



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8727 OF 2024

Dhrupatabai W/o Gangadhar Chhapewar,
Age: 55 years, Occu. Agri.,
R/o Main Road, Dr. Ambedkar Nagar,
Ardhapur,Tq. and Dist. Nanded.

... PETITIONER

V/s.

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
6th Floor, Mantralaya, Mumbai – 400 32.
2. The District Collector, Nanded
Tq. and Dist. Nanded.
3. Sub-Divisional Officer, Nanded,
Tq. and Dist. Nanded.
4. Tahsildar, Ardhapur
Tq. Ardhapure, Dist. Nanded.

... RESPONDENTS

.....
Mr. S.S. Gangakhedkhar, Advocate for the Petitioner
Mr. M. M. Nerlikar, Addl. GP for the Respondent-State
.....

CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.

RESERVED ON : 21st August, 2024

PRONOUNCED ON : 04th September, 2024

JUDGMENT (Per: Y.G. Khobragade, J.):-

1. Rule. Rule made returnable forthwith. Mr. Nerlikar the learned
Addl. GP waives service of notice on behalf of Respondent Nos.1 and 2. With

the consent of both the sides, the matter is heard finally at the stage of admission.

2. We have considered the strenuous submissions canvassed on behalf of the Petitioner as well as on behalf of the Respondents. By the present Petition under Article 226 of the Constitution of India, the Petitioner has prayed for issuance of Writ of Mandamus to consider the report submitted by Respondent No.3 on 08.07.2011 and his representation dated 02.06.2023 for regularization of his encroachment on Gairan Land bearing Gut No. 679 ad-measuring 2 Hectare in pursuance of Government Resolution dated 28.11.1991.

3. The learned counsel for the Petitioner submits that late Shri Bhima Chappewar i.e. the father in law of the present Petitioner was in possession of land bearing Gut No. 679 ad-measuring 2 Hectare since 1984. After demise of her father in law, her husband was in possession and was cultivating the said land and after demise of her husband, she is in possession and cultivating the said land. During life time, her father in law had submitted an application for regularization of said Gairan land as per G.R. dated 28.11.1991. Thereafter, the Revenue Department made an enquiry and prepared spot Panchnama on 25.01.2011 stating therein that the deceased Bhima, Gangaram and his family are having possession over the said land. Accordingly, on 29.09.2010, the

Respondent No.3 sent a proposal for regularization of said Gairan land to the Respondent No.2 Collector, Nanded but possession of said land could not be regularized in favour of the Petitioner and her family. Therefore, on 08.07.2011 and 02.06.2023, the Petitioner submitted representations but said representations were not decided and the land was not regularized.

4. Per contra, the learned AGP canvassed that the Petitioner is praying for regularization of encroachment on Gairan Land bearing Gut No. 679 ad-measuring 2 Hectare as per G.R. dated 28.11.1991 on the ground that her father in law late Shri Bhima Chappewar was in possession of land since 1984 and after demise of her father in law, her husband was in possession and after demise of her husband, she is in possession of the said land and she is cultivating the said land, however, on 29.09.2010, the Sub-Divisional Officer Nanded submitted its report stating that as per G.R. dated 28.11.1991, the encroachments on Gut No. 679 were regularized but as per order dated 16.03.1989, the said land ad-measuring 2.02 H.R. was given to the Maharashtra Khadi Gramodyog Mandal for development of Rayon Industry but on 19.07.2007 the Maharashtra Khadi Gramodyog Mandal returned said land because of non utilization. Though, possession of Petitioner is shown as per revenue record from 1982-83 to 1999-2000 as well as per 7/12 extract of 1983-84, encroachment of Petitioner's father-in-law was shown to the extent of 60 R and as per Pere-Patrak (Cultivation Record) of 1983-84 to the extent of

1.00 H.R. but as per G.R. dated 28.11.1991, no land hold lease was shown in the name of Petitioner's father in law. So also, Shri Gangadhar Bhima Chappewar, the husband of the Petitioner had filed Regular Civil Suit bearing R.C.S. No. 2 of 2005 for decree of declaration and permanent injunction which was dismissed. So also, the Petitioner with her children had filed a civil suit bearing R.C.S. No. 944 of 2012 for declaration that they are entitled for regularization of their possession over the Writ land but said suit was also dismissed on 02.05.2016. The Petitioner and her children had also preferred an Appeal bearing RCA No. 64 of 2016 challenging judgment and decree dated 02.05.2016, but said appeal was also dismissed on 09.06.2022. Being aggrieved by both these judgments, the Petitioner preferred Second Appeal bearing No. 611 of 2022 before this Court, however, on 24.02.2023, the Petitioner with her children have withdrawn said appeal. Therefore, judgment and decree passed by the learned Civil Judge Senior Division, Nanded came to be confirmed by the learned First Appellate Court. Therefore, the Petitioner is not entitled for regularization of her encroachment on said Gairan land. To buttress this submissions, the learned AGP has placed reliance on the case of **Jagpal Singh and Ors. V/s. State of Punjab & Ors.; AIR 2011 SC 1123.**

