

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2135 OF 1992

Rashtriya Shikshan Mandal
through its Administrative Officer &
Asst. Charity Commissioner

Mr. U.S. Bhandare & ors.

.. Petitioners

vs.

The State of Maharashtra & ors.

.. Respondents

Mr. Y. S. Jahagirdar, Sr. Advocate a/w. Mr. P.S. Dani, Sr. Advocate
a/w. Mr. S.S. Kanetkar for the Petitioners.

Ms M.S. Bane, B-Panel AGP for Respondent Nos.1 to 5.

Mr. Ram Apte, Sr. Advocate a/w. A.A. Garge for Respondent Nos.7 to
9.

Mr. P.J. Thorat i/b D.R. More for Respondent No.10

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 09 February 2015.

Date of Pronouncing the Judgment : 23 February 2015

JUDGMENT :-

1] This petition challenges the following two orders

(a) The order dated 27 April 1992, whereby the
transfer/alienation of portion of the property allotted to the
petitioner in favour of respondent No.10 has been regularised
subject to payment of fine of Rs.3.75 lacs;

(b) The order dated 27 April 1992, by which 40000 sq.ft. of
the property allotted to the petitioners has been ordered to be
resumed and returned to the original landlord Mahadu S. Kale
and four others as '*special case*'.

2] The petitioner No.1 is a Public Charitable Trust, which was originally established in the year 1924 for the purpose of promoting Ayurvedic Education. The Trust has established and administers Tilak Ayurvedic College, Ayurvedic Rasshala, Nanal Hospital, Mehendale Dispensary amongst other institutions at Pune.

3] In the year 1950, the petitioner Trust approached the State Government for acquisition of certain properties necessary for the purpose of extension of the building/housing their various institutions, staff quarters, hostels for students, Botanical gardens and other purposes and ancillary and incidental therewith. The State Government, accordingly, acquired property ad-measuring about 6 acres and 31 gunthas comprising Survey Nos. 258/1, 258/2, 259/A/1, 259/A/2, 259/A/3, 259/C/1/2, 260/1, 260/2, 260/3 and 260/C/1 (said property). This acquisition was completed some time in the year 1952 and the same was allotted in favour of the petitioner Trust as confirmed by the agreement dated 22 September 1952. Such agreement is relatable to Section 41 of the Land Acquisition Act, 1894. In pursuance of the same, but subject to certain terms, conditions and covenants, the petitioner Trust was placed in possession of the said property free from all encumbrances of whatsoever nature.

4] The petitioner Trust has pleaded and produced some material on record that in fact a loan was granted by the State Government, in order to enable the petitioner trust to bear the costs of acquisition. There is no serious dispute that such loan was indeed availed and has been duly repaid by the petitioner Trust to the State Government.

5] Upon the said property, the petitioner Trust has constructed *inter alia* staff quarters, gymnasium, hospitals, laboratories and laid out a Botanical garden, which is necessary for the conduct of Ayurvedic Medical Courses. The details of such construction and development, are the matter of record.

6] The Municipal Corporation of Pune, from out of the said property, acquired a portion ad-measuring about 34,506 sq.ft., for the purpose of a public road. Upon such acquisition and construction of the road, the said property came to be divided into two parts. In one part, which is now the main campus of the Trust and its institution, the constructed area covers about 83,140 sq.ft., open space around the same is about 31,500 sq.ft., play grounds and other facilities for the student cover an area of 86,513 sq.ft. In this very area, the Botanical garden covers an area of about 28,867 sq.ft.

The second portion is separated by the constructed road ad-measuring about 12,800 sq.ft (separate portion).

7] It is the case of the petitioner trust that the separate portion, being severed from main campus due to the constructed road, was unfortunately being encroached upon by the slums and occasioning nuisance. Besides, the petitioner Trust also felt necessity of providing an independent ladies hostel, for which the funds were in short supply. In the year 1987, therefore, the petitioner Trust *bonafide* resolved that an independent ladies hostel, duly secured by compound wall be constructed and steps taken to remove the encroachment on the separated portion and to protect the same against future encroachments. Several efforts were made by the petitioner Trust to raise finances for such project. Finally, it was resolved that the separate portion should be sold, in lieu of the purchaser offering consideration in terms of money as well as construction of ladies hostel and compound wall to secure the same.

