

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.309 OF 2020

Santosh Ramchandra Madne

... Petitioner

Vs.

The State of Maharashtra & Ors.

... Respondents

WITH

WRIT PETITION (ST.) NO.27553 OF 2025

ATUL
GANESH
KULKARNI

Kondiba @ Kondu Ramji Pandhekar,
deceased through Heirs
Anabai Kondiba Pandhekar & Ors.

... Petitioners

Vs.

The State of Maharashtra & Ors.

... Respondents

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by ATUL GANESH
KULKARNI
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Mr. Sumit V. Khaire for the Petitioner in WP/309/2020.

Mr. Nilesh Wable for the Petitioner in WPST/27553/
2025 & for Respondent Nos.10A to 10D and 12 in
WP/309/2020.

Mr. Y.B. Lengare with Mr. Aditya Giakwad and Mr.
Sunny Sadafale for Respondent No.9 in both WPs.

Smt. M.S. Bane, AGP for Respondent Nos.1 to 8-State
in WP/309/2020.

Smt. P.J. Gavhane, AGP for Respondent Nos.1 to 8-
State in WPST/27553/2025.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 5, 2026

PRONOUNCED ON : OCTOBER 7, 2026

JUDGMENT:

1. Since the questions of law and facts involved in both the petitions are common, both the petitions are being decided by this common judgment.

2. The facts which have led to filing of the writ petitions are as follows. By these petitions, the Petitioner has challenged the order dated 2 January 2020 passed by Respondent No. 2. The land belonging to the Petitioner was acquired for construction of the Veer Baji Pasalkar Dam Project. Respondent Nos. 10 and 11 are Project Affected Persons of the Veer Baji Pasalkar Dam Project. The name of Respondent No. 10 was recorded in the 7/12 extract pursuant to Mutation Entry No. 4 dated 17 December 1953. The name of Dagde Chimaji Pandhekar was recorded in the 7/12 extract pursuant to Mutation Entry No. 15 dated 17 December 1953. The name of Respondent No. 11 was recorded in the 7/12 extract pursuant to Mutation Entry No. 21 dated 17 December 1953. Mutation Entry No. 114 dated 16 December 1960 records the names of Respondent Nos. 10 and 11 and Vithu Chimaji Pandhekar. The Award came to be passed on 16 January 1978. On 22 April 2013, Respondent No. 10 made an application for allotment of land bearing Gat No. 155/4 at Boripardhi, Gat No. 173/2 at Kedgaon, Gat No. 5/2 at Patil Nimbalkar Wasti and Gat No. 348/2 at Dapodi. Thereafter, on 9 May 2016, land bearing Gat No. 51/2, admeasuring 00 H 81 R, and Gat No. 348/1, admeasuring 00 H 44 R, was allotted to Respondent No. 10. On 17 June 2016, Panchanama and Tabepawati were prepared in respect of Gat No. 348/1. Tabepawati and Panchanama were prepared in

respect of Gat No. 51/2. On 13 July 2016, an application was made for converting the land bearing Gat No. 51/2, admeasuring 00 H 36 R out of 00 H 81 R, and Gat No. 348/1, admeasuring 00 H 44 R, from New Tenure to Old Tenure. On 3 April 2017, the Deputy Collector (Rehabilitation) passed an order converting the said lands from New Tenure to Old Tenure.

3. On 28 April 2017, the Petitioner purchased land bearing Gat No. 348/1, admeasuring 00 H 44 R, from Respondent No. 10. Pursuant to Mutation Entry No. 4392, the name of the Petitioner came to be recorded in the 7/12 extract. Prior thereto, on 27 February 2017, Respondent No. 9 had made an application before the Divisional Commissioner, Pune Division, Pune. On 27 July 2017, Respondent No. 9 submitted an application to the Collector. The Petitioner filed a reply to the application made by Respondent No. 9. The said application filed by Respondent No. 9 was dismissed on 14 December 2017. On 16 August 2018, Respondent No. 9 filed a Revision Application under Section 247 before the Additional Collector, Pune Division, Pune. On 14 November 2018, the Revision Application filed by Respondent No. 9 was forwarded to the Additional Collector by the Deputy Commissioner. Thereafter, on 20 December 2018, the Divisional Commissioner (Rehabilitation), Pune Division, Pune addressed a letter to the Collector, Pune. The Petitioner filed a reply to the said application.

4. On 12 July 2019, Respondent No. 10 expired. However, no heirs of Respondent No. 10 were brought on record. By the impugned order dated 2 January 2020, the Deputy Collector (Rehabilitation) directed that the name of the Collector, through

the Deputy Director of Land Records, Pune, be recorded. The Deputy Collector directed that a report be submitted regarding allotment of the land to the Petitioner and other persons. Being aggrieved by the said order dated 2 January 2020, the Petitioner filed the writ petition. Respondent No. 9 filed a reply to the petition.

5. On 30 March 1976, the compensation amount was accepted by Namdev Jaiwant Bhandwalakar. A possession receipt was issued in that regard. Respondent No. 9 filed Regular Civil Suit No. 47 of 2018 seeking declaration and injunction. The application filed by the Petitioner under Order VII Rule 11 of the Code of Civil Procedure came to be allowed. Thereafter, on 26 October 2020, the Tahsildar, Daund submitted a report in terms of the directions contained in the impugned order dated 2 January 2020. In the said report, the Tahsildar recorded that the Petitioner was an independent Project Affected Person. Respondent Nos. 1 and 2 filed their reply. The Petitioner filed a rejoinder.

