IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1957 OF 2025

1. Rajebhau s/o Mukinda Nampalle
   Age 60 yrs Occ. Labour & Agri.
2. Narsing s/o Limbaji Kamble
   Age 50 yrs Occ. Agri & Labour
3. Manik s/o Vithoba Aagale
   Age 55 yrs Occ. Agri & Labour
4. Shankar s/o Vithoba Aagale
   Age 50 yrs Occ. Agri & Labour
5. Ranba s/o Bhaguji Gavane
   Age 45 yrs Occ. Agri. & Labour
6. Kondabai Baburao Gavane
   Age 60 yrs Occ. Agri & H.H.
7. Sonappa Bapurao Kokane
   Age 45 yrs. Occ. Agri & Labour
8. Ramesh s/o Kisanrao Taralkar
   Age. 50 yrs Occ. Agri & Labour
9. Asha w/o Khandu Kokane
   Age 50 yrs Occ. Agri & Labour
10. Abhimanyu s/o Mokinda Nampalle
    Age 65 yrs Occ. Agri & Labour
11. Balasaheb s/o Sheshrao Hare
    Age 45 yrs Occ. Agri & Labour
12. Govind s/o Tukaram Mohite
    Age. 45 yrs Occ. Agri & Labour
13. Digamber s/o Shivram Lonkar
    Age. 45 yrs Occ. Agri & Labour
    All R/o Jawalgaon Ta. Ambajogai
    District. Beed ..PETITIONERS

VERSUS

1. The State of Maharashtra
   Through its Secretary,
   Revenue and Forest Department,
   Mantralaya Mumbai – 32
2. The District Collector, Beed
   District Beed.
3. Deputy/Sub-Divisional Officer,
   Ambajogai District. Beed.

4. The Tahsildar, Ambajogai ..RESPONDENTS
Ta. Ambajogai District. Beed

…

WITH
WRIT PETITION NO. 1018 OF 2025

1. Suryakant @ Mahesh Marotirao Patil
Age 56 years, Occ: Agriculturist
r/o At present Near Balaji Temple
Allapur, Tq. Degloor
District Nanded. ..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Industry, Energy & Labor
Department, Mantralaya,
Mumbai.
2. The Collector,
Collector Office, Nanded.
3. The Deputy Collector,
Degloor,
District Nanded
4. The Tahsildar, ..RESPONDENTS
Degloor.

…

WITH
WRIT PETITION NO. 1906 OF 2025

1. Kiran s/o Ramesh Patil,
Age : 42 years, Occ : Agri. and
Deputy Sarpanch,
R/o. Shidwadi, Post. Dhamangaon,
Taluka Chalisgaon, Dist. Jalgaon. ..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Revenue and Forest Division,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Divisional Commissionerate Office,
Nashik.
3. The District Collector,
Jalgaon, Dist. Jalgaon.

4. The Chief Executive Officer,
   Zilla Parishad, Jalgoan.
5. Executive Engineer (Establishment)
   (O and M Circule),
   Maharashtra State Electricity Distribution Co. Ltd.,
   Jalgaon, Dist. Jalgaon ..RESPONDENTS

...

WITH
WRIT PETITION NO. 2181 OF 2025

1. Namdev S/o Balaji Jadhav,
   Age : 42 years, Occu : Agri,
   R/o. Kapshi, Tq. Palan,
   Dist. Parbhani. ..PETITIONER

VERSUS

1. The State of Maharashtra
   Through its Chief Secretary,
   Revenue and Forest Department,,
   Madam Kama Road, Mumbai – 32.
2. The State of Maharashtra,
   Through its Secretary,
   The Ministry of New and Renewal Energy,
   Madam Kama Road, Mumbai – 32.
3. The Maharashtra,
   Energy Development Agency,
   Through its Chairman,
   Aundh Road, Opposite to Spicer College,
   Near Commissionerate of Animal Husbandry,
   Aundh, Pune, Maharashtra 411007
   (Maharashtra)
4. The Maharashtra,
   Energy Development Agency,
   Through its Director,
   Aundh Road, Opposite to Spicer College,
   Near Commissionerate of Animal Husbandry,
   Aundh, Pune, Maharashtra 411007
   (Maharashtra)
5. The Union of India,
   Through its Secretary,
   Ministry of Power,
   F-Wing, Second Floor,
   Nirman Bhawan,
   New Delhi-110011

