

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's orders or Registrar's	Court's or Judge's orders.
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SECOND APPEAL NO. 634 OF 2013
WITH CA/7057/2015 IN SA/634/2013

NARAYAN GAMBHIR WAGH AND OTHERS
VERSUS
SAMBHAJI GANGARAM PATIL AND OTHERS

...
Advocate for Appellants : Mr. Paranjape Prakash S .
Advocate for Respondents: Mr. M. R. Wagh.

CORAM: T. V. NALAWADE, J.
DATED: 26th August, 2015.

PER COURT:

1. The appeal is filed to challenge the judgment and order of Civil Appeal No.94 of 2010 which was pending in the court of District Judge-2, Dhule and also the decision of RCS No.30 of 2006 which was pending in the court of Civil Judge, Junior Division, Shirpur. Both the sides are heard.

2. The suit was filed by the present Respondents, who are 152 residents of village Gidhade, Tahsil Shirpur for relief of

permanent injunction. It is their case that property bearing Gat No.18, admeasuring 34 Hectares 98 Ares is reserved for grazing cattle, it is Gairan land and that land is being used as such for more than 60 years by the villagers. It is their case that the villagers of this village have no other land for grazing their cattle. It is their case that the defendant No.1 is the Police Patil of the village and by misusing his position he, his relatives and his men are trying to cultivate the land and they are preventing the villagers from grazing their cattle on the suit land. The suit was filed in representative capacity and relief of injunction was claimed to restrain the defendants from obstructing the exercise of rights by plaintiffs and other villagers to graze their cattle in the suit land.

3. Defendant Nos.1 and 2, the husband and wife filed written statement and contested the matter. The defendants did not dispute that the land belongs to Government and it is reserved for grazing cattle. However, they contended that they are in possession of 5 Acres of the land and there is one Government Resolution in their favour. They contended that the remaining land is in possession of other defendants. The other defendants also filed similar written statements and they claimed that each of them is having some portion of

land in their possession and they have some Government Resolution in their support.

4. Both the sides gave evidence. In view of the aforesaid admitted things, finding is given by both the courts below that the land belongs to the Government and it is Gairan land. In view of the nature of pleading, though there was no specific issue against the defendants about their entitlement, it was necessary for the defendants to show that this land was allotted to them by the Government under any Government Resolution or under any policy decision.

5. Some admissions given by the defendant No.1 are considered by the courts below and they show that all the villagers are entitled to graze their cattle in the land and the Village Panchayat is managing, supervising the suit land. The evidence of the defendants do not show that there is any order made in their favour by the Government or any authority under which the pieces of land mentioned by them in the written statements are allotted to them.

6. When the defendants have specifically contended that the lands are allotted to them, it follows that they are

preventing the others from using this land as Gairan. Thus, there was a cause of action for the suit. The plaintiffs had come with a case that the defendants were trying to cultivate the entire land and that is how they were preventing the villagers from grazing their cattle in the suit land. It appears that police were required to file chapter proceedings in view of the dispute which was there between the two sides. It is not in dispute that in the revenue record the names of the defendants are not entered in crop cultivation column. In view of this circumstance and nature of the evidence it cannot be said that the defendants were in settled possession of the land. The trial Court has appreciated this evidence and the finding of both the courts below on this point is consistent.

7. The learned counsel for the original plaintiffs tried to place reliance on a case reported as **2011 AIR (SC) 1123 [Jagpal Singh and others V/s State of Punjab and others]** and he tried to refer to Government Resolution of State Government dated 12th July, 2011 issued by the Revenue and Forest Department. He submitted that the land cannot be allotted to anybody, including the defendants as it is Gairan land. This point

is not at all involved in this matter. As the dispute can be decided on the basis of aforesaid facts and no other point was involved, this Court holds that no substantive question of law as such is involved in the matter. There is no case at all in favour of the Appellants, defendants.\

8. In the result, appeal stands dismissed.

9. In view of dismissal of the second appeal, the civil application No.7957 of 2015 stands disposed of.

[T. V. NALAWADE, J.]

Dt.26/08/2015
ans/634