6. Mr. Khaire, learned Advocate for the Petitioner, submits that the impugned order dated 2 January 2020 was passed by the Authority against a person who had died. Therefore, according to him, the said order is a nullity and cannot be sustained in law. He submits that Respondent No. 9 had no right to challenge the allotment order dated 9 May 2016. The order dated 14 December 2017 passed by the Deputy Collector (DRO) was never challenged by Respondent No. 9 till date. Therefore, a second application challenging the same allotment order dated 9 May 2016 could not have been entertained and was not maintainable. He submits that

the Revision Application filed by Respondent No. 9 before the Additional Commissioner, Pune Division, Pune under Section 247 of the Maharashtra Land Revenue Code, 1966 was not maintainable. According to him, Respondent No. 2 treated the application filed by Respondent No. 9 as a Review Petition. For deciding such Review Application, prior permission of the Commissioner under Section 258(1)(i) of the Maharashtra Land Revenue Code, 1966 was necessary. In the case, no such permission was obtained by Respondent No. 2. On this ground, the impugned order is required to be set aside.

7. Mr. Khaire submits that Respondent No. 2 has treated the order dated 14 December 2017 as an order which could be reviewed on the basis of the application dated 16 August 2018. Therefore, according to him, Respondent No. 9 was required to file an application for condonation of delay. In the absence of such an application, the proceedings initiated by Respondent No. 9 were not maintainable. He submits that the Tahsildar conducted an enquiry regarding the allotment of the land to the Petitioner and other persons. In that enquiry, the Tahsildar recorded a finding that the Petitioner was an independent Project Affected Person and that the allotment of land to the Petitioner was made in accordance with the provisions of law. He submits that the Petitioner purchased the land only after it was converted from Class-II to Class-I tenure. Therefore, the sale deed executed in favour of the Petitioner was in accordance with law.

8. Ms. Bane and Ms. Gavhane, learned AGPs appearing for the State, submit that the lands belonging to Respondent No. 10 were

acquired for the Veer Baji Pasalkar Project in the year 1978. Thereafter, Respondent No. 10, namely, Mr. Kondu Pandhekar, being a Project Affected Person, made an application for allotment of alternate land. By order dated 9 May 2016, Respondent No. 2 allotted land bearing Gat No. 348/1, admeasuring 00 H 44 R, situated at Dapodi, and Gat No. 51/2, old Gat No. 818, admeasuring 00 H 81 R, situated at Village Patil Nimbalkar Vasti, Taluka Daund, District Pune, to Respondent No. 10. The said allotment was made on certain terms and conditions, as can be seen from the order dated 9 May 2016.

9. It is submitted that Respondent No. 10 applied for conversion of the land from Class-II to Class-I. The said application was rejected by the Commissioner by order dated 9 February 2017. However, according to the learned AGPs, the Petitioner, in collusion with the original allottee, suppressed the said order from the Deputy Collector. Thereafter, the application for conversion was allowed by Respondent No. 2 by order dated 3 April 2017 and the land was converted from Class-II to Class-I. On the basis of the said order, Respondent No. 10, who was the original allottee, sold the land to the Petitioner within one year from the date of allotment. According to the State, such sale was contrary to the provisions of law. It is submitted that the entire transaction appears to be sham and not genuine. Since Respondent No. 10, being the original allottee, was allotted alternate land on Class-II tenure, he could not have sold the said land for a period of ten years from the date of allotment. Therefore, any transaction made during this period could not be treated as a valid or transaction. It

is pointed out that the Petitioner had obtained a Power of Attorney from the original allottee for sale of the land. The said Power of Attorney appears to have been registered with the Sub-Registrar, Kedgaon. However, it was not annexed to the Sale Deed registered in the office of the Sub-Registrar, Kedgaon at Serial No. 2019 of 2017. In paragraph 5 of the Sale Deed there is a reference to the Power of Attorney dated 15 July 2015 allegedly executed by the original allottee in favour of the Petitioner for consideration in respect of Gat No. 348/1. The Petitioner paid stamp duty on the said Power of Attorney in respect of Gat No. 348/1 of Village Dapodi, Taluka Daund, treating it as a conveyance and paid an amount of Rs.5,05,000/- to the original allottee. According to the State, this fact is important because on 15 July 2015 the land had not even been allotted to Respondent No. 10. Despite this, the original allottee had executed a Power of Attorney for consideration in favour of the Petitioner. After the land was allotted to Respondent No. 10, the Petitioner, acting as the Power of Attorney holder of the original allottee, executed and registered the Sale Deed in his own favour. According to the learned AGPs, the manner in which the transaction was carried out shows that the Petitioner and the original allottee were acting together and that the authorities were misled. It is submitted that the Commissioner had rejected the application for conversion of the Class-II land into Class-I land by order dated 9 February 2017, on the ground that sale of alternate land was prohibited for a period of ten years. The Petitioner and the original allottee did not disclose this order to the Deputy Collector and obtained the order

dated 3 April 2017 converting the land from Class-II to Class-I.

10. It is submitted that the Petitioner was not the original allottee and, therefore, had no independent right to challenge the cancellation of the allotment. The Petitioner claims his right only through the original allottee and on the basis of the subsequent Sale Deed. According to the State, the validity of the said Sale Deed is doubtful for the reasons stated above. Therefore, the Petitioner cannot claim any relief from this Court on the basis of such subsequent transfer. It is submitted that Respondent No. 9 had filed a complaint on 27 July 2017 before the Collector and the Divisional Commissioner. In the said complaint, Respondent No. 9 stated that the Additional Collector had wrongly allotted land bearing Gat No. 348/1, admeasuring 44 R, to Respondent No. 10, namely, Mr. Kondu Ramji Pandhekar, in excess of his actual entitlement. After hearing both sides, Respondent No. 2 dismissed the application filed by Respondent No. 9 by order dated 14 December 2017. Thereafter, Respondent No. 9 filed another complaint before the Additional Commissioner, Pune, stating that the allotment of land bearing Gat No. 348/1, admeasuring 00 H 44 R, situated at Dapodi, and Gat No. 51/2, old Gat No. 818, admeasuring 00 H 81 R, situated at Village Patil Nimbalkar Vasti, Taluka Daund, District Pune, in favour of Respondent No. 10 was illegal and sought cancellation of the said allotment. Respondent No. 9 stated that Respondent Nos. 10 and 11 and one Vitthal Pandhekar were joint holders of the acquired land and, together, were entitled to only 01 H 60 R of alternate land. According to Respondent No. 9, they had been allotted land in excess of 01 H 60 R. The

Additional Commissioner, Pune, by letter dated 20 December 2018, directed Respondent No. 2 to decide the complaint and communicate the decision to the complainant.

