

sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.79 OF 2002

1. Tanaji Haribhau Jagdale
At post Kumthe, Taluka Koregaon,
District Satara.
 2. Hindurao Kashinath Jagdale
At post Kumthe, Taluka Koregaon,
District Satara.
- ..Petitioners.

V/s.

1. The State Government of Maharashtra
(Revenue & Forest Ministry), Mantralaya,
Mumbai.
 2. The Collector, District Satara.
 3. The Tashildar, Taluka Koregaon.
 4. The Gram Panchayat of Village
Kumthe, Taluka Koregaon,
District Satara.
 5. Jarandeshwar Sahakari Sakhar
Kharkhana Ltd., Chimangaon,
Taluka Koregaon, Dist. Satara.
- ..Respondents.

WITH
WRIT PETITION NO.7127 OF 2010

1. Grampanchayat Kumthe,
Taluka Koregaon, District Satara,
through the authorized persons:
 - (1) Shri Shankar Hanumant Jagdale,
Adult,
 - (2) Shri Sandesh Chunilal Mehta,
Adult,

Both residing at Kumthe,
Tal. Koregaon, Dist. Satara.

V/s.

1. The State Government of Maharashtra
(Revenue & Forest Ministry), Mantralaya,
Mumbai.
 2. The Collector, Satara.
 3. The Tashildar, Taluka Koregaon,
Dist. Satara.
 4. Jarandeshwar Sahakari Sakhar
Kharkhana Ltd., Chimangaon,
Taluka Koregaon, Dist. Satara.
 5. The Maharashtra State Co-op. Bank Ltd.,
Mumbai, having its head office at 9,
Maharashtra Chamber of Commerce
Lane, Fort, Mumbai – 400 001.
 6. The Maharashtra State C-op. Bank Ltd.,
Regional Office, 915/2, Dr. Sule Road,
Shivaji Nagar, Pune.
- ..Respondents.

Mr.P.J.Thorat i/b. Mr.R.A.Thorat for the Petitioner in PIL No.79/2002.

Mr.Suresh M.Sabrad for the Petitioner in WP 7127/2010.

Mr.S.N. Patil, AGP for the Respondent Nos.1 to 3.

Mr.Rajendra Desai for the Respondent No.5 in PIL 79/2002 and for
Respondent No.4 in WP 7127/2010.

CORAM : A.S.OKA AND A.K. MENON, JJ.

RESERVED ON : 13th MARCH, 2015

PRONOUNCED ON : 8TH MAY, 2015

JUDGMENT (PER A.K.MENON, J.)

1. By this common order we dispose of the writ petition
and PIL. PIL No.79 of 2002 was filed in September, 2002 seeking

a writ calling for record and proceedings in respect of the order passed by Respondent No.2, Collector, Satara bearing No.MHA/3/Jamin-Gra/816 and directing Respondent nos.1, 3 and 5 to deliver the land granted under the impugned order dated 5.8.2002 to Respondent No.4 Gram Panchayat.

2. The facts leading to filing of PIL No.79 of 2002 briefly stated are as follows : Vide the impugned order dated 5.8.2002 passed by Respondent No.2 at the instance of Respondent No.1 possession of the gairan (grazing land) admeasuring 10 Hectares 94 Ares out of Gat No.1110 was directed to be given to Respondent No.5 (Jarandeshwar Sahakari Sakhar Karkhana) for industrial purposes. According to the Petitioners, the land allotted was gairan land. The Petitioners were alerted by a news article dated 21.7.2002 which reported that an educational institution run by Respondent no.5 has been granted a part of gairan land in village Kumthe for opening a Medical College. They then made representation to the Hon'ble Chief Minister against the proposal stating that already 35 acres of gairan land has been taken over by the State for the purpose of rehabilitation of project affected villagers from the Dhom Dam project.