8] In pursuance of the aforesaid, the petitioner Trust approached the Charity Commissioner, submitted the aforesaid proposal and applied for permission under Section 36(1)(a) of the Bombay Public Trusts Act, 1950 (said Act), since the same involved alienation of the

Trust property. The Joint Charity Commissioner Pune, by an order dated 16 January 1987 sanctioned the proposal in terms of Section 36 (1)(a) of the said Act upon record of satisfaction that the same was *bonafide* and in the interest of the Trust. Accordingly, by agreement dated 22 January 1987, the separate portion was transferred to respondent No.10 for consideration and upon terms and conditions and covenants referred to therein.

9] At this stage, respondent No.6, i.e., Mahadu Kale, by an application dated 18 July 1986 applied to, then Revenue Minister pointing out that the said property included a portion of about 26,000 sq.ft. which was acquired from him in the year 1952. Mr. Mahadul Kale pointed out that he was an extremely poor person and that since the petitioner trust had not utilised the entire said property as yet, some portion thereof should be restored to him, so that he can use the same for agricultural purposes.

10] Based upon Mr. Kale's plea, the Minister (Revenue) forwarded Mr. Kale's application to the Collector, Pune. The Collector, Pune issued notice to the petitioner trust on 3 August 1987, requiring the petitioner trust to submit a response. Such response was furnished by the petitioner trust on 24 September 1987. Therein, the

petitioner trust denied the allegations that no construction was carried out and furnished details with regard to the utilisation of the said property. In particular, the petitioner trust pointed out that Tilak Ayurvedic College conducts of BAMS Degree Course and the same involves study of medicinal herbs for which maintenance of Botanical garden is mandatory. The petitioner trust pointed out that a Botanical garden has been laid out and even furnished details of the medicinal plants and trees therein.

11] It is the case of the petitioner trust that in the meanwhile, respondent Nos.6 to 9, i.e., Kales involved one well known builder from Pune Mr. M. S. Rajpal and even constituted the said M.S. Rajpal as their constituted Attorney for the purposes of pursuing the matter of re-obtaining some portion of the said property, obviously for commercial purpose. The Kales, through their constituted Attorney caused legal notice to be served upon various statutory authorities as well as the petitioner trust, once again alleging that the petitioner trust had failed to utilise the said property for the purpose for which it was acquired and therefore, the said property or at least is allegedly un-utilised portion thereof ought to be resumed and thereafter allotted to the Kales.

12] The petitioner trust responded to the notice on 20 February 1990, only to be served with a fresh notice dated 26 February 1990. The Collector, Pune made enquiries and even drew out a panchanama by inspecting the said property in pursuance of the representations and legal notices as aforesaid.

13] The Collector Pune made a report on 8 October 1990 and forwarded the same to the Under Secretary (Revenue). Therein, the Collector Pune has specifically stated that the said property was found to have been legally and substantially used by the petitioner trust for the purposes for which the same was acquired. In particular, the report makes reference to the fact that the petitioner trust administers Tilak Ayurvedic College, for which there is necessity of maintaining a Botanical garden. The Botanical garden, can therefore, not be described as some un-utilised portion. The report also makes reference to existing structures like laboratories, hostels, staff quarters etc. The report ultimately recommended that pleas of Kales ought to be rejected.

14] Un-daunted, the Kales through their constituted Attorney made yet another application dated 25 February 1991 to the Collector, Pune reiterating the previous allegations. Instead of

rejecting the same, the Collector Pune issued the petitioner trust yet another notice dated 25 April 1991 alleging that there was non-utilisation or mis-utilisation of a portion of the said property and requiring the petitioner Trust to furnish certain details.

15] The petitioner trust, furnished details on 8 May 1991 and at the same time denied the allegations of non-utilization or mis-utilisation. The petitioner trust also furnished explanation in the matter of alienation of the separated portion and the circumstances in which no previous sanction was obtained from the State Government in terms of Clause 8 of the agreement dated 22 September 1952. The petitioner trust also submitted that in case any technical breach was detected in the matter of alienation, then the same may be regularised.