11. Respondent No. 2 issued notices to all concerned persons, heard the parties and considered the documents placed on record. It was found that Respondent Nos. 10 and 11 and their co-holder were entitled to only 01 H 60 R of alternate land because the acquired lands were held jointly and had not been held by them. In view of the Government Resolution dated 8 August 1990 and the Government letter dated 7 June 2008, where the shares in the survey numbers have not been divided by following the proper procedure and the separate names have been entered in the 7/12 extract only on the basis of an application made by the landholder, the Project Affected Persons cannot claim separate allotment of alternate land under the Resettlement Rules. It was found that lands had been allotted to Respondent No. 10 and his other family members in the years 1998-1999. Despite this, land was allotted to them on 9 May 2016. It was found that the allotted land was sold within one year and that the sale was made without obtaining prior permission from the competent authority. After considering these circumstances, the then DRO, Pune, allowed the application filed by Respondent No. 9 and resumed the excess land allotted to Respondent No. 10 back to the Government. According to the learned AGPs, the order passed by the Authority is and proper. On the basis of the facts and the record, the learned AGPs submit that the appropriate order may be passed.

12. Mr. Lengare, learned Advocate appearing for Respondent No. 9, submits at the outset that the Petitioner has filed the petition challenging the order dated 2 January 2020 passed by Respondent No. 2. By the said order, the land bearing Gat No. 348/1, admeasuring 44 Are, situated at Village Dapodi, Taluka Daund, District Pune, and Gat No. 51/2, old Gat No. 818, admeasuring 81 Are, situated at Village Patil Nimbalkar Vasti, Taluka Daund, District Pune, was resumed by the Government. Respondent No. 2 directed the Tahsildar, Daund, to conduct an enquiry regarding the excess land allotted to Respondent Nos. 10 and 11 and their co-holders. According to the learned Advocate, the petition is not maintainable as the Petitioner has no locus to challenge the said order or to claim rights which belong to the Project Affected Persons, particularly Respondent Nos. 10 and 11. It is submitted that the Petitioner and Respondent No. 11 have acted as agents and land dealers by obtaining Powers of Attorney from the poor Project Affected Persons on the promise of getting alternate land allotted to them and have thereby acted against their interests. Respondent No. 12 obtained a Power of Attorney dated 10 December 2013 and the Petitioner identified the said document. Similarly, the Petitioner obtained a Power of Attorney dated 15 June 2015. Thereafter, an Agreement for Sale dated 7 December 2016 was executed. The Petitioner signed the said Agreement both as purchaser and as consent holder of the other co-holders, while Respondent No. 12 signed as a witness. Thereafter, the Petitioner purchased the property by Sale Deed dated 28 April 2017. In the said Sale Deed, the Petitioner signed both as purchaser and as

Power of Attorney holder of the consent holders. According to Respondent No. 9, these facts are clear from the Sale Deed dated 28 April 2017 and show that the Petitioner has not approached this Court with clean hands.

13. It is submitted that the predecessor-in-title of Respondent No. 9, namely, Mr. Ramchandra Namdev Bhandwalkar, was holding land bearing Gat No. 348/1, admeasuring 44 Are, situated at Village Dapodi, Taluka Daund, District Pune. Though the said land was acquired, its actual physical possession was never taken by the authorities. According to Respondent No. 9, the land continues to be in his possession and cultivation. At present, there is a standing crop of popcorn and animal grass on the land. There are eight tin sheds and an animal shed. One borewell and a pipeline are existing on the land.

14. It is submitted that Respondent No. 10 made an application for allotment of alternate land. By the allotment order dated 9 May 2016, the Additional Collector allotted land bearing Gat No. 51/2, old Gat No. 818, admeasuring 81 Are, situated at Patil Nimbalkar Vasti, and Gat No. 348/1, admeasuring 44 Are, situated at Village Dapodi, Taluka Daund, District Pune, to Respondent No. 10. According to Respondent No. 9, the Tabepavati and Panchanama relied upon in respect of the allotment are not genuine. They were not signed by Respondent No. 10 and were prepared in the offices of Respondent Nos. 2 and 8. It is submitted that neither Respondent No. 10 nor the concerned officers ever visited the site of the allotted lands.

15. Respondent No. 9 made an application before Respondent No. 1 on 27 July 2017. It is submitted that Respondent No. 9 had sought the necessary documents relating to the acquisition and the revenue record from the concerned authorities. Those documents were not available when the application was being heard. Respondent No. 9 sought sufficient time to produce the necessary documents. However, according to him, Respondent No. 2 did not grant such time and rejected the application by order dated 14 December 2017 without giving a proper opportunity of hearing and without considering the important facts relating to the dispute.

16. Respondent No. 9 obtained the necessary documents concerning the acquisition and the revenue records relating to Respondent Nos. 10 and 11 and the other co-sharers. From these documents, it was found, according to Respondent No. 9, that Respondent No. 10 was not entitled to any separate alternate land because Respondent Nos. 1 and 2 had allotted excess land to the co-holders. Respondent No. 9 filed a Revision Application before the Additional Commissioner, Pune Division, Pune. The matter was forwarded to Respondent No. 2 for enquiry by communication dated 20 December 2018. It is submitted that a plain reading of Mutation Entry No. 114 shows that Respondent Nos. 10 and 11 and one Shri Vithu Chimaji Pandhekar were joint holders of several lands, including the acquired lands bearing Survey Nos. 6/2, 6/7, 6/10, 12/6, 14/2, 09/05, 12/3/4, 17/01, 18/1, 26/part, 19/7, 19/2, 20/5 and 21/01. The said Mutation Entry is dated 16 December 1960. Mutation Entry Nos. 4, 15 and 21 dated 17