3. According to the Petitioners, considering the number of cattle in the village, the land remaining is inadequate for the purpose of grazing. It is therefore alleged that the purported action

in allotting the land to Respondent no.5 was malafide. It transpired that Respondent No.5 vide letter dated 9.5.2002 requested the Collector - Respondent no.2 to grant an area of 102 Acres and 38 Ares out of Gat No.1109, 1110 and 787 which were lands reserved for grazing and it is on the process of application of Respondent No.2 and the Additional Secretary of Respondent No.1 granted a land admeasuring 10 Hectares and 94 Ares out of Gat No.1110. Reference is made to a Government Resolution dated 26.3.1994 and also Rule 31 of the Maharashtra Land Revenue Code (Government Disposal Lands) Rules, 1971. It is further stated that the aforesaid land was given at price Rs.10,39,300/-. However, the grant was subject to certain conditions. According to the Petitioner as on date of the petition, only 60 Hectares and 71 Are were available to the villagers of village Kumthe for the purposes of grazing about 7000 cattle. The impugned order reduces gairan land, adding to the misery of the villagers resulting from unavailability of grazing land.

4. Respondent No.4 Gram Panchayat had apparently passed a resolution not to allow grant of grazing lands for any purpose to Respondent Nos.1 to 3. Yet Respondent No.5 is likely to start construction on the land available for grazing. According to the Petitioners land ought to be disposed of only by way of auction as contemplated under Section 31 of the Maharashtra Land Revenue Code, 1966 and in the present case no such procedure

had been followed. The Respondent No.1 had not consulted even the Gram Panchayat under whose supervision the land remained. The lands were vested in the Gram Panchayat by the Respondent No.1 way back in 1954 and unless the Gram Panchayat consents the lands cannot be allotted to Respondent No.5. The Petitioners further contended that majority of the villagers have their earnings from cattle and in absence of adequate grazing lands the villagers will be affected. If the land for grazing of cattle is not available for the villagers, they will be deprived of their livelihood. The Petitioners, therefore, claim that they are entitled to the reliefs as prayed for.

5. One Supriya Subhash Bagawade, Tahsildar, Koregaon District Satara has filed an affidavit in reply on behalf of Respondent No.2. In the said affidavit, it is contended that Respondent no.1 has granted 10 Hectares and 94 Are of land in Gat No.1110 for industrial purposes. According to the deponent the PIL is politically motivated and the Petitioners are rivals of Respondent No.5. It is admitted that by resolution of 6th August, 1954 the then Tahsildar had allotted the land admeasuring 162.22 acres for grazing. According to the reply, the land is allotted to Respondent No.5 and not to a Medical College. It is admitted that the land admeasuring 35 acres has been granted to villagers who were affected by the Dhom Dam project and the land admeasuring 5 acres has been allotted for a school and dis-housed persons.

Thus, the State has retained 60.71 hectares for the purpose of grazing cattle.

6. In the PIL an affidavit in reply dated 9th March, 2015 has been filed by one Shri B.A.Ghodge, Managing Director of Respondent No.5. According to him the Petitioners are closely connected with the Gram Panchayat of Kumthe village and Petitioner no.1 has been party to the resolution passed in a meeting dated 8th June, 1989 in which Respondent Gram Panchayat granted consent to Respondent No.5 acquiring the land from Gat No.717, 1109, 1110 and 787. According to him, the said resolution is signed by Petitioner No.2. The Petitioners in PIL are closely connected with the affairs of Gram Panchayat and day to day developments of Gram Panchayat. According to the deponent, being a party to the decision of granting consent for allotment to the said land the Petitioners have also suppressed the fact that Gram Panchayat had filed a Regular Civil Suit No.451 of 2002. The Petitioners were aware of the proceedings filed by the Gram Panchayat. The Sarpanch of Gram Panchayat was the first to sign on the representation made to the Chief Minister on 8th August, 2002. The same Sarpanch filed a suit on 2nd September 2002. The Petitioners in the PIL also signed the said representation to the Chief Minister. According to him the Petitioners have full knowledge of the filing of the civil suit and all three of them were acting in concert and filing proceedings for to achieve their common intention of ensuring cancellation of the

allotment of land. According to Respondent No.5 since the suit was pending in the District Court and for identical reliefs, the Petitioners have already availed of an alternative remedy and therefore could not maintain the present PIL.

