

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3128 OF 2015

Subhash Ramchandra Nirval
and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 9384 OF 2015**

Digambar Sampat Nirval .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Mrs. A. D. Rakh, Advocate for Petitioners in both matters.
Mr. M. B. Bharaswadkar, A.G.P. for Respondent Nos. 1 and 2 in
both matters.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

DATE : 28TH SEPTEMBER, 2016.

PER COURT :

. Mrs. Rakh, the learned counsel for petitioners submits that, houses of petitioners are acquired in the year 2006. According to the learned counsel the petitioners are entitled for the allotment of plots as per the scheme and as per the provisions

of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (for short “Act of 1999”). The learned counsel submits that, some of the persons whose plots/houses were acquired, were allotted the alternate plots, however, the petitioners are not allotted the same. The petitioners had earlier filed Writ Petition No. 7465 of 2013 and Writ Petition No. 7492 of 2013. This Court under order dated 30.06.2014 directed the authority to consider the claims of the petitioners for allotment of plots in the new gaothan favourably and take appropriate measures. According to the learned counsel, this Court while disposing of earlier writ petitions has observed that, the separate houses of the petitioners are acquired, still the authority while rejecting the claims of the petitioners has not considered the same. According to the learned counsel, it is erroneous on the part of the authorities to say that, the karta of the family has been allotted the alternate site, when independent residential houses are acquired. They are entitled for separate allotment of the plots.

2. The learned Assistant Government Pleader submits that, the Government Resolution dated 12th July, 1978 specifically lays down that for a family of five members, the area to be allotted is 2000 square feet to 4000 square feet. Considering the said Government Resolution, the distribution of the alternate land has been done in the year 1998, though the award has been passed in the year 2006. As the possession of the houses was

taken earlier, the allotment was made in the year 1998 and subsequently acquisition proceedings were completed. According to the learned A. G. P. the petitioners could not establish that the residence of the petitioners was separate or they constitute a separate unit.

3. The learned counsel for petitioners submits that, the possession of the houses of the petitioners was taken in the year 2012.

4. We have considered the submissions. Perusing the E-Statement accompanying the award, it is clear that, the independent sites/plots were appearing in the name of petitioners. The authority is required to consider the date of possession taken from the petitioners, so also has to satisfy as to whether petitioners constitute an independent unit or were part of the family unit of the alleged karta. Prima facie when the compensation amount is paid independently and separately in respect of the property standing in their individual names, the authority is required to consider the efficacy of the same. There has to be some strong reason for the authority to conclude that, the petitioners were not forming independent unit.

5. Considering the above, the impugned orders are quashed and set aside. The petitioners are relegated before the authority.

The petitioners may represent before the respondent No. 1 i. e. Collector, Jalna. The petitioners shall appear before the Collector, Jalna on 17th October, 2016. The petitioners are entitled to put forth their stand and whatever documents they would wish to rely. The Collector shall also consider the award with the E-Statement and the documents that would be filed by the petitioners and so also relevant Government Resolutions existing and the provisions of the Act of 1999 and pass orders afresh about the entitlement of the petitioners for alternate/separate plots. The decision shall be taken by the authority/Collector, Jalna expeditiously and preferably within a period of six (06) months from the date of appearance of the petitioners before it. The writ petitions are disposed of. No costs.

6. The parties to act on authenticate copies.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]