

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5102 OF 2014

SOPAN FAKIRA TARU
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Thombre Chandrakant V.
And Mrs. S.B.Nakhate
AGP for Respondents: Mrs. A.V. Gondhalekar
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CORAM : R. M. BORDE & P.R. BORA, JJ.
Date: August 26, 2015
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PER COURT :-

1 The petitioner is praying for issuance of directions to the respondents to regularize the encroachment committed by him on land Gut No.300 and 303 situate at Pachlegaon, Taluka Jintur, District: Parbhani, old Survey No.122 and 123 to the extent of four acres and 20 gunthas. The petitioner contends that, since the time period of his forefathers, the aforesaid area remained in possession of the family of the petitioner. It is not disputed that, the land belongs to the State Government and the petitioner and his forefathers were encroachers over the aforesaid Government land. The petitioner states that, in view of the Policy of the Government, more particularly Government resolution dated 28.11.1991, the encroachment of the petitioner over the Government land needs to be regularized. The petitioner tendered

an application to the Collector, requesting for issuing the order of regularization, but the application of the petitioner has not been considered favourably.

2 An affidavit in reply has been presented on behalf of respondent Nos.3 and 5, wherein, it has been stated that, the father of the petitioner along with some other persons were in possession of the land survey No.122 during the period 1976 to 1979 only for a period of three years and there-after, the encroachment has been removed and the land was handed over to Grampanchayat. On the date of issuance of the Resolution i.e. 28.11.1991, the petitioner or his father were not found in possession of the land. An enquiry has been conducted, in this regard by the Tahsildar who has tendered a report to the Collector on 26.4.2013 wherein, it has been stated that, the encroachment committed by the petitioner or his forefather is not liable to be regularised. In this context, the directives issued by the Supreme Court in Civil Appeal No.1132/2011 i.e. SLP (C) No. 3109/2011(arising out of Special Leave Petition (Civil) CC No. 19869 of 2010) in case of **Jagpal Singh & others V/s State of Punjab and others** can be referred wherein Supreme Court observed in paragraph No.2 of the Judgment, as below:-

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

3 The State of Maharashtra, on consideration of the directives issued by the Supreme Court in the matter of ***Jagpal***

Singh & Others V/s State of Punjab & others has issued resolution on 12.7.2011 directing therein, not to regularise encroachments committed by the encroachers over the Government land. The State Government has declared the Policy of utilizing the Government land only for the purpose of public utility and for public purposes.

4 Even on consideration of the earlier Government Policy declared on 28.11.1991, the alleged encroachment of the petitioner is not liable to be regularised.

5 For the reasons recorded above, the petition does not deserve any consideration and hence stands rejected.

(P.R. BORA, J.)

(R. M. BORDE, J.)