7. According to Respondent No.5, during pendency of the suit before District Court, the PIL is not maintainable as two remedies for the same relief cannot be pursued by said persons who are acting in concert with each other. It is stated that the State has powers to grant land to the societies for Industrial and Commercial use and also for residential use. The reference is made to the orders of this Court wherein various lands allotted to the Politicians, Artists, Sports persons, Judges of the High Court and several other societies and industries. The allotment of lands were made by the Government / Collectors who formed Co-operative Societies without advertisement and without acting on the basis of Government policy. According to the Respondent, the Government has powers to allot the land which was used by the Collector to allot land to Respondent No.5 and such decisions taken were approved by this Court. It is further stated that land mentioned in the PIL has not been mortgaged to the Maharashtra State Co-operative Bank Ltd. The auction notice issued to Respondent No.5 Sakhar Karkhana does not mention the land in question. According to Respondent No.5, no public interest is involved. No legal rights have been affected and there is ample grazing of land and hence it

is submitted that the petition may be rejected.

8. An affidavit in rejoinder has been filed by Shri Tanaji Haribhau Jagadale in September, 2003. The contents of the reply to the extent it is inconsistent with the Petitioners' case has been denied. According to the deponent the allegations of malafide are false. The Petitioners have also denied that they are opposing any scheme made for progress of the villagers and the available land is 60.71 hectares and the news item refers to Respondent No.5 and using the grazing land for construction of a Medical College and not for industrial projects. In any event, there are 7000 cattle which form an integral part of the agricultural activity and milk business and therefore availability of sufficient grazing land is of paramount importance. The initial available area of 160 acres has already been reduced and further reduction would cause immense hardship to the cattle and the villagers dependent on cattle produce for livelihood. According to the Petitioners vide Government Resolution of 9th December, 1952 the State has fixed areas for cattle grazing. Presently, the areas available for villagers of Kumthe is insufficient, even assuming while denying that there are only 800 cattle as stated by the Respondent.

9. In the Writ Petition, the Petitioner is the Grampanchayat acting through authorized persons viz. Shri Shankar Hanumant Jagdale and Shri Sandesh Chunilal Mehta, Respondent No.1 is the

State of Maharashtra through its Revenue and Forest Department, Respondent Nos.2 to 6 are the Collector, Satara, the Tahsildar of Taluka Koregaon, District Satara, the Freshwater Sahakari Sakhar Karkhana Ltd., the Maharashtra State Co-op. Bank Ltd. and the Authorized Officer of Respondent No.5 who is holding the auction in respect of the land forming part of the PIL. According to the Petitioner, the Karkhana was not in possession of the land. The land which was allotted on 5th August, 2002 to Respondent No.2 by Respondent No.2 was in breach of the terms and conditions of the said allotment mortgaged with the bank. The Karkhana appears to have defaulted for the loans and the said land along with other lands are proposed to be auctioned. The total land is admeasuring 12.19 Hectares and was in possession of the Petitioner for several years. It is further contended that if the land is reserved for grazing, it should not be given to Respondent No.4 Karkhana for any other purpose. According to the Petitioners, the remaining portion of the land is 10 Hectares and 94 Are and it is still with the Petitioner Gram Panchayat.

10. Apropos, allotment of the land, it is stated that condition No.5 of the order of allotment provided that the Karkhana could not transfer the land to anybody without permission in favour of anyone. The condition No.7 of the said order provided that the said land was being allotted for industrial purpose. Condition No.6 provided that Respondent No.4 should use the said land solely for

the purpose for which it has been allotted. It is stated that the land since has been illegally mortgaged with Respondent No.4 bank. The Karkhana has not used the land to the industrial purpose for which it was allotted and since it is not put to use, it has violated the terms and conditions of the allotment.

