

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

WRIT PETITION NO. 4810 OF 2015

Sakharam s/o Girdhar Patil
age 63 years, occ. Ex-serviceman
R/o Kolade, Tq. & Dist. Nandurbar

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary
Revenue & Forest Department,
Mantralaya, Mumbai.
2. The District Collector,
Nandurbar.
3. The Sub-Divisional Officer,
Sub-Division, Nandurbar.
4. The Tahsildar
Nandurabar

.. RESPONDENTS

Mr. J.R. Shah, advocate for petitioner.
Mr. S.G. Karlekar, AGP for the State.

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**CORAM : R.M. BORDE &
P. R. BORA, JJ.**

**RESERVED ON : 10th AUGUST, 2015.
PRONOUNCED ON : 20th OCTOBER, 2015.**

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Heard.
2. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final disposal at admission stage.
3. Instant petition is the classic example of red tapism and negative approach of the bureaucracy ensuring denial of benefits of beneficial

scheme formulated by the State to the ex-serviceman who has rendered services to the Nation for 18 years and guarded Siachin Glacier for three years twice during his tenure of service.

4. Petitioner is an ex-serviceman and joined service of Indian Army on 04.09.1974. Petitioner rendered services for almost 18 years and during his service career has received Siyachin Glacier Medals on two occasions since he was posted there for three years during his service career. Petitioner also participated in the Operation Blue Star. He served as Havildar in 12 Guard Regiment and retired from the services on 31.01.1992. Petitioner was receiving monthly pension of Rs. 277/- and as such, his total annual income was Rs. 3,324/-. He tendered application on 07.04.1992 for allotment of land situate at village Kolade, Tq. & Dist. Nandurbar bearing Gat No. 1/A, admeasuring 4 Hectors 27 R, out of which 2 Hectors was claimed by him. Gram Panchayat for the concerned village adopted a resolution of no objection for allotment of land. The application tendered by petitioner in the year 1992 remained undecided as such, he approached the Collector, Dhule, with application dated 19.07.1997 requesting for consideration of his application for allotment of land. The Collector took cognizance of the application and directed respondent no. 4 i.e. Tahsildar, Nandurbar, to enquire into the matter and submit report through the Sub-Divisional Officer, Nandurbar. Petitioner also tendered application dated 15.07.1997 to the Sub-Divisional Officer, Nandurbar, who in turn, directed the Tahsildar vide communication dated 19.07.1997 to file report. The Tahsildar by order dated 22/23.07.1997 directed the Revenue Circle Officer,

Korit, to enquire into the matter and file his report. Petitioner further presented reminder on 24.03.1998 to the Sub-Divisional Officer, Nandurbar. The Sub-Divisional Officer again issued directions vide communication dated 30.03.1998 to the Tahsildar to enquire into the application and, in turn, the Tahsildar again directed the Revenue Circle Officer to enquire into the application and present report on 06.04.1998. Ultimately, the Circle Officer, presented report on 18.07.1998 to the Tahsildar, Nandurbar, informing that the land which is sought to be allotted to the petitioner is involved in civil litigation i.e. Regular Civil Suit No. 170/1992 presented by the villagers of the concerned village objecting to allotment of the land. Later on, Civil Suit No. 170/1992 came to be withdrawn by the plaintiffs on 17.09.1997, which fact was communicated by the Tahsildar vide communication dated 15.07.1998 to the District Collector, Dhule. The Collector, Dhule, after formation of Nandurbar district, directed transfer of proceedings to Collector, Nandurbar by order dated 30.07.1998. The District Soldiers' Welfare Board, Dhule, vide letter dated 25.12.1998, communicated the District Collector, Nandurbar, recommending allotment of land to the petitioner. The Office of the District Collector, Nandurbar, on receipt of communication from the District Soldiers' Welfare Board, against directed the Tahsildar to submit report alongwith opinion in the prescribed form. The Tahsildar Nandurbar, submitted his compliance report on 20.10.1999 to the District Collector, Nandurbar supporting the direction issued on 21.01.1999. Even after receipt of the report, nothing was done in the matter and no decision was taken. The Collector by communication dated 19.04.2002, sought opinion from the Tahsildar as to whether any demand is