6. The Maharashtra State,
Electricity distribution Company
Through its Chairman and Managing Director,
Office At Prakashgad Plot No. G-9anant
Kanekar Marg Bandra (E),
Mumbai, Maharashtra, India – 400051

7. The Divisional Commissioner Officer
Divisional Commissioner Office.
Chhatrapati Sambhajinagar,
Tq. & Dist. Chhatrapati Sambhajinagar.

8. The District Collector,
Collector Office, Parbhani

9. The Maharashtra State,
Electricity distribution Company Ltd.
Through its Superintendent Engineer office at Viddut Bhawan Jintur Road Parbhani.

10. The Deputy Superintendent
Engineer Maharashtra State
Electricity Distribution Company
Substation at Palam.

10. The sub divisional Officer
Office at Gangakhed Dist. Parbhani.

11. The Tahsildar,
Tahsil Office, at Palam,
Tq. Palam, Dist. Parbhani.

12. The Divisional Forest Officer
Divisional Forest Office At Parbhani.
Tq. & Dist. Parbhani.

13. The Assistant Director,
Town Planning office at parbhani.
Tq. & Dist. Parbhani.

14. The Chief Executive Officer,
Zilla Parishad parbhani.
Tq. & Dist. Parbhani. ..RESPONDENTS

...
WITH
WRIT PETITION NO. 2930 OF 2025

1. Yashavanta s/o Sandu Gayakavad,
Age :- 75 years, Occ. Agri.,
R/o Galwada, Tq. Soygaon,
Dist. Aurangabad ..PETITIONER

VERSUS

1. The State of Maharashtra
   Through its Secretary,
   Industry, Energy and Labour,
   Maharashtra State, Mantralaya,
   Mumbai - 32
2. The Divisional Commissioner,
   Aurangabad Division, Aurangabad
3. The District Collector,
   Collector Office, Aurangabad
4. The Sub Divisional Officer,
   Sub Division, Sillod,
   Tq. Sillod, Dist. Aurangabad
5. The Tahsildar,
   Tahsil Office, Phulambri,
   Tq. Phulambri, Dist. Aurangabad ..RESPONDENTS

...

WITH

WRIT PETITION NO. 2741 OF 2025

1. Vijay s/o Limbaji Kamble
   Age 50 yrs Occ. Agri & Labour
   R/o. Jawalgaon Ta. Ambajogai
   District. Beed ..PETITIONER

VERSUS

1. The State of Maharashtra
   Through its Secretary,
   Revenue and Forest Department,
   Mantralaya Mumbai-32
2. The Divisional Commissioner,
   Divisional Commissionerate Office,
   Chhatrapati Sambhajinagar
3. The District Collector, Beed
   District Beed.
4. Deputy/Sub-Divisional Officer,
   Ambajogai District. Beed.
5. The Tahsildar, Ambajogai ..RESPONDENTS
   Ta. Ambajogai District. Beed

...

Advocate for petitioners : Mr. N.D. Kendre (WP/1957/2025 & WP/2741/2025)
Advocate for petitioners : Mr. S.D. Tekwad (WP/1018/2025)
Advocate for petitioners : Mr. Amol N. Kakade (WP/1906/2025)
Advocate for petitioners : Mr. P.S. Anerao (WP/2181/2025)
Advocate for petitioners : Mr. Raju W. Bagul (WP/2930/2025)

GP for the respondent – State : Mr. A.B. Girase
Advocate for respondent no. 4 : Mr. Sachin B. Munde (WP/1906/2025)
...