11. According to the Petitioners, the lands could not have been used for any purpose other than as a grazing land and the apprehension of the villagers that the Karkhana was trying to grab the said land. Moreover, it had no powers to mortgage the land to Respondent No.5 bank without the permission from the State Government. The action of the Karkhana in allegedly mortgaging the said land has been challenged and it is submitted that the auction proposed to be held ought to be set aside. In the circumstances, the Petitioner seeks a writ to quash and set aside the notice dated 23rd August, 2010 published by Respondent No.6 insofar as land bearing Gat No.1110 is concerned and for a declaration that the mortgage of the said land admeasuring 10 Hectares, 94 Ares, Gut No.1110 situated at Village Kumthe, Taluka Koregaon, Dist. Satara with Respondent No.5 bank is in breach of the order dated 5th August, 2002 passed by Respondent No.2.

12. On behalf of Respondent No.4, an affidavit has been filed of Mr.B.A. Ghodge, the Managing Director on the same lines of the affidavit filed in response to the PIL. He opposes the petition on

the ground of delay stating that the land was allotted by the State Government on 5th August, 2002 and the petition is filed in the year 2010, apart from delay and laches, he pressed into service the fact that the Petitioner had not disclosed the filing of Regular Civil Suit No.451/2002 in the Court of Civil Judge, Senior Judge, Satara referred to herein. According to him, the Petitioner has not disclosed that the Gram Panchayat had filed a Civil Suit in Satara District against the Respondent Karkhana for the same reliefs and the said suit is said to be pending. He contends that the Collector is empowered to grant lands without auction and the Karkhana has been granted the land under the Rules. The allotment is made to the Karkhana using the same powers. According to him, the land has not been mortgaged to the Respondent No.5 bank. In paragraph 8 of his affidavit, he contends that the subject land has not been mortgaged to Maharashtra State Co-operative Bank Ltd. According to him, the auction notice issued by Respondent No.5 bank does not mention the land forming subject matter of this petition. The affidavit is of 2nd March, 2015 and according to the Petitioner, the suit in the District Court is still pending.

13. In the PIL vide order dated 20th December, 2014, this Court recorded that that the Advocate for the Petitioner is in receipt of the letter addressed on 17th August, 2008 by both the Petitioners in which they have stated that they do not want to prosecute the PIL. We have observed that considering the issues involved, the PIL

cannot be disposed of on the basis of the said letter and the same be treated as *Suo Moto* PIL. Furthermore, the issue of locus to the PIL petitioners will not arise since it is shown as *Suo Moto* PIL and even otherwise, they are not the parties to the suit nor were office bearers of the Gram Panchayat. Accordingly, although one of the petitioners had expired, the matter was converted to *suo moto* PIL and Mr.Thorat was requested to continue to assist the Court as *Amicus Curiae* which he graciously agreed to do.

14. We have heard Mr.Sabrad, learned counsel on behalf of the Petitioner in the Writ Petition, Mr.Thorat, the learned counsel appointed as *Amicus Curiae* of the PIL Petitioner, as well as Mr.Patil, AGP, for the Respondent-State and Mr.Desai, the learned counsel for Respondent No.5 in the PIL and for Respondent No.4 in the Writ Petition. Vide order dated 7th September, 2010, the Writ Petition was ordered to be tagged along with the PIL as the land was the subject matter of the PIL as well. Vide order dated 24th September, 2010, the Division Bench of this Court had ordered that the auction which was scheduled to take place on 27th September, 2010 could be held but subject to the outcome of this Writ Petition.

15. Mr.Thorat, learned counsel urged that the property should not be allowed to be auctioned. He relied upon the guidelines by the Committee constituted by the Revenue Department dated 26th March, 1984 wherein it is clearly stated that

in the year 1959, a High Power Committee was constituted to made demands of the land for cultivation and grazing. The Committee advised that no changes should be made in the land for grazing land and this Committee found that the land designated for grazing purposes are largely infertile and accordingly, the same should not be put to other use other than grazing and the percentage ought not to be changed. It was also decided in the said meeting of the Committee to enforce the Government Resolution that where it is found that case is not taken to keep the grazing land in proper condition, the concerned District Collector was to remove the illegal construction and make available for grazing purposes. The District Collector was also informed that as per the guidelines in clause (c), the grazing lands may be developed by making divisions for the purpose of grazing.

