

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3325 OF 2023

Lalita Mohan Jadhav.

...Petitioner.

Versus

Popat Hari Kokate and Others.

..Respondents.

Mr. Lakshaved R. Odhekar for the Petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : March 24, 2023.

P. C. :

1. Heard. By this petition, the challenge is to the order dated 3rd August 2022 passed by the Commissioner in Grampanchayat Appeal No.52 of 2022 upholding the order dated 22nd March 2022 passed by the Additional Collector in Dispute Application No.25 of 2021.

2. The allegation in the present case was as against the petitioner, who is elected member of grampanchayat, in terms of section 14(1)(j-3) of the Maharashtra Village Panchayats Act that there is an illegal construction by the petitioner or her family members and as such she has incurred the disqualification.

3. Learned counsel appearing for the petitioner invited the attention of this Court to the order passed by the Collector as well as the order passed by the Commissioner. He has also tendered a compilation of documents, which is taken on record. Perusal of the order dated 22nd March 2022 passed by the Collector indicates that the after the allegation was made, the complainant has withdrawn his application. In spite of this withdrawal, the collector has proceeded with the inquiry and passed the impugned order allowing the application.

4. The basis for impugned order appears to be Village Form No.8 in respect of House Property No.538/1. The Collector on the basis of Village Form No.8 has come to the conclusion that the petitioner's father-in-law has committed encroachment. On the same basis, the Commissioner by the impugned order has upheld the finding rendered by Collector.

5. Perused Village Form No.8 which is at page No.13 of the compilation of documents tendered by learned counsel for the petitioner. Pertinently, said Village Form No.8 although refers to House No. 531/1, there is no Gat number mentioned in Village Form No.8. This

is pertinent for the reason that the allegation is that house has been constructed on Gat No. 380, which is the grampanchayat property, and the contention of the petitioner is that her house, i.e., property number 538/1 is constructed on Gat No.375. Reliance could be placed on Village Form No.8 provided Gat Number is specifically mentioned in Village Form No.8, which is missing in the present case. In support of her submissions, the petitioner had produced the electricity bill of her house which is at page No.36 to the petition, which shows Gat number of her house property as Gat No.375.

6. In the light of above, the reasoning of the Collector and the Commissioner is *prima facie* perverse inasmuch as the impugned orders are passed on the basis of Village Form No.8, which does not reflect the Gat Number. Hence, issue notice to the respondents returnable on **21st April 2023**. In addition to Court notice, the petitioner to serve the respondents by private notice and file affidavit of service before the next date. There shall be ad-interim relief in terms of prayer clause (e) till the next date.

[Sharmila U. Deshmukh, J.]