CORAM : MANGESH S. PATIL &
Y.G. KHOBRAGADE, JJ.

RESERVED ON : 24 APRIL 2025
PRONOUNCED ON : 09 MAY 2025

JUDGMENT (MANGESH S. PATIL, J.) :

We have heard the learned advocates for the petitioners in all these petitions as also the learned Government Pleader.

2. Rule in all the petitions. Learned Government Pleader waives service. Mr. Munde waives service for respondent no. 4 in writ petition no. 1906 of 2025.

3. Considering the peculiar circumstances and at the joint request of the parties from all the petitions, all these matters are being disposed of finally at the stage of admission.

4. With little variation in the pleadings and the prayer clauses, the basic issue on which adjudication is solicited in all these petitions being the same, in order to avoid rigmarole, all the petitions are being disposed of by this common judgment.

5. The issue involved, can be culled down to the effect, as to whether the state government, in the teeth of ***Jagpal Singh and***

others Vs. State of Punjab and others; (2011) 11 SCC 396 and in the teeth of a policy decision taken by the state government in the light of direction is ***Jagpal Singh*** (supra), reflected in the government resolution dated 12.07.2011, can invoke the powers under section 22A, 38 and 40 of the Maharashtra Land Revenue Code, 1966, for using a gairan land for setting up a solar power generation plant ?

6. The learned advocates for the petitioners would take us through the decision in the matter of ***Jagpal Singh*** (supra) to demonstrate the intention and will of the supreme Court of maintaining pasture lands which have a special status in the agrarian society dominated by enormous population residing in the villages. Then, they would refer to the policy declared by the state government in obedience to the directions in ***Jagpal Singh*** (supra), in the form of government resolution dated 12.07.2011.

7. They would advert our attention to the government resolution, particularly clause 9.3, whereby it has been resolved that if at all some portion from a gairan land is to be used by the central or the state government or its various departments for providing public utility or for some public purpose, it can be used with certain stipulations and conditions *inter alia* of non-availability of any other suitable government land and passing of a specific and precise resolution by the concerned Gramsabha and Grampanchayat duly approved by the chief executive

officer of the zilla parishad and subject to ascertaining the requirement to be *bona fide*. They would submit that in view of such stringent stipulations, there is no escape for the state government and its instrumentalities in following the mandate. However, ignoring this, under the Chief Minister Solar Agricultural Channel Scheme ("मुख्यमंत्री सौर कृषी वाहिनी योजना"), the state government as indicated in each of these petitions has started setting up the solar energy panels, without fulfilling the afore-mentioned conditions. Without fulfilling such conditions, even the state cannot arbitrarily change the character of the gairan land making it permanently useless as a pasture which is the basic need of the villagers and undermines the importance of the whole concept of maintaining a gairan or pasture in every village. They, therefore, are objecting to such action of the state of setting up the panels and are seeking a *prohibitio*.

8. As we have cursorily mentioned herein-above, every petition claims a different relief albeit afore-mentioned is the common thread. Some of the petitioners who are occupying some portion of the gairan land, are seeking consideration of their representations for regularization and seeking injunction for protecting their possession which aspects we propose to decide independently at a later place, after we reach a conclusion in respect of the afore-mentioned basic issue which is common across all the petitions.

9. The learned government pleader Mr. Girase would submit that indeed gairans or pastures have a special status in the rural community and its importance has been emphasized by the Supreme Court in ***Jagpal Singh***. He also submits that in obedience to the directions of the supreme court, the government resolution dated 12.07.2011, was passed to meet the contingency.