5. Needless to say that as per G.R. dated 28.11.1991, encroachment on Gairan land can be regularized if the possession over the Gairan land is of

person belonging to Scheduled Caste is found during tiller dates 1st April, 1978 to 14th April, 1990. The relevant clauses of the GR read as under:-

- (1) दिनांक 1 एप्रिल 1978 आणि 14 एप्रिल 1990 या कालावधीत व दिनांक 14 एप्रिल 1990 रोजी अस्तित्वात असलेली अतिक्रमणे नियमानुकूल करण्यात यावीत :
- (2) अतिक्रमण करणा-या व्यक्तीचे नित्याचे वास्तव्याचे ठिकाण (युज्वल प्लेस ऑफ रेसीडन्स) नियमानुकूल करावायाच्या जमिनीच्या 8 कि.मी. च्या परिसरात असावे.
- (3) सदर कालावधीमध्ये अतिक्रमण करणा-या व्यक्तीने अतिक्रमित केलेली जमीन किमान एक वर्ष तरी कसली असली पाहिजे.
- (4) अतिक्रमण करणा-या प्रत्येक व्यक्तीचे जास्तीत जास्त 2 हेक्टर जिरायत जमीन एवढे अतिक्रमण नियमानुकूल करण्यात यावे.
- (5) अतिक्रमण करणा-या व्यक्तीकडे त्यांनी धारण केलेली काही जिरायत जमीन असल्यास अशा व्यक्तीच्या बाबतीत 2 हेक्टर क्षेत्र पूर्ण करण्यासाठी जेवढे क्षेत्र आवश्यक असेल तेवढेच जिरायत क्षेत्र नियमानुकूल करण्यात यावे.
- (6) अतिक्रमण करणा-या व्यक्तीने अतिक्रमणाच्या संपूर्ण कालावधीतील आकारणी (असेसमेंट) आणि महसूल संहितेच्या कलम 20 च्या तरतूदीप्रमाणे दंड आकारलेला असल्यास तो भरणे आवश्यक राहील.
- (7) अतिक्रमण करणारी व्यक्ती जर मागासवर्गीय असेल तर जमिनीच्या आकारणीच्या 6 पटी इतकी आणि अमागासवर्गीय असेल तर आकारणीच्या 24 पट इतकी कब्जेहक्काची रक्कम महाराष्ट्र जमीन महसूल (सरकारी जमिनीची विल्हेवाट करणे) नियम, 1971 च्या तरतूदीप्रमाणे भरण्यास पात्र राहील.
- (8) अतिक्रमण करणारी व्यक्ती जमिनीच्या कृषिक वापराबाबत सर्वसाधारण (ऑर्डिनरी) कृषिक आकारणी भरण्यास पात्र राहील. शिवाय सन 1971 च्या सरकारी जमिनी वाटपाबाबतच्या नियमातील नियम 43 (1) (अ) मधील क (चार) (पाच) आणि (सहा) या शर्तीही अतिक्रमण करणा-या व्यक्तीवर लावण्यात याव्यात.
- (9) या निर्णयाप्रमाणे नियमानुकूल करण्यात यावयाची अतिक्रमणे नियम 43 (1) (अ) (चार) (पाच) आणि (सहा) यामध्ये विहित केलेल्या शर्ती व अटींना अधीन राहतील.

(10) या निर्णयाप्रमाणे नियमानुकूल करावयाच्या अतिक्रमणांबाबत नियम 11 5 मध्ये विहीत केलेली वार्षिक उत्पन्नाची मर्यादा आणि नियम 17 खाली विहीत केलेली जमीन वाटपाबाबतची कार्यपद्धती शिथील करण्यात यावी आणि

(11) जमीन प्रदानाचे आदेश आणि सनदा अतिक्रमण करणा-या व्यक्तीच्या आणि त्याच्या पत्नीच्या (अविवाहित विधूर विधवा व्यक्ती सोडून) नावाने शासन परिपत्रक, महसूल व वन विभाग क.एलएनडी.1089 /1044 /86-अ-1 दिनांक 7 मे मध्ये दिलेल्या सूचनांप्रमाणे काढण्यात/देण्यात यावेत.

