



(1)

48wp4577.23

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

48 WRIT PETITION NO.4577 OF 2023

Manisha Ravindra Panpatil,

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through Additional Commissioner,
Nashik Division Nashik
2. The Collector, Jalgaon
3. Grampanchayat Vichkheda,
Tq. Parola, Dist. Jalgaon
Through its Gramsevak
4. Ganpat Javala Gaikwad
5. Pandit Gobru Patil,
6. Asaram Subham Bhil,
7. Onkar Varnya Bhil (More)

...RESPONDENTS

Mr. M. S. Deshmukh, Advocate for the petitioner
Mr. S. B. Pulkundwar, AGP for the respondents/State
Mr. A. A. Khande, Advocate for the respondent No.7

CORAM : KISHORE C. SANT, J.

DATE : 03rd AUGUST, 2023

P. C.

1. Heard the parties.

(2)

48wp4577.23

2. The petition is taken up for final disposal with the consent of the parties.

3. The petitioner has approached this court challenging the judgment and order passed by the learned Additional Divisional Commissioner, Nashik in Grampanchayat Appeal No. 92/2022 dated 05-04-2023 confirming the order dated 21-06-2022 passed by the learned Collector, Jalgaon in Grampanchayat Dispute No. 05/2022 thereby disqualifying the petitioner from holding the post of a Member and consequently Sarpanch of Grampanchayat Vichkheda, Tq. Parola, Dist. Jalgaon.

4. Facts in short are that, The petitioner was elected as Member of village panchayat on 05-02-2021 the petitioner was thereafter is elected as Sarpanch. Respondent Nos. 5, 6 and 7 raised a dispute with the learned Collector, Jalgaon under Section 16 stating that the petitioner is staying with her mother-in-law namely Meerabai Panpatil who has constructed a RCC

(3)

48wp4577.23

building on the government land. The petitioner appeared and took a stand that she was staying separate with her husband and children since 2001. In 2021 in the rainy season as her house was in dilapidated condition and one wall collapsed she started residing in the house of one Uday Patil on rent basis. She disputed that she was residing in joint family. She submits that she also replied in which it was found that house number i.e. 355 which was stated to be property of Uday Patil was found to be a government land. She explained that in 2017-18 House No. 355 was given to house of Uday Patil. However, later on it was given to the Grampanchayat land. The petitioner also prayed to summon Gramsevika with register of property from 2015. As regards the submission made by the Police Patil about her residence with the joint family, she prayed to summon the Police Patil for cross-examination. She produced on record two ration cards showing that her ration card is different than the ration card of her mother-in-law. She also produced on record the property extract of the property of Uday Patil which shows his property number as 206. The rent agreement is also produced

(4)

48wp4577.23

dated 15-08-2021.

5. The learned Collector, Jalgaon by considering all the pleadings and the submissions mainly that the house of Uday Patil in which the petitioner claims to be residing on rental basis is shown of Zilla Parishad School and disbelieved the case of the petitioner. It is held that the mother-in-law of the petitioner is staying in the house constructed on the government land and held the petitioner disqualified.

6. The petitioner challenged the said order by filing the village Panchayat Appeal No. 92/2022 in the office of Divisional Commissioner. The grounds taken in the appeal are **i**; no opportunity was given to cross-examine whose statements were recorded in the enquiry **ii**; there is no documentary evidence to show that the petitioner was residing in the house of her mother-in-law **iii**; the learned Collector has not considered the ration cards showing that petitioner is residing separately **iv**; the learned Collector has also not considered the rent agreement

(5)

48wp4577.23

and panchanama in case of natural calamity. She also contended that extract of property No. 206 is in fact of the same property which is mentioned as property No.355. After three years there is change in the number of the property. However, it is the same property in which she is residing.

7. The learned Additional Divisional Commissioner, Nashik initially granted stay vide order dated 24-03-2022. The learned Additional Divisional Commissioner, Nashik after hearing rejected the appeal by judgment and order dated 05-04-2023 and confirmed the judgment and order of the learned Collector, Jalgaon.