10. Mr. Girase, however, would take us through the affidavit-in-reply filed on behalf of the state and would submit that though the genesis of the issue lies in the matter of ***Jagpal Singh*** and the government resolution dated 12.07.2011, the scenario has undergone a drastic change inasmuch as what was considered to be merely a direction of the supreme court under its inherent jurisdiction, the legislature in its wisdom has inserted section 22A in the Maharashtra Land Revenue Code (**MLRC**) by Maharashtra Act No. XXXIV of 2017 on 26.04.2017. He would submit that by incorporation of the special provision in the MLRC, elaborate provisions have been made for use of a gairan land which begins with the title '*Prohibition on diversion of use of Gairan land*'. He would submit that in the light of such legislative exercise, the state has responded to the direction of the supreme court in ***Jagpal Singh*** in more concrete and positive manner. The government resolution dated 12.07.2011 was issued obviously in obedience to the directions of the supreme court but the legislature in

its wisdom has introduced section 22A which, in effect, repeals or makes all the other earlier government resolutions including the government resolution dated 12.07.2011 otiose. He would submit that the rights of the parties in all these petitions will now have to be examined, regulated and decided only in the light of section 22A.

11. In addition, Mr. Girase would submit that the decision of the state government to set up solar energy panels over the gairans or portions thereof also will have to be examined from the perspective of its power to grant leases as mentioned in section 38 and the powers of the government to deal with its property, as provided under section 40 of the MLRC. He would submit that a division bench at the Principal Seat, in the matter of ***Santosh Madhukar Bhondve Vs. State of Maharashtra and others; 2024(6) Bom.C.R. 27*** (writ petition no. 3098 of 2021), decided on 12.09.2024, had an occasion to deal with a similar issue and has decided the rights in similar set of facts. He, would, therefore, submit that as a matter of judicial discipline, this division bench is bound by the conclusions of the co-ordinate division bench.

12. Mr. Girase would lastly submit that in some of the petitions, the petitioners are merely seeking regularization of their encroachment over gairan lands and in some, they are seeking consideration of their representations therefor, which request is beyond tolerance and cannot be considered in the light of decision in the matter of ***Jagpal Singh***

coupled with the statutory prohibition incorporated in the form of section 22A.

13. Rival submissions now fall for our consideration.

14. We feel it not necessary to consume space to emphasize the importance of maintaining gairans, particularly in the light of ***Jagpal Singh***. One need not overemphasize the issue. As can be gathered, the basic issue which we have been called upon to consider and decide revolves around the right of the state government in the light of sections 22A, 38 and 40 of the MLRC to use a gairan land or a portion thereof for setting up solar energy panels.

15. It is necessary to mention here itself that except the right of the state to use the gairan land, no other issue has been raised in any of these petitions like whether the project sought to be erected or is being set up, is a public project or otherwise. Even no issue has been raised in respect of its power to get it done through an agency engaged by it. Consequently, we are restricting the discussion only to the scope of the right of the state government under the afore-mentioned provisions.

16. In our considered view, in a slightly different context, in the matter of ***Santosh Madhukar Bhondve*** (supra), a co-ordinate division bench has examined such power of the state in conjunction with the

provisions of the Maharashtra Provincial Municipal Corporations Act and that of the Maharashtra Regional and Town Planning Act, 1966. The paragraphs relevant in the context of these petitions, in our considered view, are sufficient to answer the issue involved in these petitions :

> *"**21.** Before delving into the submissions made by the learned Counsel for the respective parties, it would be apposite to notice certain statutory provisions.*
>
> *Section 22A of the MLRC, 1966, which puts prohibition on diversion or grant or lease of Gairan land with certain exceptions thereto, is extracted hereunder:*
>
> *"**22A. Prohibition on diversion of use of Gairan Land.-***
>
> *(1) The land set apart by the Collector for free pasturage of village cattle (hereinafter referred to as "the Gairan Land") shall not be diverted, granted or leased for any other use, except in the circumstances provided in sub-sections (2) or (3), as the case may be.*
>
> *(2) The Gairan land may be diverted, granted or leased for a public purpose or public project of the Central Government or the State Government or any statutory authority or any public authority or undertaking under the Central Government or the State Government (hereinafter in this section referred to as "Public Authority"), if no other suitable piece of Government land is available for such public purpose or public project.*
>
> *(3) The Gairan land may be diverted, granted or leased for a project of a project proponent, not being a Public Authority, when such Gairan land is unavoidably required for such project and such project proponent transfers to the State Government, compensatory land as provided in sub-sections (4) and (5).*
>
> *(4) The compensatory land to be transferred to the State Government under sub-section (3) shall be in the same revenue village have area equal to twice the area of the Gairan land and its value shall not be less than the value of the Gairan land so allotted under sub-section (3) :*
>
> *Provided that, the area of compensatory land shall have to be suitably increased, wherever necessary, so as to make its value equal to the value of the Gairan land so allotted under sub-section (3).*

