

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3130 OF 1994

1. Ayub Abdul Raheman,
2. Abdul Mannan S/o Abdul Raheman,
3. Attawar Raheman S/o Abdul Mannan,
4. Chand Pasha S/o Abdul Raheman,
All, aged about 38, 60, 35 and 33
respectively, Occu-Agriculturist,
R/o Pathrud, Tal.Mazalgaon,
Dist.Beed

PETITIONERS

VERSUS

1. The State of Maharashtra,
2. The Tahsildar,
Mazalgaon, Tal.Mazalgaon,
Dist.Beed,
3. The Sub Divisional Officer,
Ambajogai, Tal.Ambajogai,
Dist.Beed,
4. The Additional Collector,
Beed, Tal. and Dist. Beed,
5. The Additional Commissioner,
Aurangabad, Division-Aurangabad

RESPONDENTS

Mr.V.D.Salunke, Advocate for the petitioners.

Mr.A.P.Basarkar, AGP for respondent/State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 05/05/2016

ORAL JUDGMENT :

1. This petition was Admitted vide order dated 10/10/1994. The petitioners are aggrieved by the order dated 30/12/1992 passed by the S.D.O. Ambejogai, order dated 30/07/1993 passed by the Additional Collector, Beed and the order dated 02/08/1994 delivered by the Additional Commissioner, Aurangabad.

2. The petitioners had applied for NA permission on 06/11/1989 praying for permission to use an area admeasuring 3 acres and 12 gunthas out of land Survey No.350. The purpose narrated was for residential accommodation of the petitioners. By order dated 11/12/1990, the application filed by the petitioners was allowed subject to the 24 conditions that were imposed upon the petitioners. The said conditions are set out below paragraph No.2 of the order dated 11/12/1990.

3. Before the petitioners could proceed to implement the said conditions and occupy the land for residential purpose, the Deputy Collector, Ambajogai, suo-motu issued notice and subsequently passed the impugned order dated 30/12/1992 by which the permission granted to the petitioners on 11/12/1990 was set aside only for the reason that a fresh proposal for extension of Gavthan including Survey No.350 was submitted by the Tahsildar, Majalgaon. For the same reason, the

impugned orders dated 30/07/1993 and 02/08/1994 have been passed.

4. Mr.Salunke strenuously submits that ever since the cancellation of the permission on 30/12/1992, even after a passage of almost 24 years, till today, there has been no development on S.No.350, much less any extension of the *Gavthan*. He submits that the said land is as it is and neither could the petitioners utilize it, nor could the respondent/State earn any revenue out of the permission granted to him on 11/12/1990.

5. Learned AGP appearing on behalf of the State submits on instructions that as on date, there has been no development. He also submits that the reason for setting aside the permission was purely because a fresh proposal for extension of *Gavthan* was submitted by the Tahsildar, Mazalgaon.

6. He, however, submits that the passage of 24 years may be considered and the petitioners be directed to submit a fresh proposal for seeking NA permission as the present situation as well as the policy of the State would be relevant and germane to the issue of grant of permission.

7. I have considered the submissions of the learned Advocates. There is no dispute as regards the grant of permission and the reason for cancellation. However, it cannot be ignored that in the last 24 years, though the said *Gauthan* at village Pathrud, Tal.Majalgaon, Dist.Beed may not have undergone any change, yet the present policy of the Government needs to be considered without putting the petitioners to any further costs or expenditure. As such, considering the fact that the reason cited for cancelling the permission was never brought into effect, the impugned orders deserve to be quashed. At the same time, this Court cannot ignore the submissions of the learned AGP that the present policy of the Government will have to be scrutinized if the said permission is to be restored.

8. In the light of the above, this petition is partly allowed. the impugned orders are quashed and set aside. The matter is remitted to the Tahsildar, Majalgaon in the light of the application filed by the petitioners, only for reconsideration as to whether the NA permission granted on 11/12/1990 can be continued on the same terms and conditions set out in the order or as to whether the policy has undergone any change and as to whether further conditions are required to be imposed on the petitioners.

9. As such, the Tahsildar, Majalgaon shall issue a notice of hearing to the petitioners and without imposing any further costs or expenditure or fees on the petitioners, shall consider whether the said NA permission can be restored or not. The Tahsildar shall issue a notice of hearing as directed above, within 4 (four) weeks from today and shall decide the issue within 8 (eight) weeks from the appearance of the petitioners.

10. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)