December 1953 are prior to Mutation Entry No. 114. Similarly, by Mutation Entry No. 42 dated 17 December 1953, the name of Vithu Chimaji Pandhekar was recorded. By Mutation Entry No. 113 dated 16 December 1960, the name of Gaurubai Chimaji Pandhekar, stated to be the heir of deceased Dagadu Chimaji Pandhekar, was recorded. Respondent No. 9 submits that from the Award dated 16 January 1978, referred to as 27 March 1978, and the CC statement, it is clear that the acquired land was jointly held by Respondent Nos. 10 and 11 and Shri Vithu Chimaji Pandhekar. Therefore, at the time of acquisition, the land formed part of their common holding. It is submitted that Khata No. 4, admeasuring 4 Hectare 30.90 Are, Khata No. 33, admeasuring 4 Hectare 86.02 Are, and Khata No. 12, admeasuring 4 Hectare 93.03 Are, together show substantial remaining land with the said co-holders. The total area is stated to be 35 Acres 25 Are. According to Respondent No. 9, this holding was more than the prescribed economic holding of 14 Acres. Therefore, Respondent No. 10 was not entitled to a separate alternate land and was required to claim his share, if any, from the lands allotted to Respondent No. 11 and the other co-holders. It is submitted that Khata Nos. 4, 12 and 33 were separated after the acquisition pursuant to the Award dated 16 January 1978, referred to as 27 March 1978. Thus, on the date of the Award, Respondent Nos. 10 and 11 and the other co-holders together held about 35 Acres 25 Are. According to Respondent No. 9, they were not entitled to alternate land. It is submitted that Respondent Nos. 10 and 11 and the other co-holders were holding joint Khata No. 114 and, even after the acquisition, their

remaining holding was more than the economic holding. They were not entitled to separate alternate land.

17. It is submitted that, on the basis of the acquisition of the lands of Respondent Nos. 10 and 11, they were entitled to only 1 Hectare 60 Are of alternate land. However, according to Respondent No. 9, land admeasuring 7 Hectare 70 Are was allotted to them through various orders. This fact is reflected in the impugned order. Therefore, the excess land was rightly required to be resumed by the Government. It is submitted that the allotted land was illegally converted from Class-II to Class-I and was purchased by the Petitioner by Sale Deed dated 28 April 2017. Respondent No. 10 did not take possession of the allotted land or personally cultivate it as required by the terms and conditions of the allotment order. According to Respondent No. 9, Respondent No. 10 thereby violated the conditions of allotment. It is alleged that the Petitioner, Respondent No. 10 and Respondent No. 12 acted together and committed fraud in relation to the allotment and sale of the land. It is pointed out that land bearing Gat No. 197/1, old Gat No. 118/part, and Gat No. 197/2, old Gat No. 118/1/B, situated at Village Kalewadi, Gat No. 65/B, Plot No. 85, situated at Village Hinganebardi, and Gat No. 233/B situated at Village Yavat Station, Taluka Daund, District Pune, had been allotted to Respondent No. 10 and the other co-holders. It is submitted that Respondent Nos. 10 and 11 had been allotted land by earlier allotment orders. By allotment order dated 30 May 1986, Gat No. 155/B, admeasuring 2 Hectare 2 Are, and Gat No. 174/B, admeasuring 40 Are, situated at Village Devulgaonraja,

Taluka Daund, District Pune, were allotted. By allotment order dated 31 December 1987, Gat No. 118, admeasuring 81 Are, was allotted. By order dated 2 June 1988, Gat No. 118/1/B, admeasuring 81 Are, situated at Village Hinganebardi-Kalewadi, was allotted. Despite these earlier allotments, Respondent No. 10 was again allotted Gat No. 348/1, admeasuring 44 Are, at Village Dapodi and Gat No. 51/2, admeasuring 81 Are, at Village Patil Nimbalkar Vasti. Thus, according to Respondent No. 9, Respondent Nos. 10 and 11 and their co-holders were allotted in all 7 Hectare 70 Are, equivalent to about 19 Acres 10 Are, which was far in excess of their entitlement.

18. It is submitted that Respondent No. 10 did not make the application for alternate land in the proper prescribed format. There are corrections and additions in the application concerning the request for Gat No. 348/1, admeasuring 44 Are, at Village Dapodi, Taluka Daund, District Pune. According to Respondent No. 9, there was a delay of more than 35 years in seeking alternate land. No proper explanation for such delay has been given by Respondent No. 10. Respondent No. 9 submits that Respondent No. 10 filed an affidavit regarding the heirs in which the date of death of Narayan Pandhekar was shown as 1 August 1987, the date of death of Gaurabai Chimaji Pandhekar as 23 September 1981 and the date of death of Vithu Chimaji Pandhekar as 19 April 1982. However, according to Respondent No. 9, a bare reading of Mutation Entry No. 237 shows that Shri Narayan Hari Pandhekar died on 28 May 1999 and that his heirs were Geetabai Narayan Pandhekar and Bababai Raghu Vatane. Similarly, the heirs of Shri

Vithu Chimaji Pandhekar were recorded by Mutation Entry No. 239. Vithu C. Pandhekar died on 5 May 1998 and his heir was Rakhamabai V. Pandhekar.

19. It is submitted that Gaurabai Chimaji Pandhekar had died, and her heirs were recorded through Mutation Entry No. 171 dated 24 September 1979 and Mutation Entry No. 163 dated 3 December 1986. Therefore, according to Respondent No. 9, Kondu Ramaji Pandhekar could not be treated as the heir of Respondent No. 11 and the other co-holders. The relevant supporting documents, including the death certificates of Narayan Hari Pandhekar, Vithu Chimaji Pandhekar and Gaurabai Chimaji Pandhekar, were relied upon in support of this submission. Lastly, it is submitted that having regard to Section 17 of the Maharashtra Resettlement of Project Displaced Persons Act, 1976, including the relevant provisions contained in Schedule-A, Part-I and Schedule-B, Part-II, as well as the Government Resolution dated 9 May 1973, Respondent No. 10 was not entitled to any separate alternate land. According to Respondent No. 9, the remaining holding of Respondent Nos. 10 and 11 and the other co-holders was 35 Acres 25 Are, which was more than the prescribed economic holding. Therefore, Respondent No. 10 could not claim allotment of alternate land.

