
(2015) 01 BOM CK 0214
In the Bombay High Court
Case No : Writ Petition No. 162 of 2015

Sheela Dilip Daberao

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:

Citation : (2015) 5 ALLMR 235 : (2015) 3 MhLj 231

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : A.B. Mirza, for the Appellant; Neeraj Patil, AGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R.K. Deshpande, J.—Rule, made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties. In the proceedings of disqualification under section 14(1)(j-3) of the Maharashtra Village Panchayats Act, 1959, the Additional Collector, Akola, rejected the claim for disqualification of the petitioner. In appeal preferred under section 16(2) of the said Act, the Additional Commissioner, Amravati Division, Amravati, has reversed the decision of the Collector and the petitioner is disqualified from the membership of Gram Panchayat, Manatri Bu. Hence, the petitioner has challenged the order passed by the Additional Commissioner, Amravati Division, Amravati.

2. The findings of fact recorded by both the Courts below are that one Shri Dilip Ramrao Daberao, the husband of the petitioner, is the owner of Plot No. 73, admeasuring 33 x 33 sq.ft., situated at Village Manatri Bu, Tahsil Telhara, District Akola. There is an encroachment over the Government land attached to the said property to the extent of 17 x 17 sq.ft. Though the petitioner is not the owner of the said land, still she is residing thereon along with her husband. These findings of fact are not challenged in this petition.

3. The disqualification alleged against the petitioner is under section 14(1)(j-3)

of the said Act, which is reproduced below:

"14. Disqualifications.--(1) No person shall be a member of a Panchayat continue as such, who--

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

Clause (j-3) of section 14(1) of the said Act, which is reproduced above, covers the cases where a member of a Panchayat resides in a portion encroached upon the Government land or public property. It will not be necessary in such a situation to establish that such member is the owner of the property adjacent to the encroached portion. The question as to whether any other member of the family has made an encroachment, loses its significance. In the facts and circumstances of this case, it was not be necessary for the respondents to establish that it is the petitioner herself has encroached upon the Government land. The decision of the learned Single Judge of this Court in the case of Sou. Kanchan Shivaji Atigre Vs. Mahadev Baban Ranjagane and Others, (2013) 1 ALLMR 5 : (2013) 2 BomCR 311 : (2013) 1 MhLj 455 , relied upon by the learned counsel for the petitioner, would not, therefore, be applicable in the facts of the present case.

4. In the result, the petition is dismissed. Rule stands discharged. No order as to costs. The learned counsel for the petitioner submits that the interim order granted by this Court shall be continued for a further period of four weeks so as to enable the petitioner to approach the Apex Court. The prayer is opposed by the other side. Hence, it is rejected.