8. Learned advocate for the petitioner submits that complainant while filing the complaint has not given any proof that the petitioner is residing in a property of the joint family of the mother-in-law. On the contrary the petitioner has given rent agreement and that is not considered by the learned Collector, Jalgaon. He further submits that there is no presumption in law

(6)

48wp4577.23

that a person is residing in the joint family property. Though the proceeding before the learned Collector, Jalgaon is summary in nature however, till natural justice requires fair play. Natural justice demands that proper evidence be taken before coming to any conclusion as the matter of disqualification is a serious thing. He submits that in this case the findings recorded by both the authorities is totally perverse and prays that judgment and order impugned in this petition deserves to be quashed and set aside by holding that the petitioner has not incurred any disqualification.

9. Learned advocate for the respondent vehemently opposes the petition submitting that the petitioner has not given any proof that she was not residing in the house of her mother-in-law. Though there is stand taken that she is residing separately since 2001 however, nothing is shown on record to substantiate this fact. The rent agreement shows that she started residing in the rented premises in August, 2021 whereas she is elected as Sarpanch in February, 2021. He further submits that

(7)

48wp4577.23

rent agreement shows the property number as 355 which is a school and therefore her rent agreement also becomes doubtful as it is not registered document. He submits that it has come on record that the property in which she is residing separately shows the property No. 206. He submits that there are two ration cards and at the most it can be said that there are two different family units. Having two different ration cards can not conclusively prove that they are residing separately.

10. The learned AGP also supports the order saying that both the authorities have rightly considered the material on record.

11. In rejoinder the learned Advocate for the petitioner submits that when the complainant makes an allegations it is for the complainant to prove the allegations made in the complaint. In this case he has merely made allegations and the court has believed the same. Though the Police Patil has given the affidavit against the petitioner, however it was necessary to allow the

(8)

48wp4577.23

petitioner to at least cross-examine him. He submits that general principle is that it is for the person who makes the allegations should prove the allegations. The authorities have erred in expecting the petitioner to prove the negative fact which cannot be proved. She has given best proof available with her and that should have been accepted.

12. Considering the submissions and the orders this court finds that the petitioner was elected as member and thereafter elected to the post of Sarpanch on 15-02-2021. To deny allegation that the petitioner is residing in a joint family this the petitioner has produced on record ration cards. However on both the ration cards there is no address given of the card holder. Therefore, it cannot be considered to show that she is residing at different place. The rent agreement admittedly is of August, 2021 at the most it can be said that she is residing separately since August, 2021. This court does not feel it necessary to go into further discussion about the same. It is not stated as to where the petitioner was residing when the election

(9)

48wp4577.23

took place. If at all she was residing at some other place than the place shown then it could have been easily stated in the say of the defence. But there is no case as such. Mere statements that because of rainy season wall of the building collapsed and therefore, she was required to reside in rental premises after the election is over is not sufficient. However, even then there is no statement as to which house she is talking of which wall collapsed.

13. This court finds that manner of enquiry is summary in nature. No strict proof is expected and therefore, both the authorities did not feel it necessary to call the Police Patil etc. Though the ground is raised that at least there should have been discussion by the authorities on that aspect this court finds that when in summary enquiry this court finds that itself cannot be said to be illegal or that there is failure to exercise the jurisdiction. The submission that it is necessary to give proof by the complainant this court finds that complainant is from the same village and certainly has the knowledge of residence of

(10)

48wp4577.23

each other. About the submission that there is no presumption that person is residing in the joint family there cannot be any dispute on this however, there should be some material to show that when it is the case of the petitioner that she was residing separately then to give those details as to where she was residing. On the third submission that since it is summary proceeding the authorities did not summon the person for giving evidence or for the purpose of cross-examination. Without calling a person even if the finding is recorded that in this case this court does not find that there is any perversity committed by both the authorities in the facts of this case.

14. Considering all the above aspects, this court finds that no case is made out calling for interference in the impugned judgment and order. The petition is thus dismissed and disposed off.

15. The learned advocate for the petitioner at this stage submits that there was stay pending appeal before the learned

(11)

48wp4577.23

Commissioner even in this court she was protected and said protection is still continued. He therefore, prays to continue the same for a period of four weeks.

16. Learned advocate for the respondents vehemently opposes this prayer.

17. However, considering the above position, interim relief to continue only for a period of three weeks from today.

[KISHORE C. SANT, J.]

VishalK/48wp4577.23