REASONS AND FINDINGS:

20. I have considered the submissions of the learned Advocate for the Petitioner, the learned AGPs for the State and the learned Advocate for Respondent No. 9. The dispute is required to be

looked from mainly two aspects. One is whether the persons who challenged the allotment had any right to challenge the same. The other is whether Respondent No. 10 was entitled to the land which was allotted to him and whether the Petitioner, after purchasing the land, could get any better right than the original allottee.

21. First, the question of locus raised by both sides needs to be considered. The Petitioner says that Respondent No. 9 had no right to challenge the allotment. Respondent No. 9, on the other side, says that the Petitioner has no locus as he is only a subsequent purchaser. For considering this question, the judgment of the Supreme Court in *Ravi Yashwant Bhoir v. Collector*, (2012) 4 SCC 407, becomes relevant. In paragraph 58, the Supreme Court observed:

“58. Shri Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a right or protected interest of the complainant but juridically harm of this description is called *damnum sine injuria*.”

22. In paragraph 59, the Supreme Court has stated the position as follows:

“59. The complainant has to establish that he has been deprived of or denied of a right and he has sustained injury

to any protected interest. In case he has no peg for a justiciable claim to hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be injuria or a grievance which can be appreciated and not a stat pro ratione voluntas reasons i.e. a claim devoid of reasons.”

23. The meaning of this is that merely because a person is not satisfied with an allotment made in favour of somebody else, he cannot come to Court. He has to show that because of that allotment some right belonging to him is affected.

24. In the case of Respondent No. 9, his case is that his predecessor-in-title was holding Gat No. 348/1 and that even after the acquisition, the authorities had not taken the land and he continues to cultivate it. According to him, there are crops, tin sheds, animal shed, borewell and pipeline on the land. Even if this position is taken for the moment, it does not show that Respondent No. 9 has any right in the alternate land allotted to Respondent No. 10. The acquisition proceedings had resulted in an Award. From the material before the Court, compensation was accepted in 1976 and a possession receipt was issued. Therefore, merely because Respondent No. 9 says that he is still cultivating the land, that fact cannot create a right in his favour against the alternate land allotted to Respondent No. 10.

25. I find that Respondent No. 9 has not shown his personal ownership or any other right in the alternate land allotted to Respondent No. 10. His main complaint was that excess land was allotted and that the rehabilitation scheme was wrongly used.

Such objection would not make Respondent No. 9 an aggrieved person in the strict meaning explained by the Supreme Court in *Ravi Yashwant Bhoir*. But that does not mean that the proceedings before the Authority would become invalid. If the competent rehabilitation authority, after seeing the record, found that the land was wrongly or excessively allotted, and if the law gives such power, the Authority could examine that question. Therefore, only because Respondent No. 9 may not have a locus, the writ petition cannot be decided in favour of the Petitioner.

26. The position of the Petitioner is different. The Petitioner is not a person having no connection with the property. His name was entered in the revenue record after the Sale Deed dated 28 April 2017. The proceedings under challenge affect the property which the Petitioner says he has purchased. Therefore, his interest is affected by the impugned order. For this purpose, he need not be the original Project Affected Person. He can show prejudice because the order seeks to resume the land which is standing in his name. Therefore, I do not accept the submission of Respondent No. 9 that the Petitioner has no locus at all to challenge the impugned order. But having locus does not establish that the Petitioner has a title. Locus and the actual merits of the claim are different matters. The right claimed by the Petitioner comes from the original allottee, namely Respondent No. 10. Therefore, if the original allotment was against the Act, Rules or the conditions on which the allotment was made, the subsequent sale cannot make the transaction legal. A registered Sale Deed cannot give the purchaser a better right than the right which the original allottee

was having to transfer.

27. The next question is about the entitlement of Respondent No. 10. The chart filed by the Petitioner shows that the acquired land was standing in the names of Kondu Ramji Pandhekar, Narayan Hari Pandhekar and Vithu Chimaji Pandhekar. The total acquired area is shown as 07 H 50.8 R. Against this, the chart shows the entitlement for allotment as 01 H 60 R. The same chart refers to the land standing in the name of Kondu Ramji Pandhekar in the 7/12 extract and shows the acquired area as 01 H 85.42 R with entitlement of 01 H 20 R.

28. The difference between the Award record and the later revenue entries is important in this matter. Respondent No. 9 says that the acquired land was a joint holding and only because different names were appearing in the 7/12 extract, it cannot be said that there was a proper partition giving separate entitlement to every person as a Project Affected Person. There is some material which supports this submission. Mutation Entry No. 114 is relied upon for showing Respondent Nos. 10 and 11 and Vithu Chimaji Pandhekar as common holders. Mutation Entries Nos. 4, 15 and 21 are earlier entries. Therefore, merely because different names are found in some revenue entries, it cannot be said that there was a partition and each person became entitled to alternate land under the rehabilitation scheme.

29. This aspect is required to be seen with reference to the Government Resolution dated 9 May 1973, because the acquisition in the present case is of the earlier period. Therefore, the

entitlement of the concerned persons has to be seen as per the rehabilitation policy which was applicable at that time. The said Government Resolution is regarding the “Minimum & Maximum Quantum of land within and outside the benefited zones of major and medium irrigation projects, to be allotted to the project affected persons for resettlement.” From the GR, it is seen that, as far as possible, land for land was to be given to the persons affected by the Government projects. But this was subject to the family or economic holding. The GR says that efforts should be made to give the displaced khatedars at least four acres of dry land, or two acres of seasonally irrigated land, or one acre of irrigated land, wherever it was possible. GR dt 9..5.1973 Therefore, only because the land of a person was acquired, it cannot be said that such person would get a separate area of alternate land merely because his name is appearing in the revenue record. The area which can be given has to be seen with reference to the land which was lost, the nature of alternate land, the family or economic holding and the formula given in the GR. The table in the GR gives different maximum areas. If the land lost is below one acre, the allotment from the command area may be up to two acres. If the land lost is more than one acre and up to two acres, it may again be up to two acres. If the land lost is more than two acres and up to five acres, it may be up to three acres. If more than five acres is lost, the maximum is four acres.