(5) The compensatory land to be transferred to the State Government under sub-section (3) shall, notwithstanding anything contained in any other law, rule or orders made thereunder, be assigned by the Collector under section 22 for the use only of free pasturage of village cattle or for grass or fodder reserve.

(6) The powers of diversion, grant, lease of Gairan land under this section shall be vested in the State Government:

Provided that, notwithstanding anything contained in section 330A, the powers of the State Government under sub-section (3) shall not be delegated to any officer or other authority sub-ordinate to it.

Explanation .-

(a) For the purposes of this section, the term "public purpose" shall have the same meaning as assigned to it in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013).

(b) The question whether or not such land is unavoidably required for a project under sub-section (3) shall be determined by the State Government on the advice of the Divisional Commissioner.

(7) Notwithstanding anything in sub-sections (1) to (6) or any other provision of this Act, Gram Sabhas shall be competent to preserve, safeguard and manage Gairan land in Scheduled Areas: Provided that, no Gairan land in the Scheduled Areas shall be diverted or disposed of without the prior informed consent of the Gram Sabhas concerned.

Explanation.- For the purposes of sub-section (7), the term "Gram Sabha" shall have the same meaning as assigned to it in section 54-1A(b) of the Maharashtra Village Panchayats Act (III of 1959)."

Section 40 which vests authority in the State Government to dispose of any Government land is also extracted hereinbelow:

*"**40. Saving of powers of Government -** Nothing contained in any provision of this Code shall derogate from the right of the State Government to dispose of any land, the property of Government, on such terms and conditions as it deems fit."*

Section 3(3)(a) and 3(3)(b) of the Corporations Act, 1949 which read thus:

***Section 3 - Specification of larger urban areas and constitution of Corporations**.*

(1) .....

(1A) .....

(2) .....

(2A) .....
(3) (a) Subject to the provisions of sub-section (2), the State Government may also from time to time after consultation with the Corporation by notification in the Official Gazette, alter the limits specified for any larger urban area under sub-section (1) or sub-section (2) so as to include therein, or to exclude therefrom, such area as is specified in the notification.
(3) (b) Where any area is included within the limits of the 4 larger urban area under clause (a), any appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, by-laws or forms made, issued, imposed or granted under this Act or any other law, which are for the time being in force in the 5[larger urban area] shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise provided in section 129A or any other provision of this Act, apply to and be in force in the additional area also from the date that area is included in the larger urban area."

22. *Main plank of argument of Shri Anturkar, learned Senior Advocate representing the petitioners is that in terms of the provisions contained in Section 22A of the MLRC, 1966, Gairan land cannot be diverted or granted or leased for any other use and since in this case Gairan land has been allotted in favour of respondent No.4 - Corporation for use of construction of houses for economically weaker section, the same is illegal being violative of the prohibition contained in Section 22A of the MLRC, 1966. It is his further submission that exception to prohibition as carved out in sub Section (2) of Section 22A of the MLRC, 1966 will operate only with a pre-condition that Gairan land may be diverted or granted or leased for public purpose/project only if no other suitable land of the Government is available for such public purpose/project and in the instant case, there is nothing on record to establish that any other Government land was available for the construction of houses for economically weaker section under the PMAY. Thus, it is his contention that the allotment was is unlawful.*

