

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION No.5383 OF 2013

(Prakash s/o. Sudama Gaikwad and Ors. vs. State and Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : B.P.DHARMADHIKARI &
A.P.BHANGALE, JJ.

DATE : 9th JANUARY, 2015.

Heard Mr.A.K.Choube, learned Counsel for the petitioner, Mr.T.R.Kankale, learned A.G.P. for respondent nos. 1 to 3 and 5 to 7 and Mrs.Choube, learned Counsel holding for Mrs.A.A.Joshi, learned Counsel for respondent no.4.

The grievance of the petitioners before this Court is that the land from Survey No.188 at Risod has been allotted to them and some other persons by regularising their encroachments way back in the year 1992. They are peacefully continued in possession thereof. They were shocked when effort was made to allot their land to respondent no.7 for construction of Sports Complex.

Our attention is also drawn to communication dt.27.8.2012 sent by the Town Planning Department at Washim to the Tahsildar, Rishod pointing out that, as per the D.P. Resevation no.85, land from Survey No.188 of Risod is reserved for development by appropriate Authority namely President, Mahatma Fule Yuvak Kalyan Shaikshanik wa Vyayum Mandal, Risod. As such, it cannot be given to or

recommended for development by respondent no.7.

Mr.Choube, learned Counsel for the petitioners submits that the lands were never measured and available land has not been determined. He contends that, thus, the petitioners are sought to be dispossessed forcibly and the provisions of law are being violated.

Mrs.Choube, learned Counsel appearing on behalf of respondent no.4/Chief Officer points out that Mrs.A.A.Joshi, learned Counsel appears for the said respondent. She sought adjournment. However, when adjournment was rejected, she invited our attention to the affidavit-in-reply filed by respondent no.4. Learned A.G.P. also relies upon the reply-affidavit.

None of the parties have placed on record the extent of area on which D.P. Reservation 85 is fastened while sanctioning revised Development Plan u/s. 31 of the Maharashtra Regional and Town Planning Act, 1966. As per the communication dt.27.8.2012 (mentioned supra), it appears that the Tahsildar had sought possession of 10 acres of land from Survey No.188 for its development as Sports Complex. A report submitted by Talathi on 22.3.2010 to Tahsildar, Risod shows that the land to the extent of 1 Hectare each from Survey No.188 is given on lease to seven persons. Name of petitioner no.1 appears therein.

Name of petitioner no.2 Vinod Prakash Gaikwad and petitioner no.3 Ganesh Sudama Gaikwad does not figure in that list. However, as per that communication, total area of land No.188 is shown to be 11.80 hectares and out of it, 6.80 hectares is shown as distributed to seven persons. One Zingru Dhumal has been given patta for about 0.80 hectares

of land while other six persons have been patta for one hectare each.

Reply filed by the State Government on record in paragraph no.7 shows that about four hectares of land is claimed out of Survey No.188 which is E Class land for development of Taluka Sports Complex. In paragraph 8, it is mentioned that, out of total area of 11.80 hectares, 6.80 hectares has been distributed to seven persons after regularising their encroachments and five hectares of land is still available. The Government has disclosed that the said land can be utilised for development of Sports Complex.

Reply filed by respondent no.4/Planning Authority does not disclose all these details. However, a part plan of D.P. Risod, District Washim showing site no.85 is annexed with that reply.

During arguments, Mr.A.K.Choube, learned Counsel for the petitioners has specifically stated that the petitioners are not in possession of excess area and continue in possession of one hectare each, which has been regularised in their favour.

We do not wish to go into this controversy.

The D.P. reservation will be for a particular area and the Sports Complex will be required to be developed on that area. The Government may, in exercise of its discretion, change the Authority which has to develop that Sports Complex. But then, that development and activity cannot jeopardise the rights and interest of the petitioners. Their possession cannot be disturbed except in accordance with law.

The respondents, therefore, have to first

undertake measurement, find out extent of the area available for development and thereafter, proceed further in accordance with law.

Hence, with a direction to the respondents to not to disturb the possession of the petitioners except in accordance with law and to proceed with development in accordance with the Maharashtra Regional and Town Planning Act, 1966 as also the provisions of the Maharashtra Land Revenue Code, we dispose of the present petition. No costs.

JUDGE

JUDGE