16] The Collector, Pune on 12 July 1991 submitted a report to the Secretary (Revenue). In this report, the Collector Pune opined that alienation of the separate portion constituted breach of the agreement dated 22 September 1952, but observed that the circumstances in which such alienation was effected appeared to be *bonafide* and therefore the same could be regularised by levy of penalty. The report however, stated that the constructions were not

put up within two years from the date of acquisition and further the area used by the petitioner trust as a Botanical garden could be resumed and the petitioner trust could be given some land on the outskirts of the Pune City to set up a Botanical garden. The report makes reference to agreement dated 16 June 1960 and alleges breach thereof. The petitioner trust, however, pointed out that the agreement dated 16 June 1960 is not at all referable to the said property but it pertains to some other land, which came to be acquired after the year 1960.

17] Based upon the second report of the Collector Pune, the Secretary (Revenue) called for a report from the Divisional Commissioner, Pune. The Divisional Commissioner, Pune submitted such report on 14/19 November 1991. The Divisional Commissioner examined the issue afresh and concurred with the opinion expressed by the Collector Pune that the transaction of alienation of the separate property should be regularised by Clevey of penalty. The Divisional Commissioner further observed that the recommendation made by the Collector Pune that portion of the said property being utilised as Botanical garden should be returned to respondent Nos.6 to 9, i.e., Kales was wrong and that there was no provision for restoration of lands to the original land owners. The Divisional

Commissioner also opined that Botanical garden was one of the purposes for which the said property was acquired and at site there indeed exist such garden, which is necessary for the purposes of Ayurvedic College.

18] Despite reports as aforesaid, the petitioner trust called upon to show cause as to why the said property or at least the portions thereof should not be resumed. In such show cause notice dated 10 February 1992, the petitioner trust was called upon to respond as to whether they consent to shifting Botanical garden to some alternate property, that may be provided in lieu of existing site. The petitioner trust submitted its response on 14 February 1992. The respondent No.6 to 9, i.e., Kales through their constituted Attorney petitioned the Revenue Minister by application dated 17 February 1992 stating therein that the Kales proposed to use the land upon which a Botanical garden is exist for agricultural purpose, in case the same is restored to them.

19] The Minister Revenue taking cognizance of the application dated 17 February 1992, called upon the petitioner trust to attend meeting on 31 March 1992. Hardly two days notice was furnished to the petitioner trust to attend such meeting. At that stage, on account

of some issues, there was no governing body or trustees administering the Trust, but rather the Trust was being administered by the State appointed Administrator. The Administrator, being unfamiliar with the issue applied for some time. On the adjourned date, some submissions were made by the Administrator, particularly in the matter of regularisation of the transaction concerning the separated portion. The Administrator also pointed out that since the issue of trustees administering the Trust was *sub-judice*, a decision in the matter be deferred, until the same was effectively sorted out.

20] The Minister Revenue has made the two orders dated 27 April 1992, which have been impugned in the present petition. By first order, the Minister Revenue has regularised the transaction concerning alienation of the separate property to respondent No.10 subject to penalty of Rs.3.75 lacs. By the second order, however, the Minister Revenue has directed resumption of portion of the said property to the extent of 40,000 sq.ft. (comprising the Botanical garden) and for restoration of the same to respondent Nos.6 to 9, i.e. Kales as and by way of '*special case*'.

21] Mr. Y.S. Jahagirdar, learned senior counsel for the petitioners, in the background of the aforesaid facts and circumstances, made

the following submissions in support of the petition:

(a) That there was really no breach of the agreement dated 22 September 1952 warranting the exercise of power of resumption;

(b) That in any case, the breach if at all, was in the context of alienation of the separate portion, such breach was also of a technical nature only. The circumstances in which such alienation was effected were adequately explained and further even the Charity Commissioner, upon being satisfied with the *bonafides* had sanctioned such alienation. There was, accordingly, no justification to impose any penalty in regularization of the breach and consequent transaction. In any case, upon regularisation of such technical breach, there was no further question of directing any resumption;

(c) That insofar as allegation of non-utilisation or mis-utilisation are concerned, the same were totally misconceived and not at all borne from the material on record. In fact, the material on record, by way of reports from the Collector and the Dy. Commissioner, clearly establish that Botanical garden was not only laid upon the portion of the said property, but further the same was entirely consistent with the purposes of acquisition. Accordingly, the second order of resumption is

totally unjustified, illegal and *ultra vires*;