30. In this situation, the Authority could not decide the entitlement only by looking at one revenue entry and saying that the name of Respondent No. 10 was appearing. It was necessary to

see the Award, the land acquired, the nature of the holding, the share of each co-holder, the earlier allotments and what land was remaining with the concerned persons. It was necessary to see what type of land was acquired and what type of alternate land was being given. This is because the GR gives different limits for dry land, seasonally irrigated land and irrigated land. Therefore, all these aspects were required to be looked into before deciding whether the allotment made in favour of Respondent No. 10 could continue.

31. Respondent No. 9 has relied upon the earlier allotments made in favour of the co-holders. However, the chart filed by Respondent No. 9 has to be seen carefully. Some entries in the chart are shown as “Not Allotted” and some lands are shown as “Allotted”. In particular, the chart records allotment of 00 H 81 R in Gat No. 197/1 to Narayan Hari Pandhekar, 00 H 81 R in Gat No. 197/2 to Narayan Hari Pandhekar, 00 H 44 R in Gat No. 348/1 to Kondu Ramji Pandhekar and 00 H 81 R in Gat No. 818 to Kondu Ramji Pandhekar. The other entries in the same chart are shown as “Not allotted”. The same position is seen from the detailed last page of the chart. It records Gat Nos. 197/1 and 197/2 as allotted to Narayan Hari Pandhekar and Gat Nos. 348/1 and 51/2 as allotted to Kondu Ramji Pandhekar. Therefore, the chart does show that some earlier allotments and later allotments were made. But from this chart alone, it cannot be said that the whole area of 07 Hectare 70 Are was allotted. Several lands relied upon by Respondent No. 9 are themselves shown as “Not Allotted” in the chart. Therefore, the statement that the whole 07 H 70 R was

allotted cannot be accepted only from this chart. Even if the figure of 07 H 70 R is not proved from the chart, the record does show that some allotments had been made in favour of the co-holders and after that fresh allotments were made in favour of Respondent No. 10 on 9 May 2016. Therefore, the Authority was justified in examining whether Respondent No. 10 was being given land more than what could be given to him under the rehabilitation policy applicable at that time and under the GR dated 9 May 1973.

32. The chart of the Petitioner creates some difficulty for his case. The chart shows 01 H 60 R as the entitlement against the joint acquisition. 01 H 60 R is about four acres. The GR dated 9 May 1973 provides that where more than five acres of land is lost, land from the command area may be given up to a maximum of four acres. It says that the grant is subject to the family or economic holding. Therefore, the figure of 01 H 60 R cannot be accepted or rejected only from the chart. It has to be seen whether the original acquisition of the concerned person comes within the category mentioned in the GR, whether Respondent No. 10 was an individual eligible khatedar or was part of the joint holding and what land had been allotted to the same family or affected holding.

33. The GR shows that the question of maximum holding is required to be considered. It provides that the grant is subject to the family or economic holding. Its note says that where the family members are more than eight, additional land may be considered for every additional three members, but the total land allotted to one family should not be more than seven acres. The GR deals

with landless project affected persons and with dry or jirayat land from sources other than the command area. In those cases, the grant is subject to the maximum area permitted under the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971.

34. Therefore, the entitlement cannot be decided only because one particular name is appearing in the 7/12 extract. The Authority has first to see whether the concerned persons were separate eligible project affected persons or whether they were co-holders in the same holding. After this, the area which could be granted under the GR has to be calculated. Respondent No. 9 says that about 07 H 70 R was allotted. This figure is much more than the maximum area mentioned in the GR for a single affected family in the circumstances covered by the table. Therefore, this figure cannot be accepted without seeing the status of each person and the allotment orders. At the same time, the Court cannot presume that the entire 07 H 70 R was allotted when the chart shows several entries as “Not Allotted”. It is required to be noticed that the GR says that the grant of such land would be subject to the “equated compensatory value received by the allottee project affected persons.” Therefore, the matter is not only about how much land was acquired. The nature and value of the alternate land and the conditions under which the grant was made are important. The Authority therefore has to see the original allotment orders and the connected record. It cannot decide the whole issue only on the basis of later revenue entries.

35. I now come to the subsequent sale. The Petitioner says that he purchased the land only after it was converted from Class-II to Class-I and therefore the Sale Deed is legal. This submission cannot be accepted in such a manner. The conversion order is dated 3 April 2017 and the Sale Deed is dated 28 April 2017. However, the State points out that an earlier application for conversion had been rejected by the Commissioner on 9 February 2017. It is alleged that this rejection order was not brought to the notice of the Deputy Collector. Therefore, the dates and the sequence of these events are important. The later conversion order cannot wipe out the effect of the earlier proceedings without seeing the complete record.

36. The State and Respondent No. 9 rely upon the recital in the Sale Deed that the Petitioner had obtained a Power of Attorney from the original allottee for consideration under an earlier document dated 15 July 2015. The allotment in favour of Respondent No. 10 was made only on 9 May 2016. Therefore, on 15 July 2015, the land had not yet been allotted to Respondent No. 10. After that, an Agreement for Sale was executed on 7 December 2016 and the Sale Deed was registered on 28 April 2017. Thus, the whole sequence of these events was within a close period and it cannot be ignored while considering the case of the Petitioner.

