that the subsequent assessment extract of 7th October 2022 showing the name of the Petitioner's husband bracketed in respect of Property 1805-D by virtue of grampanchayat resolution dated 30th June 2022.

28. The Collector has held that the Petitioner's family's name is noted since the year 1998 when the Petitioner's husband was minor and it is nobody's case that Petitioner's father-in-law was earlier the

encroacher and thereafter the encroachment continued. Both the authorities failed to notice that the assessment extract of the year 2008-2012 was clearly a fabricated document by inserting the name of Petitioner's husband which did not tally with the figures appearing in the assessment extract. The Divisional Commissioner has factually erred in holding that the Petitioner has accepted that Plot No.1805-D is in her possession which has been throughout disputed by Petitioner stating that they have no connection with 1805-D.

29. Mr. Ganbavale has rightly relied on the decision in the case of **Ravi Yashwant Bhoir** (supra) where the Apex Court has held in paragraphs 34 and 35 as under:

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."

30. In the case of ***Kisan Laxman Navale*** (supra) learned Single Judge of this Court has held that there has to be first a finding of encroachment and thereafter the question will come whether the encroachment is made by any member of the family which could make the member elected disqualified. Said judgment is squarely applicable in the present case as there can be no finding of encroachment by the Petitioner's husband. In the case of ***Kisan Navale (supra)*** the issue was as regards the encroachment on *gairan* land and it has been held that encroachment has to be proved and the encroacher has to be shown in continued occupation of the premises and a clear cut case has to be made out for seeking disqualification.

31. In case of ***Manisha Ravindra Panpatil vs The State of Maharashtra***¹¹, the Apex Court in context of disqualification of woman Sarpanch has held that in matter of removal of an elected public representative should not be treated so lightly, especially when it concerns women belonging to rural areas. The Apex Court held that

¹¹ Civil Appeal No 10913 of 2024

it must be acknowledged that these women who succeed in occupying such public offices, do so only after significant struggle. The Apex Court struck a note of caution that the concerned authorities need to sensitize themselves and work towards creating a more congenial atmosphere where women, such as the appellant, can prove their worth by rendering their services as Sarpanch of the Grampanchayat.

32. In the present case, I do not find that there can be any finding as regards the encroachment by the Petitioner or the family members. The records do not show that Petitioner is in continued occupation of the Property stated to be an encroachment on government land. In the assessment extracts of said Property No 1805-D, the name of Petitioner's husband is evidently inserted subsequently. A clearcut case must be made out that the Property bearing No.1805-D was an encroachment on Survey No.444, which encroachment has been at the hands of the Petitioner's family members and which continued to be in the enjoyment of the Petitioner. From the material which has come on record, I do not find any such case being made out. It is indeed unfortunate that the allegations have been levied by the brother of the Petitioner's father in law, who instead of appreciating the accomplishment of the Petitioner, has made a concerted effort to ensure that the Petitioner does not continue as the Sarpanch of the Grampanchayat.

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33. In light of the discussion above, the impugned order dated 8th September, 2023 passed by Respondent No 1 in Appeal No 16 of 2023 is hereby quashed and set aside. Resultantly, the Appeal No 16 of 2023 stands allowed.

34. Petition succeeds. Rule is made absolute. In view of disposal of petition, Interim/Civil Applications, if any, do not survive for consideration and stand disposed of.

[Sharmila U. Deshmukh, J.]