6. In the case in hand the Petitioner claimed that since 1984, her father in law was in possession of said land and after demise of her father in law, her husband was in possession and was cultivating the Writ land, so also after her husband's death, she is in possession and cultivating the Writ land after demise of her husband. During life time of her father in law he had submitted an application for regularization over the Gairan land as per G.R. dated 28.11.1991. Thereafter, the Revenue Department made an enquiry and prepared spot Panchnama on 25.01.2011 stating therein that the deceased Bhima, Gangaram and Petitioner are having possession over the land. Accordingly, on 29.09.2010, the Respondent No.3 sent a proposal for regularization on Gairan land to the Respondent No. 2 Collector, Nanded, but her possession over said Gairan land was not regularized.

7. In the case of **Jagpal Singh and Ors.** (supra), the Hon'ble Supreme Court held as under:

"22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for

eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.”

8. Needless to say that, on 29.09.2010, the Sub-Divisional Officer, Nanded submitted a report and observed that as per G.R. dated 28.11.1991 all the encroachments on Gut No. 679 were regularized but as per order dated 16.03.1989, the Writ land ad-measuring 2.02 HR was given to the Maharashtra Khadi Gramodyog Mandal for development of Rayon Industry and encroachment of the Petitioner's father-in-law was not regularized. On 19.07.2007 the Maharashtra Khadi Gramodyog Mandal returned said land because of non utilization. Therefore, it appears that the father in law of the Petitioner was not in actual possession of the Writ land on 16.03.1989 and on 19.07.2007. Merely revenue record from 1982-83 to 1999-2000, 7/12 extract

of 1983-84 encroachment of Petitioner's father in law was shown to the extent of 60 R and Pere-Patrak (Cultivation Record) of 1983-84 to the extent of 1.00 H.R., but no land hold lease was shown in the name of Petitioner's father in law as per G.R. dated 28.11.1991.

9. In the case of **Balwant Singh & Anr. vs. Daulat Singh (Dead) by Lrs & Ors.; (1997) 7 SCC 137**, the Hon'ble Supreme Court of India has held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue.

10. In case of **Suraj Bhan & Ors. V/s. Financial Commissioner & Ors.; (2007) 6 SCC 186**, the Hon'ble Supreme Court of India has held that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue record or jamabandi have only "fiscal purpose" i.e. payment of land revenue, and no ownership is conferred on the basis of such entries.

11. It is not in dispute that late Shri Gangadhar Bhima Chappewar, the husband of the Petitioner had filed Regular Civil Suit bearing (R.C.S.) No. 2 of 2005 before the Civil Court and prayed for decree of declaration and permanent injunction but the said suit was dismissed. Not only this but the Petitioner with her children had also filed a civil suit bearing R.C.S. No. 944 of

2012 for declaration that they are entitled for regularization of their possession over the Writ land. On 02.05.2016, the learned Civil Judge Sr. Dn., Nanded passed judgment and declined to grant decree of declaration and injunction in respect of Writ land. Thereafter, Petitioner and her children had preferred an appeal bearing R.C.A. No. 64 of 2016 challenging judgment and decree dated 02.05.2016 but said appeal was also dismissed on 09.06.2022. Being aggrieved by the concurrent findings of both the Courts below, the Petitioner and others had preferred Second Appeal bearing S.A. No. 611 of 2022 before this Court, however, on 24.02.2023 the Petitioner with her children have withdrawn the said Second Appeal. Therefore, judgment and decree passed by the learned Civil Judge Senior Division, Nanded was confirmed by the learned First Appellate Court. Therefore, under these circumstance, unless judgment and decree passed by the learned Civil Judge, Sr. Dn., which was confirmed by the learned First Appellate is set aside the Petitioner is not entitled for regularization of her encroachment on the Gairan land.

12. Nonetheless, the Petitioner has not pleaded that, she is landless lady belonging to Scheduled Caste or Schedule Tribe, therefore, as per law laid down in the case of **Jagpal Singh and Ors.** (supra), the Petitioner is not entitled for regularization of her encroachment on said Gairan land.

13. In view of above discussion, **this Petition is dismissed. Rule is discharged.**

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]