37. I would not record any finding of fraud only on the basis of this sequence. Fraud is an allegation and the Power of Attorney document is not before the Court in the material supplied. But this sequence creates some difficulty in accepting the Petitioner's case

that he was a bona fide purchaser who came into the matter only after the allotment was made and everything had become unquestionable. This circumstance will have to be considered while examining whether the transaction was legal.

38. The Petitioner relies upon the enquiry made by the Tahsildar, in which the Petitioner is stated to have been described as Project Affected Person. The entitlement of Respondent No. 10 under the rehabilitation scheme is one matter. Whether the Petitioner, who claims through a sale from Respondent No. 10, got right is another matter. A later report of the Tahsildar cannot make a transfer legal if the original allottee did not have the right to transfer the land or if the conditions of allotment were not followed.

39. I find some substance in the submission of the State that the sale took place within one year from the allotment. The State submits that the allotment contained conditions restricting transfer without permission. Therefore, the legality of the transfer cannot be decided only on the ground that the land was later treated as Class-I land. The Authority has to see the original allotment order, the conditions imposed at the time of grant, the permission, if any, obtained for transfer and the legal position applicable to such Government allotted land at the relevant time. The fact that the sale took place soon after the allotment is relevant. The conversion order is dated 3 April 2017 and the Sale Deed is dated 28 April 2017. Thus, even after the conversion, the transfer took place within a very short time. Therefore, the Petitioner cannot say that only because the Sale Deed is registered, the transaction cannot be looked into further. The source of the right of the original allottee

and the conditions attached to the grant are still relevant.

40. The Petitioner has raised objection regarding the death of Respondent No. 10. It is not disputed that Respondent No. 10 died on 12 July 2019 and the impugned order was passed on 2 January 2020. It is not disputed that his legal heirs were not brought on record before the impugned order was passed. In my view, this fact is important. The proceeding was concerning continuation of the allotment made in favour of Respondent No. 10 and resumption of the land allotted to him. His right was involved. Once the Authority was proposing to pass an order against the allottee after his death, the persons who were representing his estate were required to be identified and given proper opportunity of hearing before passing an order affecting the property and the rights arising from the allotment.

41. The fact that the Petitioner claims through Respondent No. 10 does not remove this defect. The Petitioner can be heard because his own claimed rights are affected. But the rights of the deceased allottee and the effect of his allotment could not be decided without bringing his legal representatives before the Authority. Therefore, the impugned order suffers from a basic defect.

42. The submission of the Petitioner regarding the order dated 14 December 2017 requires consideration. It is submitted that Respondent No. 9 had challenged the allotment and his application was dismissed on 14 December 2017. Thereafter, Respondent No. 9 filed another application dated 16 August 2018. According to the

Petitioner, the later proceeding was in the nature of review of the earlier order and therefore the legal requirements for review, including the requirement of permission, were required to be followed.

43. I am not inclined to hold that only because a party calls a proceeding “Revision”, “Complaint” or “Review”, the jurisdiction of the Authority gets decided by that name. What is important is to see what was sought to be reopened and under which provision the Authority acted. The record shows that Respondent No. 9 first made a complaint on 27 July 2017. That complaint was dismissed on 14 December 2017. Thereafter, on 16 August 2018, another proceeding was filed and on 20 December 2018 the Additional Commissioner directed Respondent No. 2 to deal with the complaint. The Authority issued notices, heard the parties and examined the revenue records and earlier allotments. Therefore, only from these dates, it cannot be said that the later proceeding was necessarily a review application. But if the Authority was in substance trying to review and reverse its own order dated 14 December 2017, then the source of power for doing so had to be clearly shown. The impugned order does not satisfactorily show how the earlier order was reopened and under which particular statutory or administrative power. This is a reason why the matter requires fresh decision according to law.

44. The objection regarding delay and condonation cannot decide the whole matter. If the later proceeding was a revision or any other proceeding for which a particular period of limitation applied, the question of limitation had to be considered according

to the provision governing that proceeding. But before deciding limitation, the Authority first had to decide what was the nature of the later proceeding. Without deciding this, it could not proceed on the assumption that the earlier order was open for reconsideration.

45. The allegation made by Respondent No. 9 regarding the affidavit of legal heirs raises a factual issue which requires proper checking. It is submitted that the dates of death mentioned in the affidavit did not tally with the dates appearing from the later Mutation Entries concerning Narayan Hari Pandhekar, Vithu Chimaji Pandhekar and Gaurabai Chimaji Pandhekar. If such difference is found from the original revenue records and death certificates, the same would require an explanation. But this issue cannot be decided only on the oral submissions. The concerned persons and the original documents will have to be examined by the competent Authority.

46. There is one more reason why the entire case of Respondent No. 9 cannot be accepted in the manner in which it has been placed. Respondent No. 9 says that the co-holders were allotted about 07 Hectare 70 Are. But his own chart shows several entries as “Not Allotted” and only certain entries as “Allotted”. Therefore, the Court cannot accept the figure of 07 Hectare 70 Are merely because such figure is stated, without matching it with the allotment orders. The Authority will have to calculate the allotment from the original documents and compare it with the extent permissible under the GR dated 9 May 1973. At the same time, the Petitioner cannot take benefit of this discrepancy and say

that the allotment of Gat No. 348/1 and Gat No. 51/2 was legal. The documents show that these lands were allotted to Kondu Ramji Pandhekar on 9 May 2016. The same chart records 00 H 44 R in Gat No. 348/1 and 00 H 81 R in Gat No. 51/2 in his name. Therefore, whether these allotments were permissible, after considering the original acquisition, earlier allotments, the nature of the joint holding and the limits laid down in the GR, remains a question which has to be decided by the competent Authority.