(d) That the entire proceedings are tainted with legal *malafides*, inasmuch as, respondent Nos.6 to 9, i.e., Kales are merely a front and the real motivating force is the constituted Attorney who is a builder and who wants portion of the said property for the commercial development;

(e) That in any case, there is no provision under which the resumed lands can be restored to the original land owners. In the present case, the original land owners claimed that 26,000 sq.ft. of their property was acquired. But by virtue of the impugned order, property ad-measuring 40,000 sq.ft. has been restored to them. Such restoration is held as illegal by this Court in case of *Dattatraya G. Borkute vs. State of Maharashtra*¹;

(f) That the Minister Revenue has no power to order restoration of lands to original owners as and by way of '*special case*'. In fact, this concept of '*special case*' is totally antithetic to the equality clause enshrined under Article 14 of the Constitution of India;

(g) That the impugned order of resumption defies, doctrine of proportionality and reasonable exercise of power. In making the impugned order, relevant considerations have

1 2005(2)Bom.C.R.151

been ignored and irrelevant consideration have been taken into account.

22] Ms M.S. Bane, learned AGP for the State submitted that the Collector of Pune in his affidavit dated 26 June 2013 has justified the making of the impugned order and the same may be regarded as her submission in support of the impugned order. Learned AGP further pointed out that in this case there was sufficient material on record that the petitioners had indeed breached the terms and conditions of the agreement dated 22 September 1952 and therefore, the impugned orders may not be interfered.

23] Mr. Ram Apte, learned senior advocate for respondent Nos.7 to 9 i.e. Kales, submitted that in the present case, agreement dated 22 September 1952 clearly provided that acquired lands were not to be used for any purpose other than that for which the same were acquired; the constructions were to be commenced within two years from the date of possession and completed within five years from the date; acquired land had to be maintained in good order and condition, finally the acquired land or any portion thereof was not to be alienated without previous permission of the Government. Mr. Apte pointed out that each of such conditions have been breached by

the petitioners and therefore there was nothing wrong in making of the impugned order.

24] Mr. Apte further pointed out that in the present case, the Kales were poor agriculturalists who have lost their property due to acquisition in the 1950. Thereafter, they were brought down to penury and in such circumstances, if some un-utilised portion of the said property was restored to them as and by way of a special case, the same cannot be said to be illegal or *ultra vires*. For all these reasons, Mr. Apte maintained that the impugned orders ought not be interfered with.

25] Mr. P.J. Thorat, learned counsel appearing for respondent No.10 adopted the submissions made by and on behalf of learned senior counsel for the petitioners. Mr. Thorat submitted that respondent Nos.6 to 9, in the course of proceedings before the Minister (Revenue) virtually conceded that they have no grievance with regard to the alienation of the separated portion in favour of respondent No.10. The penalty amount has been paid without prejudice.

26] The rival contentions, now fall for determination.

27] In so far as challenge to the first impugned order concerning the separated property is concerned, it must be noted that the Minister (Revenue) has in fact, indulged the petitioners by imposing fine in paltry amount of Rs.3.75 Lacs. The separate property was indeed alienated by the petitioners without obtaining prior permission of the State Government, even though clause 8 of the agreement dated 22 September 1952 required that the Society or its members shall not in any way alienate the said land or any portion thereof except with the previous permission with the Government. The explanation furnished by the petitioners, in regard to the apparent breach came to be accepted. The circumstance that the Charity Commissioner had permitted alienation was also taken into account. Respondent Nos.6 to 9, i.e., Kales, in the course of proceedings stated that they had no complaint with regard to the alienation of the separated portion. This aspect has been recorded in the first impugned order. The alienation has been regularised against a fine of Rs.3.75 Lacs. If all such circumstances are taken into consideration, then there is no case made out to interfere with the fine imposed. The fine amount is not at all disproportionate, rather the same is on the lower side. Accordingly, there is no case made out to interfere with the fine amount imposed by the first impugned order dated 27 April 1992.