16. Mr.Thorat also placed reliance upon the Government Resolution dated 18th December, 1995 and submitted that proposals in relation to the grazing lands should mention reasons as to why the said grazing land is needed including by making reference to the number of cattle to be provided for. We are told that the proposals sent were lacking in such information. Further reliance is placed upon the Government Resolution dated 14th October, 1996 wherein the District Collector was directed to organize a meeting of all Chief Agricultural Officers as well as Irrigation Officers and Tahsildar and guide them properly about the

availability of the land and submit a report through the Divisional Commissioner on various aspects of grazing, infertile and private forest land available. Thus, Mr.Thorat submits that the subject lands cannot be allotted in any manner as sought to be made and the same is a very valuable public property and is proposed to be disposed of without following the due procedure.

17. He placed reliance on the judgment of this Court in PIL No.48 of 2004 [Sanjay Kumar Survey V/s. State of Maharashtra & Ors.] decided on 20th / 21st November, 2014 wherein certain plots were allotted to M/s.K.Raheja without following a fair and transparent process. This Court held that the allotment made by CIDCO was completely in violation of the mandate of Article 14 of the Constitution of India and the Respondents were directed to hand over the plot in its original condition to CIDCO. He submits that as in that PIL, similar reliefs can be granted in the present case as well since admittedly the land was barren land and the allotment to Karkhana was not justified. Furthermore, whether or not the Karkhana intended to start a medical college is not relevant. The fact remains that the allotment is obviously made illegally and without following the due process.

18. Mr.Sabrad, the learned counsel appearing for the Petitioner in the Writ Petition also supported the submission of Mr.Thorat and assailed the action of the Respondent bank to

auction the property, in addition to the challenge to the allotment of the land to the Karkhana. Mr.Sabrad concedes that the suit was indeed filed and is pending. This suit will be heard in due course.

19. On behalf of the Respondents, Mr.Desai, the learned counsel appearing for Respondent No.5 vociferously submitted that the allotment made cannot be assailed in this manner as the same was as in several cases such allotments have been made. He referred to the judgment of this Court in the case of Nyayasagar CHS Ltd. [Shri Nitin Deshpande V/s. The Registrar General & Ors. in Criminal PIL No.12 of 2011], a society consisting of number of members who were sitting and retired judges of this Court. In the said judgment, this Court has held that the petition was misconceived. A reference is made to a similar challenge in the case of Foreshore Cooperative Housing Society Ltd. vs. Nivara Hakk Suraksha Samiti reported in (1991) 2 SCC 75 and the Supreme Court turned down that challenge in the following words:-

“5. The last contention raised by Shri Sebastian was that the plots in question were reserved in the draft development plan for "housing the dishoused" and that, therefore, the allotment of this land to the society for housing purposes was not proper. The High Court has pointed out that the plots have been dereserved under the powers vested in the Administrator of the Municipal Corporation under Section 50 of the Maharashtra Regional Town Planning Act. Learned Counsel referred to the provisions of Sections 26 to 29 of the

Act. But we agree with the High Court that the relevant provision is contained in Section 50 and that, since de-reservation has been made under this section, the objection put forward does not survive. The reservation becomes material only at the stage of permission to construct on these plots and it is common ground that by the time the constructions were made de-reservation had been effected."

20. He submitted that although under the provisions of Rule 31 of The Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971, that for disposing of such land, it is necessary to follow the tender process and by auctioning the plots, placing reliance on the aforesaid decisions of this Court, Mr.Desai submitted that there is no reason for this Court to interfere. He submitted that the Petitioner has suppressed the fact of the pending suit. According to him, an alternate remedy had been availed of and the present writ petition and the PIL ought not to be entertained at this stage, when the decision of Regular Civil Suit No. 451/2002 is pending before the Civil Judge, S.D., Satara. According to him, the allotment of the land to the Karkhana is entirely legitimate. Furthermore, he submitted that the bank is likely to be affected by any order that may be passed in the present petition. At this stage, we may observe that the Respondent bank has chosen not to appear in the matter, although they were represented on 7th October, 2010 by one Mr.M.D.Yelekar on which date Rule was issued in the writ petition and it was directed to be heard along with PIL No.79/2002.