23. *However, the said submission of Shri Anturkar on behalf of the petitioners has to be scrutinized keeping in mind what Section 40 of the MLRC, 1966 provides for. The said submission also needs to be tested on the legal proposition as argued by Shri Kumbhakoni, learned Senior Advocate representing respondent No.4 - Corporation that in view of the provisions of Section 3(3)(a) and 3(3)(b) of the Corporations Act, 1949 on inclusion of subject land within the municipal area of respondent No.4 – Corporation, the provisions of the MRTP Act, 1966 and the Development Plan sanctioned by the State Government under Section 34/35 of the MRTP Act, 1966 will operate and therefore, any violation of the land use as determined by*

the Development Plan prepared under Section 34/35 of the MRTP Act, 1966 will not be permissible.

24. *Section 40 of the MLRC, 1966 as extracted above, vests almost absolute right in the State Government to dispose of any land or property of the Government on such terms and conditions as it deems fit. The language in which Section 40 is couched leaves no room of doubt that the right of the State Government to dispose of any of its land or property is irrespective of any provision of MLRC, 1966 for the reason of opening phrase occurring in Section 40 is "nothing contained in any provision of this Code". Thus, we are of the opinion that by operation of Section 40 of the MLRC, 1966, the State Government is vested with right to dispose of any land of the Government on such terms and conditions which are to be determined by it irrespective of any other provision available in MRLC, 1966 including Section 22A. Such, an interpretation of Section 40 qua Section 22A of the MLRC, 1966 is based on the rationale that the Government is the absolute owner of its own property and land and hence, putting any fetter on the right of the Government to dispose of any property on the terms and conditions to be determined by it, in our opinion, will not be permissible and therefore, in the view of the Court, notwithstanding the prohibition contained in Section 22A of the MLRC, 1966, the Government still will have all the authority and power to dispose of its land.*

….
….

27. *For the reasons aforesaid, we do not find that the Collector, while granting the subject land to respondent No.4 - Corporation for a public project of constructing houses for economically weaker section of the society under the Central Government Scheme (PMAY) has committed any illegality or contravened any statutory provision. We are, thus, not persuaded to interfere in the impugned order of allotment.*

….
….

30. *As already observed above, the State Government is vested with almost absolute power to dispose of any land or property of the Government on the terms and conditions to be determined by it. A perusal of the impugned order shows that the State Government, in the Department of Revenue and Forest, vide its letter dated 26th April 2018, only informed the Collector that the Government had received a proposal to transfer the subject land to respondent No.4 - Corporation for developing the houses under the PMAY for economically weaker section. By the said letter dated 26th April 2018 the State Government only directed that the Collector should take appropriate decision at his level regarding providing subject land to*

> *respondent No.4 – Corporation on appropriate terms or on such terms and conditions as the Collector may deem it appropriate, for the purposes of constructing houses for economically weaker section and low income group beneficiaries under the PMAY. Thus, what was provided for by the State Government in its letter dated 26th April 2018 was that on the proposal to transfer the subject land in favour of respondent No.4, "the Collector should take appropriate decision at his level". Therefore, the contents of the letter dated 26th April 2018 of the State Government cannot be termed, in any manner, as any kind of the diktat to the Collector; rather the Collector was only asked to consider the proposal and take decision at his level, meaning thereby the discretion of the Collector was not taken away by the State Government. In our opinion, the letter dated 26th April 2018 of the State Government cannot be construed to mean that the same contained any kind of diktat from the State Government which would have compelled the Collector to surrender his discretion."*

17. As can be understood, the issue before the division bench was of a similar kind except with the change that a portion of the gairan land was sought to be utilized and was allotted for developing the houses under the Pradhan Mantri Awas Yojna, for economically weaker section, whereas in the matters in hand, solar energy panels are being erected.