28] In so far as the second impugned order dated 27 April 1992 is concerned, however, the petitioners have made out a case warranting interference. The Minister (Revenue), having condoned and regularized the alienation of the separate property by the petitioners, cannot fall back upon such alienation as constituting any breach of the terms and conditions contained in agreement dated 22 September 1952. From the material available on record, it cannot be said that the petitioners have breached any of the terms, conditions and covenants contained in the agreement dated 22 September 1952, in the matter of non-utilization or delayed utilization of the said property. In fact, there is material on record, which establishes that constructions with regard to college building, hostel, laboratories etc., had commenced within two years from the date of allotment and were substantially completed within a period of five years therefrom. It is possible that several other structures, which may have been felt necessary have been constructed or put-up even after the completion of period of five years from the date of allotment. However, that by itself cannot be regarded as any breach of the terms, conditions and covenants of the agreement dated 22 September 1952. Neither the said agreement, nor any other deed or document had specified the number of buildings or structures that had to be constructed within the period of five years from the date of

allotment. The acquisition and allotment was to enable the establishment Ayurvedic College and matters incidental thereto. The period of five years from the date of agreement dated 22 September 1952 expired on or about 22 September 1957. From the year 1957, till 18 July 1986 no complaint whatsoever was made with regard to non-completion of constructions within a period of five years from the date of allotment. The circumstance that even after year 1957, some constructions have come up, cannot lead to the inference that there was any breach in the matter of utilization of the said property. For example, it is the case of the petitioners that they felt necessity of an independent ladies hostel and the same was constructed some time after the year 1987. This cannot support an inference that there was non-utilization or that constructions were completed beyond five years from the date of allotment. Accordingly, the impugned order, to the extent it vaguely records that there was non-utilization of the said property or that some constructions were put up beyond the period of five years from the date of allotment is vitiated by perversity and non-application of mind.

29] In so far as the Botanical garden is concerned, there is material available on record, in the form of the Collector's report dated 8 October 1990 and the Divisional Commissioner report dated

14/19 November 1991 to the effect that the petitioners had utilized the portion of the said property as a Botanical garden. The Collector's report dated 8 October 1990 makes specific reference to the fact that the petitioner Trust administers Tilak Ayurvedic College, in which there is necessity of maintaining a Botanical garden. The report also makes reference to various other structures and buildings in the said property and concludes by stating that there has been substantial utilization of the said property for the purposes for which it was acquired and allotted to the petitioners.

30] The Divisional Commissioner, Pune, in a report dated 14/19 November 1991 has observed that the Botanical garden was one of the purposes for which the said property was acquired and allotted to the petitioners and at the site there indeed exist such a garden, which is necessary for the purposes of Ayurvedic College. Accordingly, the Divisional Commissioner opined against resumption of any portion of the said property and allotment of the same to respondent Nos.6 to 9, i.e., Kales. The Divisional Commissioner also recorded that there was no provision for restoration of the lands to the original land owners.

31] If the impugned order is perused, then it is clear that the

aforesaid two reports, i.e., Collector's report dated 8 October 1990 and Divisional Commissioner's report dated 14/19/ November 1991 have not been taken into consideration by the Minister (Revenue). This clearly amounts to ignoring the relevant material, as also relevant considerations. Merely on the basis of surmises and conjectures, the impugned order proceeds to record vague findings with regard to non-utilization of the said property or the non-existence of a Botanical garden at the site. The impugned order, accordingly, is unsustainable and is required to be set aside.

32] There is no necessity to go into the question as to whether the entire proceeding before the Minister (Revenue) were tainted with legal mala-fides because respondent Nos.6 to 9, i.e., Kales, were merely a front, the real motivating force being their constituted Attorney, a builder/developer who wanted the property for commercial development. This is because the position in law is well settled that acquired lands, even after resumption cannot be returned to the original land owners, but shall have to be disposed of by way of public auction or in accordance with statutory rules in the matter of disposal of public lands. The direction to restore 40,000 sq.ft from out of the said property in favour of respondent Nos.6 to 9, i.e., Kales is consequently unsustainable.

33] In case of *State of Kerala vs. M. Bhaskaran Pillai*², the Supreme Court, in the aforesaid context has observed thus:

"In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 6 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the State Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provisions of the Act and, is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public auctions so that the public also gets benefited by getting a higher value."

34] The Division Bench of this Court in case of *Dattatraya Borkute (supra)* has held that the Government Resolution dated 10 October 1973, cannot empower the State Government to release the land once it is acquired and vested in the State Government, in view of the pronouncement of the judgment of the Supreme Court in the case of *M. Bhaskaran Pillai (supra)*. In fact, in the said case, it was held that the Government Resolution dated 10 October 1973 has no

2 1997(5) SCC 432

efficacy in law and lands cannot be restored to the erstwhile land owners based upon the same.