21. Mr.Desai submitted that the Collector was satisfied that the auction could be dispensed with. According to Mr.Desai, reasons for dispensing with the auction process need not have been recorded in the order nor was it expected that the reasons are to be recorded in the order. According to Mr. Desai, in all probability, the said reasons may be recorded by way of file notings.

22. Having heard the submissions of the learned counsel having perused the provisions of The Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 (hereinafter referred to as "Land Disposal Act), we find that grant of land for industrial and commercial purpose is governed by Rule 31, which reads thus:-

" 31. Grant of land for industrial and commercial purpose :-

(1) Except as otherwise provided in these rules, building sites situated outside the purview of the Municipal Corporations or Metropolitan Regions shall be granted by the Collector for industrial and commercial purposes under section 20 read with section 31, by public auction or by inviting public tenders, to the highest bidder, after getting the upset price of the land in question determined by the complete officer of the Town Planning and Valuation Department, unless for reasons to be recorded in writing, the Collector thinks that in any particular case there are good reasons for granting the land without auction, in which case, he shall refer the matter to the State Government and the

land shall then be disposed of in such manner as the State Government may direct.

(2) The grant of land shall be subject to the conditions under rule 41 and also the following conditions, namely:-

(a) Except with the previous permission of the State Government, the land shall not be sub-divided or disposed of in any manner;

(b) The land shall not be disposed of except along with the constructions thereon and the factory, plant and other installation, if any, and the land so disposed of shall not, except with the approval of State Government be used for a purpose other than the purpose for which it was initially granted;

(c) On disposal of the land along with the factory, plant, structures and other installations by way of sale, the State Government shall be entitled to half the unearned income and where such land is sold without any constructions aforesaid, the State Government shall be entitled to unearned income not exceeding 90 per cent, as the State Government may decide;

(d) If the State Government has reason to believe that any mis-representation or concealment is made in regard to the sale price, the sale shall be voidable at the discretion of the State Government;

(3) In case of building sites situated within the purview of any Municipal Corporation or Metropolitan Region the Collector shall obtain prior approval of the State Government before disposing of such property by public auction or by inviting tenders, as provided in sub-rule (1).

(4)-----

(5)-----

Provided ----- “

On a plain reading of Rule 31, it is obvious that the allotment is subject to the conditions set out under Rule 31 read with Rule 41. For ready reference, the relevant extract is reproduced below :-

“ 41. Conditions of grant of land for non-agricultural purpose:-

(1)Where unoccupied land is disposed of under Section 20 read with Section 32 for any non-agricultural purpose, it shall be used for the purpose for which it is granted, and be subject to such terms and conditions as the Collector may annex to the grant in accordance with the provisions of these rules and to the payment of non agricultural assessment as may be fixed by the Collector under the provisions of Chapter VII of the Code and the rules made thereunder.

(2)Where the grant is of a building site, the Collector may annex the following additional conditions, that is to say

(i) -----

(ii) The grantee shall not use the land and the building erected thereon for any purpose other than the purposes for which it is granted without obtaining the permission of the Collector under the provisions of the Code and the rules thereunder;

(iii) ---

(iv) ---

(v) ---

(vi) ---

(vii) ---

(viii) Such other conditions as the Collector may,

under the orders of the State Government, impose. ”

23. We may further observe with reference to Rule 31(1) that auction is the normal rule. A departure therefrom may be made by the Collector only provided he is satisfied that there was good reasons for doing so. In the present case, existence of good reasons is not recorded by the Collector either in his Order or the permission issued by the Collector. It is not even the case of the petitioner in the affidavit in reply that there were good reasons for dispensing with the auction. Hence the order of allotment is illegal and deserves to be set aside on that ground itself.

24. In the case of **Baliram s/o. Bhiwaji Patil V/s. State of Maharashtra** reported in **2001 (3) Mh. L.J. 742** it is seen that the allotment of 1 Acre 35 Gunthas Gairan land of Nilanga town to Respondent No.4 on payment of occupancy price was subject to the provisions of Maharashtra Land Revenue Code. This Court held that the provisions of the Code and the Rules framed thereunder makes it clear that any allotment of land which is subject to the restrictions on the right to transfer and these conditions are set out in Rules are set out in Rules 31 & 41 of the Land Disposal Act which states that previous permission was required to be obtained for either for disposing of the land or for sub-dividing the land. Moreover, the land disposed of cannot be used for any purpose other than the purpose for which it was initially granted.