18. We are in respectful agreement with the view and the conclusions of the division bench in the matter of ***Santosh Madhukar Bhondve*** (supra). There is no material or distinguishing feature for us to consider. It is a matter of use of a gairan land for erecting solar energy panels. The state government has the authority to grant leases thereof under section 38 and has all the powers under section 22A read with section 40 of the MLRC to use a portion thereof. The only thing which we wish to add is the fact that in none of these petitions,

there is any challenge put up to the vires of any of the afore-mentioned provisions of the MLRC.

19. In view of such a state-of-affairs, it cannot be said that the action which is impugned in some of these petitions, in the light of the afore-mentioned issue which we have culled down, is not sustainable.

20. It is evident that one of the limb of the arguments addressed to us was not before the division bench which decided ***Santosh Madhukar Bhondve***. Some of the learned advocates for the petitioners before us raked up the issue regarding absence of any resolution by the Gramsabha or Grampanchayat, as is required by the government resolution dated 12.07.2011.

21. Once having already concluded that the policy that was evolved pursuant to the directions in the matter of ***Jagpal Singh*** has merged into a statutory provision under section 22A, the policies that were evolved to meet the contingency in the form of passing of government resolution dated 12.07.2011, will have to give way to such statutory provision. What was, may be, amorphous, has now been crystallized into a statutory provision and all the earlier government resolutions can only be subservient to section 22A. Therefore, the submission of the learned advocate for the petitioners will have to be considered only within the parameters and scheme under section 22A

and one cannot legally refer to the stipulations in the earlier government resolutions including the government resolution dated 12.07.2011.

22. True it is, in sub-section 7 of section 22A, which is a non-obstante clause, it has been mentioned that notwithstanding anything contained in the earlier sub-sections, no gairan land in the scheduled areas shall be diverted or disposed of without the prior informed consent of the Gramsabha concerned and the Gramsabha would mean a Gramsabha as mentioned in section 54-1A(b) of the Maharashtra Village Panchayats Act, 1959. Apparently, no similar restriction finds place in respect of the gairan lands which situate in the villages which do not fall in the scheduled areas. Meaning thereby that if a gairan land which is not a part of the village from a scheduled area can be diverted or disposed of even without prior informed consent of the Gramsabha concerned. In this respect, the learned Government Pleader Mr. Girase made an emphatic statement repeatedly that none of the villages in respect of which these petitions have been filed, fall in the scheduled areas. When such a stand of Mr. Girase has gone uncontroverted and none of the advocates of any of these petitioners made any attempt to dislodge such argument, we can proceed on the premise that the fact situation stands undisputed.

23. Consequently, in the absence of the villages in these petitions being part of scheduled areas, there is no such restriction on the state government to seek any prior informed consent of any Gramsabha for setting up the solar energy panels, as is required by sub-section 7 of section 22A of the MLRC.

24. Another aspect which needs consideration is, as is the wording of sub-section 2 of section 22A, whether the decision to allot a portion of the gairan land for erection of solar energy panels is preceded by any enquiry into the aspect, as to whether any other suitable piece of gairan land was available for the project. Mr. Girase, learned Government Pleader again made an emphatic statement that it is only after ascertaining the fact of absence of any other suitable land that the solar energy panels are being set up. Again, even this stand of the state, apart from being the fact that is not exactly a ground being resorted to in any of these petitions, has gone without demur.

25. We have had an occasion to hear the arguments of learned advocates for the petitioners and Mr. Girase repetitively since there are number of advocates and number of petitions, over few dates. In spite of discussion and arguments on the point of non-availability of suitable piece of land or otherwise, none of the advocates seek to place something on the record to belie the stand of Mr. Girase

regarding absence of any other suitable government land for erecting the solar energy panels.

26. In the light of above, there is no merit in any of these petitions and those are liable to be dismissed.

27. The writ petitions are dismissed.

28. Rule in all these petitions is discharged.

[Y.G. KHOBGRADE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/