made by backward category person residing within periphery of 8 kms. radius or whether anybody has claimed allotment of land on Ek Saal Lavani or as to whether the land is required for rehabilitation project. Report was filed by the Tahsildar on 19.04.2002 informing that the land is not required for any Government Scheme nor any individual stationed within periphery of 8 kms. radius has requested for allotment of the land. In view of the report tendered by Tahsildar, infact, there was no impediment for the Collector to take decision. However, the Collector, instead of taking any decision, sought information as to whether the land gat no. 56 admeasuring 1 hector situate at Ghuli Shivar belongs to the ancestors of the petitioner or is allotted by the State Government. It was reported to the Collector that land gat no. 56 is the acenstral property of petitioner. The Tahsildar, finally by report dated 30.08.2007 submitted to the Sub-Divisional Officer, has recommended allotment of land to the petitioner. Even after prolonged enquiry and various reports, no steps were taken. The Tahsildar, on his own, raised a query as regards the annual income of the petitioner on 12.02.2009. He was informed by the Circle Officer that on the basis of income certificate of petitioner dated 25.03.2009, his income during the period from April 2007 to March 2008 was Rs. 1,09,252/-. The report received by the Tahsildar itself was an excuse for the revenue authorities for rejecting the proposal of petitioner for allotment of land. Under the pretext that as per Government Resolution dated 12.07.2007, the limit of annual income in the matter of allotment of land by the State Government is Rs. 1,00,000/- and the income of petitioner in 2007 was found to be more, he is held dis-entitled to claim allotment. Thus, the application tendered by

an ex-serviceman in the year 1992 has been turned down on the ground that his income for the year 2007-2008 was found exceeding the prescribed criteria of income laid down by the State in the year 2007. It was reasonable to expect application of criteria or norms which are in force on the date of presentation of application. However, belatedly, after 20 years of presentation of the application, the same has been turned down on irrelevant grounds.

5. During the course of hearing, affidavit-in-reply has been presented on behalf of the State on 19.06.2015 reiterating the stand that since the annual income of petitioner during the year 2007-2008 was found exceeding the prescribed criteria laid down under the Government Resolution dated 12.07.2007, the application has been rejected. During the course of hearing it was directed to the respondents to consider the application as per the policy applicable on the date of the application. However, the Collector has taken a stand that since the petitioner has inherited landed property to the extent of 1.72 H by way of partition dated 23.05.1996 and, since his wife, during the pendency of the application, has purchased some land, he is not entitled to claim allotment of the Government land.

6. It shall have to be taken into consideration that in affidavit presented on behalf of the Collector on 06.08.2015, totally different stand has been taken and a new ground is unearthed for supporting the decision of rejection of the application. Even if the ground as stated in the affidavit which has been presented on 06.08.2015 is taken into consideration,

according to us, said ground also cannot be considered to dis-entitle the applicant to claim allotment of land. It is stated that the petitioner has received 1.72 H land by way of partition on 23.05.1996 and that his wife has purchased some land thereafter. It ought to be taken into account that petitioner had tendered application for allotment in the year 1992 which ought to be considered by application of eligibility norms applicable during the relevant period. On the date of presentation of the application, petitioner was very much entitled to claim Government land. Infact, the decision had been taken to allot the land however, respondent – State authorities have unearthed one or another reason to deny the claim of petitioner. It must be borne in mind that the petitioner has rendered invaluable services to nation while he was posted at Siyachin Glacier. The just claim of an individual who has served the nation has been turned down belatedly on irrelevant ground or the grounds which are not german for consideration of the application. The reasons which are being cited for denial of the claim cannot be termed relevant since on the date of presentation of application the petitioner was very much entitled to claim allotment of land. The application tendered by petitioner shall have to be examined within the framework of the policy applicable on the date of application and, he cannot be denied benefit on irrelevant norms which have been made applicable at the later point of time. According to us, the very attitude of respondents State authorities is aimed in denying the claim on some pretext or the other.

7. In the facts and circumstances of the case and for the reasons

recorded above, writ petition deserves to be allowed and the same is accordingly allowed. Order passed on 12.09.2012 and the initial communication dated 27.06.2011 denying the request of petitioner for allotment of land stands quashed and set aside. Respondent – Collector is directed to allot the land claimed by petitioner and recommended by the authorities out of gat no. 1/A situate at Kolade, Tq. & Dist. Nandurbar, admeasuring 2H out of total 4 H and 27 R, as per the application tendered by petitioner on 07.04.1992 and 19.07.1997, as expeditiously as possible, preferably within a period of four months from today. Respondents are directed to pay cost of Rs. 10,000/- to petitioner. The amount of cost shall be paid within a period of four months from today. Rule is accordingly made absolute.

(P. R. BORA)
JUDGE

dyb

(R. M. BORDE)
JUDGE