25. In the case of Baliram Bhiwaji Patil (supra), this Court found that the Rules framed make it clear that any allotment of land which is subject to restrictions and right to transfer and conditions set out in Rules 31 & 41 of the Disposal of Land Rules. Previous permission was required to be obtained before disposing it of or sub-dividing the land. Moreover, the land disposed of cannot be used for any purposes other than the purpose for which it was initially granted. Furthermore, Rule 41 clearly sets out that the land for non agricultural purposes (in the present case to the Karkhana for the purpose of commercial purpose) shall be used only for the purpose for which it is granted and will be subject to the terms and conditions of the allotment and the same is used for the purpose for which it was granted, namely for the purpose of business of the Karkhana. Accordingly this Court found that the balance land being unused and barren for a period of out thirty years, there is nothing to show that the Collector had exercised powers under Rule 41(3) and granted extension. This Court directed the Collector to assess the unearned income by way of sale of the plots from the subject land and recover the same amount as per the provisions of Rule 31 of the Rules framed under the Maharashtra Land Revenue Code, 1966.

26. In the present case, we are clearly of the view that the allotment of barren land to the Karkhana is not justified, whether

the land could not have been granted or otherwise dealt with or otherwise disposed of or mortgaged to the bank. So far as the bank is concerned, it has chosen not to appear. In any event, we note that this Court vide order dated 24th September, 2010 made it clear that the auction if at all held, would be subject to the further orders of this Court. There is nothing on record to show that any such mortgage has been executed.

27. We are not impressed with the submissions of Mr.Desai, the learned counsel for Respondent No.5. It is true that this Court in the case of Nyayasagar Co-operative Housing Society held that the discretion to allot the lands is not prejudicial to the public auction to be followed. The issue in the case of Nyayasagar stands on a different footing. In the case of Nyayasagar, 1400 sq. mtrs of land was allotted to Nyayasagar in 2004 and land admeasuring 1500 sq. mtrs. to Respondent No.4 therein in 2007 out of the land admeasuring 25000 sq. mtrs. which was originally reserved for Courts, 1390 sq. mtrs. was allotted to Renuka Co-operative Housing Society in 2003 and 1020 sq. mtrs. was allotted to Sindhuratna Co-operative Housing Society in 2008. While allotting the plot to Nyayasagar and the other housing societies due process appears to have been followed. Paragraph 8 on page 9 of the judgment in the said Criminal Writ Petition No.12 of 2007 sets out various steps that the State adopted prior to the allotment following due process under the MRTP Act. The same process is followed for the entire

land 10,000 sq. mtrs. from which allotments are made to other societies. In any event, we are bound by the binding decisions of the Apex Court which we have discussed hereafter.

28. A leading case on the issue is the decision of the Hon'ble Supreme Court in **Akhil Bhartiya Upbokta Congress V/s. State of M.P.** Reported in **(2011) 5 SCC 29**. In this case, the Supreme Court reiterated some well settled principles dealing with the disposal of public land. It will be useful to reproduce the extracts of the said judgment.

“65. What needs to be emphasized is that the State and / or its agencies / instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and / or officers of the State. Every action / decision of the State and / or its agencies / instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well- defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented / executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to the distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies / instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred on the particulars functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions dehors an invitation or advertisement by the State or its agency/ instrumentality. By entertaining applications made by individuals, organisations or institutions made by individuals, organisations or instructions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State of its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating, the soul of the equality clause embodied in Article 14 of the Constitution."

