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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6974 OF 2013

Jyotiba Phule Magaswargiya Niwara
Sahakari Sanstha Maryadit, Jaysingpur ..Petitioner.
V/s.
The State of Maharashtra & Ors. ..Respondents.

Mr.P.M. Arjunwadkar for petitioner.
Mrs.M.P.Thakur, AGP for respondent Nos.1 to 5.
Mr. Manoj A. Patil for respondent No.6.

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

DATED : 2ND FEBRUARY, 2015

P.C. :-

1. Heard the learned counsel appearing for the petitioner, the learned AGP for the respondent Nos.1 to 6 and Mr.Patil, learned counsel appearing for the respondent No.6. Considering the narrow controversy involved, the petition is taken up for final disposal. The petitioner claims to be the promoter of a Co-operative Housing Society. The petitioner made an application on 25th January, 2004 to the District Collector for allotment of a plot of land bearing Gat No.438 for construction of houses for the members of the Co-operative Society. The petitioner also made an application 6th November, 2011 to the State Government for allotment of the said land. By

a communication dated 23rd April, 2012 the Tahsildar, Shirol informed the petitioner that the application has been disposed of on the ground that the said land is reserved for school, college, playground, garden etc.. for the benefit of the Village Panchayat of Dharangutti, Taluka Shirol and has recorded that the said Village Panchayat land cannot be allotted. The communication refers to a letter dated 10th January, 2012 addressed to the Tahsildar by the District Collector. The learned AGP on instructions states that the said letter dated 10th January, 2012 does not authorize the Tahsildar to communicate the rejection of the application made by the petitioner.

2. The learned counsel appearing for the petitioner relied on Rule 27 of the Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971 (for short 'Land Disposal Rules') to urge that the application made by the petitioner was under Rule 27 for grant of a land for a housing scheme which should have been decided only by the State Government. He pointed out that the application made by the petitioner was referred to the Tahsildar who reported that the land was free from encumbrances and was vesting in the State Government. His submission is that only on the basis of the Resolution passed by the Village Panchayat, it cannot be said that the land is reserved as claimed by the Village Panchayat. The learned counsel for the

sixth respondent submitted that there are other lands available in the village and the petitioner has not stated why he needs the said land.

3. We have perused the application dated 6th November, 2007. The said application has been filed for invoking the powers of the State Government under the Land Disposal Rules. The said application could not have been disposed of either by the Collector or the Tahsildar. Therefore, the impugned communication dated 24th April, 2012 will have to be set aside.

4. In the impugned communication, a reliance has been placed on the so called reservation imposed by the Village Panchayat. It appears that the Village Panchayat has passed a Resolution recording that there is a proposal to construct high school / college on the said land and there was a proposal to construct hostel. The Village Panchayat has no authority to impose any such reservation under the provisions of the Maharashtra Regional and Town Planning Act, 1966 and the Maharashtra Village Panchayats Act, 1958.

5. Therefore, the application made by the petitioner will have to be considered afresh on its own merits without being influenced by the stand taken by the Village Panchayat that the

said land is reserved.

6. In the circumstances, we pass the following order:-

- (i) The impugned communication dated 23rd April, 2012 is quashed and set aside. We direct the State Government to take appropriate decision on the application made by the petitioner on 6th November, 2007 (Exhibit-A to the petition) as expeditiously as possible and within a period of three months from today;
- (ii) We make it clear that the State Government shall not be influenced by the reservation purportedly imposed by the Village Panchayat as the same has no legal basis;
- (iii) The order passed on the application shall be communicated to the petitioner;
- (iv) We make it clear that we have not made any adjudication on the merits of the application for allotment of the said land or any other land;
- (v) The petition is disposed of in the above terms;
- (vi) All contentions on merits are kept open.

(A.K.MENON, J.)

(A.S.OKA, J.)