35] If the affidavit-in-reply filed by the Collector, Pune, i.e., respondent No.4 is perused, then there is virtually no defence regard to the second impugned order dated 27 April 1992 which directs resumption of 40,000 sq.ft. from out of the said property and its restoration to respondent Nos.6 to 9. In para 3 of the affidavit, the Collector Pune has stated that the petitioners have committed a breach of clause No.4(8) of the agreement dated 22 September 1952 by way of transferring 2863 sq. meter of land (separate property) to respondent NO.10. As noted earlier, in so far as such alienation is concerned, the Minister (Revenue) has regularised the same after imposing a fine of Rs.3.75 Lacs upon the petitioners. The affidavit then adverts to the admissions of the petitioners that the constructions of the ladies hostel could not be completed for paucity of funds and some portion of the said property was sold, without knowledge that prior permission from the State Government was necessary. Again, this reference is in the context of alienation of the separate property in favour of respondent No.10, which alienation has already been condoned/regularised by the Minister (Revenue). The entire affidavit-in-reply does not assert that there is no Botanical

garden at the site or that there is breach of any other clauses of the agreement dated 22 September 1952.

36] Apart from absence of any reason or material for making of the impugned order, there is no question of the Minister (Revenue) directing restoration of 40,000 sq.ft. area to respondent Nos.6 to 9 as a '*special case*'. Article 14 of the Constitution of India provides that the State shall not deny any person equality before law or equal protection of law within the territory of India. This clause, by itself militates against the carving out of any '*special case*' unless of course some class or category of classes can be carved out on basis of the doctrine of classification. In any case, the State cannot act in breach of settled legal position as and by way of '*special case*'. With regard to properties which have been acquired by the State and which are vested in the State, the State acts as a Trustee and it is not open for its Ministers to direct restoration of such properties to the erstwhile land owners as and by way of special case. If this is permitted, then the rule of law would be a casualty. Restoration of lands to the former land owners, is in breach of decisions of the Supreme Court as well as this Court. This is an additional ground to set aside the impugned order.

37] In this case, respondent Nos.6 to 9 in their first application claimed that 26000 sq.ft of their property had been acquired in the year 1952. The Minister (Revenue), has directed restoration of property admeasuring 40,000 sq.ft., again as a '*special case*'. This is *ex-facie* impermissible. Respondent Nos.6 to 9, to begin with claimed that they are poor agriculturists. However, the later correspondence would indicate that respondent Nos.6 to 9 have been throughout represented by a constituted Attorney, who the petitioners claim is well known builder from Pune. The correspondence would also indicate that respondent Nos.6 to 9, through their Attorney offered some alternate land on the outskirts of the Pune for the purposes of shifting of Botanical garden. In fact, the even the authorities, possibly based upon such offer required the petitioner Trust to submit their response to shifting of the Botanical garden to some alternate place.

38] Apart from the material on record, which establishes that the petitioners have indeed laid out a Botanical garden, Dr. Vijay Doiphode , President of the petitioner trust has filed an affidavit in this Court on 11 February 2015 affirming that the petitioners have a herbal garden in the said property which is essential for continuation of affiliation to the Central Council of Indian Medicine and Maharashtra University of Health Sciences. The affidavit states that

each year the Central Council of Indian Medicine inspects the herbal garden and verifies its adequacy for the purposes of continuing affiliation. The herbal garden in-question has total of 2445 plants and 274 species. The garden comprises plants, which have medicinal value and the same is properly maintained at considerable cost. The petitioner trust, on the basis of such herbal garden has taken part in several competitions conducted by the Garden Department of Pune Municipal Corporation and as also won several prizes for different categories during the last nine to ten years. The affidavit also records an assurances that the area in which the herbal garden is situated will be used as a herbal garden even in future and sufficient amount will be spent to maintain and upgrade the same for the educational benefits of the students.

39] Accordingly, the first impugned order dated 27 April 1992, in so far as it concerns transfer / alienation of the separate property is not interfered with. However, the second impugned order dated 27 April 1992, by which 40,000 sq. ft. of property allotted to the petitioners has been ordered to be resumed and returned to the respondent nos. 6 to 9 i.e. the Kales is set aside. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)