47. On considering the Government Resolution dated 9 May 1973 as a whole, a balanced position comes out. The rehabilitation policy was that, as far as possible, land for land should be given. But the grant was subject to the family or economic holding and to the maximum area mentioned in the Government Resolution. The GR gives a formula depending upon the area of land lost. Therefore, the entitlement of Respondent No. 10 could not be decided merely by seeing his name in one revenue entry. The State was entitled to examine whether the allotment was within the permissible area and whether the conditions of the rehabilitation scheme were followed. Respondent No. 9 could not decide the rights of the parties merely by filing a complaint. The Petitioner, on the other hand, had sufficient interest to challenge an order which affected the property standing in his name. But the Petitioner has not established that the later Sale Deed proves a lawful title.

48. I, therefore, find that the impugned order dated 2 January 2020 cannot continue. The main reason is that it was passed after the death of Respondent No. 10 without bringing his legal representatives on record, though the rights arising from his

allotment were under consideration. The order does not clearly show the basis on which the earlier order dated 14 December 2017 was reopened. Further, the exact extent of the alleged excess allotment has not been established with clarity from the charts. At the same time, since there are questions regarding the original entitlement under the GR dated 9 May 1973 and regarding the subsequent transaction, the Petitioner cannot be given a declaration that the Sale Deed dated 28 April 2017 is valid.

49. In my view, therefore, the proper course is to set aside the order dated 2 January 2020 and send the matter back to the competent Authority for fresh decision. The Authority shall first examine the legal position relating to the original acquisition and the nature of the holding of Respondent Nos. 10 and 11 and their co-holders. It shall then determine, from the Award, revenue records and earlier allotment orders, the exact entitlement under the Government Resolution dated 9 May 1973. While doing so, it shall apply the formula contained in the GR with reference to the area of land lost and the nature of alternate land available. It shall find out the extent of land allotted and shall not proceed on the figure of 07 Hectare 70 Are. The Authority shall examine the conditions of the allotment order dated 9 May 2016 and the legal effect of the conversion order dated 3 April 2017. The Sale Deed dated 28 April 2017 shall be considered in the light of the rights which the original allottee had in the allotted land.

50. Before taking the fresh decision, the legal representatives of deceased Respondent No. 10, the Petitioner, Respondent No. 9 and every other person whose rights may be affected shall be given

proper notice and reasonable opportunity of hearing. The Authority shall consider the earlier order dated 14 December 2017 and give a finding about the source of its jurisdiction to reopen or reconsider that order. The question of delay and limitation shall be decided according to the nature of the proceeding which the Authority finds applicable. The Authority shall examine whether the allotments made, individually or jointly, fall within the limits prescribed by the GR dated 9 May 1973.

51. The Supreme Court has cautioned in paragraph 60 of *Ravi Yashwant Bhoir* that:

“60. Under the garb of being a necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party.”

52. Applying this principle, Respondent No. 9 cannot claim any right merely because he has objected to the allotment. At the same time, if the competent rehabilitation Authority has power to examine an illegal or excessive allotment under the applicable rehabilitation policy and the Government Resolution, such power cannot be taken away merely because Respondent No. 9 may not have a right in the allotted land. Therefore, the decision has to be taken by the competent Authority after examining the record, the limits and conditions contained in the GR and after giving hearing

to every person whose rights are affected.

53. For all these reasons, I am of the view that the Petitioner succeeds in challenging the impugned order dated 2 January 2020. However, the Petitioner does not succeed on the ground that the allotment and the subsequent Sale Deed have been proved to be valid. The Petitioner succeeds because the adverse order concerning the allotment of deceased Respondent No. 10 was passed without bringing his legal representatives on record. There is no clear determination regarding the entitlement under the Government Resolution dated 9 May 1973, the earlier allotments, the nature of the joint holding and the jurisdictional and factual questions which formed the basis of the impugned order.

54. Accordingly, the impugned order dated 2 January 2020 is quashed and set aside. The proceedings are remanded to the competent Authority for a fresh decision in accordance with law and in the light of the findings recorded above. The fresh proceedings shall be decided after giving proper notice and effective opportunity of hearing to all concerned persons. The competent Authority shall determine the entitlement of the concerned Project Affected Persons by applying the Government Resolution dated 9 May 1973, including the maximum extent provided therein, after considering the area acquired, the nature of land, the family or economic holding and the earlier allotments. Nothing stated in this judgment shall be treated as giving validity to the Sale Deed dated 28 April 2017 or as deciding the Petitioner's title. Those questions shall be decided by the competent Authority on the basis of the original record and the applicable provisions

governing the allotment and transfer of the land.

55. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

- i) The Writ Petitions are allowed in terms of prayer clause (b);
- ii) The impugned order dated 2 January 2020 passed by Respondent No.2 is quashed and set aside;
- iii) The proceedings are remanded to Respondent No.2 for taking a fresh decision in accordance with law, after giving proper notice and reasonable opportunity of hearing to the legal heirs of deceased Respondent No.10, the Petitioner, Respondent No.9 and all other persons whose rights are likely to be affected.
- iv) While deciding the matter afresh, Respondent No.2 shall examine, inter alia, the joint holding and the entitlement of Respondent Nos.10, 11 and the other co-holders under the Government Resolution dated 9 May 1973, the earlier allotments, the allotment order dated 9 May 2016, the conversion order dated 3 April 2017, and the subsequent Sale Deed dated 28 April 2017, in the light of the material available on record;
- v) Respondent No.2 shall determine, in accordance with law, the jurisdiction and maintainability of the proceedings initiated on the basis of the application/complaint of Respondent No.9, including the effect, if any, of the earlier

order dated 14 December 2017;

vi) It is made clear that this Court has not expressed any opinion on the validity of the Sale Deed dated 28 April 2017 or on the title of the Petitioner to Gat No.348/1, and all such questions are kept open for consideration by the competent authority in accordance with law;

vii) The fresh decision shall be taken after considering the material submissions and documents of all concerned parties, as expeditiously as possible and preferably within four months from the date of receipt of a copy of this order;

viii) Until the fresh decision is taken, the parties shall maintain status quo with regard to the nature and possession of the subject lands, subject to any order passed by a competent Court or authority;

ix) The Writ Petitions stand disposed of in the above terms. No order as to costs.

(AMIT BORKAR, J.)