

WRIT PETITION NO. 1137 OF 2015

versus

The State of Maharashtra and another ...RESPONDENTS

Mr. S.S. Rathi, Advocate for petitioner
Mrs. A.V. Gondhalekar, AGP for respondents

**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.
DATED : 18th JULY, 2016.**

Order :-

1. Mr. Rathi, learned counsel for petitioner submits that petitioner trust was allotted 7 hectare, 64 Aar land from survey Nos. 615, 616 and 617 situated at Parbhani. Panchanma to that effect was made and petitioner - trust was placed in possession of said land. Same was allotted on lease for a period of 30 years. According to learned counsel for petitioner, respondent No. 2 had issued show cause notice as to why allotment made in favour of the petitioner - trust in the year 1994 should not be cancelled. The petitioner replied said notice. Without taking any decision on said show cause notice, respondent in press conference stated that respondents would take possession of the land of the petitioner.

2. According to learned counsel for the petitioner, the petitioner is not encroacher. The petitioner is in possession of the property as was delivered to it at the time of allotment of said land on lease.

4. Learned Assistant Government Pleader states that it has been observed that apart from land Gut Nos. 615, 616 and 617, petitioner is also in possession of land Survey nos. 618 and 620 situated at Parbhani, admeasuring 1.62 hectare and 2.17 hectare respectively. The area from land Survey Nos. 618 and 620 was not allotted to the petitioner. At the time of delivering possession wrongly area from land Survey Nos. 618 and 620 was also given in possession of the petitioner. The petitioner ought to have returned the possession of said land, however, the petitioner sat over the same and violated the terms and conditions, the action is rightly taken against the petitioner.

5. We have considered the submissions canvassed by the learned counsel appearing for parties. It appears to be a case of mutual mistake of fact. Naturally, the petitioner would possess area of which possession was delivered to him at the time of allotment of land. Respondents have resorted to ultimate step of cancelling allotment itself. It is not a case of encroachment being made out in the letter dated 22-01-2015 (Exhibit R-1). It appears from said letter that it is respondents' case that they have wrongly given possession of additional area from land Survey Nos. 618 and 620 at Parbhani to the petitioner.

6. The parties ought to have resolved the dispute by conducting joint measurement, more particularly, when it is not a case of encroachment but wrong delivery of possession of an area from land Survey Nos. 618 and 620. In the result, we pass the following order.

Parties shall conduct joint measurement of land Survey Nos. 615, 616 and 617 to the extent of 7 hectare, 64 *Aar* situated at Parbhani and if any land is found in possession of the petitioner in excess from land survey Nos. 618 and 620 situated at Parbhani, as per the joint measurement then petitioner shall hand over the possession of the additional area from land Survey Nos. 618 and 620 to the respondents - authorities.

The petitioner shall bear the charges of joint measurement.

Joint measurement shall be conducted, as expeditiously as possible preferably, within a period of four (04) months from today.

Upon joint measurement further course of action be taken by the parties.

Till the measurement is conducted, respondents-authorities shall not take coercive action against the petitioner.

7. With aforesaid directions, writ petition stands disposed of. No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]