29. Furthermore, in **City Industrial Development V/s. Platinum Entertainment & Ors.** the Hon'ble Supreme Court in paragraph 39 observed as follows:-

" Rule 4, to which our notice was drawn by the learned counsel appearing on behalf of the respondents, although provided an authority to dispose of plots of land by public auction or by tender or by considering individual applications as the Corporation would determine from time to time, but such action on the part of the Corporation should have been taken rationally and after applying the methods which are more rational and reflect non-arbitrariness and would not be smacked under the clout of favouritism and/or nepotism or being influenced by political personalities. In our opinion, although CIDCO had the power to allot the land in any one of the manners stated in Rule 4 above, but the conduct of such

allotment should have been more clear and transparent and without presence of any element of favouritism and/or nepotism and without being influenced by any such thing in exercising the discretion conferred upon CIDCO."

30. Later, a Full Bench of the Hon'ble Supreme Court while answering the various question referred in **Special Reference No.1 of 2012** had occasion to deal with the issue whether the only permissible method for disposal of all natural resources across all sectors and in all circumstances was by conduct of auctions. The observation of the Supreme Court in paragraph 107 is very relevant and we reproduce the same as below:

"107. From a scrutiny of the trend of decisions, it is clearly perceivable that the action of the State, is whether it relates to distribution of largesse, grant of contracts or allotment of land, is to be tested on the touchstone of Article 14 of the Constitution. A law may not be struck down for being arbitrary without the pointing out of a constitutional infirmity as McDowell case [(1995) 3 SCC 709] has said. Therefore, a State action has to be tested for constitutional infirmities qua Article 14 of the Constitution. The action has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment. It should conform to the norms which are rational, informed with reasons and guided by public interest, etc. All these principles are inherent in the fundamental conception of Article 14. This is the mandate of Article 14 of the Constitution."

31. Thus, it is evident that in cases of disposal of public land as is the case at hand, the common thread is that the State can dispose of public property only by adopting a fair and transparent method. The disposal of the property is to be founded on a well defined policy which should be made known to the public by publication in the official gazette, to be adopted by official methods and by entertaining applications of individual applicants. The State cannot exclude others who are otherwise eligible to seek allotment. A transparent and well defined policy must be adopted while disposing of the public property. In the instant case, that has certainly not been followed.

32. In the present case, we do not see any transparent steps followed while allotting the said land to the Respondent Karkhana the auction is seen to be dispensed without recording reasons. In the circumstances, the same is liable to be quashed and set aside. The Karkhana has not obtained permission from the State Government nor has it obtained permission prior to mortgage the land with the Maharashtra State Co-operative Bank, etc. The land is meant for grazing land and it is in public interest that proper procedure ought to have been followed prior to the changing the use. The proper procedure could have been followed prior to the allotment of the land to the Karkhana and change of user procedure could have been resorted to. This was not done. The

said bank has no right whatsoever in the land. Since it is not owned by the Karkhana, the Karkhana had no occasion to a valid mortgage in favour of the bank or anybody. This being the position, it stands to reason that the auction cannot proceed. If indeed it has, despite the interim orders of the Court, we hold it to be invalid. The allotment of land to the Karkhana was illegal being arbitrary. Therefore, the alleged mortgage is also invalid and liable to be set aside. The PIL must, therefore, succeed. As far as the Writ Petition is concerned, the same cannot be entertained in view of the pending suit.

33. Accordingly, we pass the following order.

- (i) Rule is made absolute in terms of prayer clause (a) & (b) in the Public Interest Litigation No.79 of 2002;
- (ii) Writ Petition No.7127 of 2010 is dismissed.
- (iii) The mortgage, if any, of the land bearing Gat No.1110, admeasuring 10 hectares, 94 Ares at Village Kumthe, Taluka Koregaon, District Satara with Respondent-bank is in breach of the order dated 5th August, 2002 passed by Respondent No.2 and, therefore, will not bind the State Government;
- (iv) The auction, if any held by the Respondents Bank is invalid

and is liable to be set aside and is accordingly set aside;

(v) We direct Respondent Nos.1 to 3 and 5 to hand over the possession of the land granted under order dated 5th August, 2002 to the State Government within a period of six months from today;

(vi) Both the petitions are disposed of accordingly.

No order as to costs.

(A.K.MENON, J.)

(A.S.OKA, J.)