

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.389/2009
WITH
CIVIL APPLICATION No.1746/2015

Iliyas Mamu S/o Mohd.Yusuf Lakhara,
Age: 40 years, Occu: Journalist,
R/o Baidpura, Sadar Bazar, Jalna.

..Petitioner..

VERSUS

1] The Union of India,
Through its Secretary,
Forest Department, New Delhi.

2] The State of Maharashtra,
Through the Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.

3] The Deputy Conservator of Forests,
Aurangabad Forest Division,
Aurangabad.

4] The District Collector, Jalna,
District Jalna.

5] The Sub-Divisional Officer (Revenue),
Jalna, District Jalna.

6] The Tahsildar, Jalna,
District Jalna.

7] The District Forest Officer, Jalna,
District Jalna.

- 2 -

8] Shaikh Kasam S/o Sk.Hasan,
Age:75 years,Occu.Agriculture,
R/o Burhannagar,Ramnagar,Jalna,
District Jalna.

9] Shaikh Ramzan S/o Shaikh Hasan,
Age:72 years, Occu: Agriculture,
R/o As above.

10] Shaikh Mohd.S/o Shaikh Hasan,
Age:70 years, Occu: Agriculture,
R/o As above.

11] Aslam S/o Shaikh Ramzan,
Age:38 years,Occu: Agriculture,
R/o As above.

12] Abdul Rashid S/o Shaikh Mohd.
Age:35 years, Occu: Agriculture,
R/o As above.

13] Jalan S/o Mohd.Imam,
Age: 48 years, Occu: Agriculture,
R/o As above.

14] Ibrahim S/o Mohd.Imam,
Age:42 years,Occ: Agriculture,
R/o As above.

15] Kadir S/o Shaikh Ramzan,
Age:36 years,Occ: Agriculture,
R/o As above.

16] Akbar S/o Shaikh Mohd.,
Age:32 years,Occ: Agriculture,
R/o As above.

17] Hadi S/o Shaikh Ramzan,
Age:35 years,Occ: Agriculture,
R/o As above.

18] Vinaykumar S/o Rikhabchand Kothari,
Age: 55 years, Occu: Business,
R/o Near Shivaji Statue,
Opp.Rest House, Jalna.

- 3 -

19] Ayyub Khan S/o Jaan Mohammed Khan
alias Johari Khan,
Age:60 years,Occu.:Business,
R/o Moti Bazar, Mangal Bazar,
District Jalna.

20] Uaman Khan S/o Rasood Khan,
Age:45 Years,Occ:Business,
R/o: as Above.

21] Madhukar S/o Kanu Rahtod
Age:45 years,Occ:Medical Practitioner,
R/o Vyankatesh Nagar,Jalna,

22] Premkishore S/o Ramalal Gondodoya
Age:66 years,Occ:nil
R/o Kadrabad,
Jalna,District: Jalna.

23] The Municipal Council,
Jalna, Through its Chief Officer,
Jalna. Dist.Jalna.

24] Mr.Rajesh S/o Ramkishan Mundada,
Age:44 years,Occu: Business,
R/o SRPF Road, Jalna.
District Jalna.

..Respondents..

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S/Shri P.R.Patil & Shri S.B.Bhapkar, Advocates for
Petitioner.

Shri S.B.Deshpande, Assistant Solicitor General for
Respondent No.1.

Shri S.B.Yawalkar, AGP for Respondent Nos.2 to 7.

Shri S.S.Kazi, Advocate for Respondent Nos.8,10,13,14,15
& 17.

Shri A.S.Bajaj, Advocate for Respondent No.9.

Shri U.R.Awate, Advocate for Applicant in C.A.1746/15.

Shri S.V.Kshirsagar, Advocate with Shri A.S.Deshpande,
Advocate for Intervenor.

Shri P.N.Kalani, Advocate for Intervenor.

- 4 -

**PUBLIC INTEREST LITIGATION NO.71/2011
WITH
CIVIL APPLICATIONS NOS.337/2012,1345/2012 & 11691/2014**

Vijay S/o Namdeo Lahane,
Age 25 years, Occu.Reporter of
'Janta Kare Pukar',Jalna,
R/o Nutan Wasahat, Jalna,
Tq. & District Jalna.
..Petitioner..

VERSUS

1] The Union of India,
Through its Secretary,
Forest Department,
New Delhi.

2] The State of Maharashtra,
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.

3] Chief Conservator of Forest,
Aurangabad Forest Division,
Aurangabad.

4] The District Collector,
Jalna, District Jalna.

5] Sub-Divisional Officer,
Revenue, Jalna,
District Jalna.

6] The Tahsildar, Jalna,
District Jalna.

7] The District Forest Officer,
Jalna, District Jalna.

- 5 -

8] Shaikh Jalal Mohd. Imam,
Age: 55 years, Occu.: Agriculture,
R/o Burhannagar, Ramnagar,
Jalna, Tq.& Dist. Jalna.

9] Jalna Municipal Council,
Jalna. Through its Chief Officer,
Jalna. Dist.Jalna.

...Respondents..

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Shri P.V.Barde, Advocate appointed as Amicus Curiae.
Shri S.B.Deshpande, Assistant Solicitor General for
Respondent No.1.
Shri S.B.Yawalkar, AGP for Respondent Nos.2 to 7.
Shri U.R.Awate, Advocate for Respondent No.8.
None present for Respondent No.9.
Shri A.S.Bajaj, Advocate for Applicant in CA No.337/2012.
Shri S.V.Kshirsagar, Advocate with Shri Ajay S. Deshpande
Advocate for Applicant in CA Nos.1345/2012 & 11691/2014.

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

DATE: 25.11.2016

ORAL JUDGMENT (Per S.V. Gangapurwala, J.) :

1] The Public Interest Litigation is filed claiming relief to the extent that the respondent - authorities should take over possession of the land bearing Survey No.276 situated at Jalna Tq. & Dist.Jalna on the ground that the same is protected forest land. Further directions are sought against the authorities to correct

- 6 -

the revenue record of Survey No.276 in the name of the State Government.

2] The notices were issued by this Court and on 7.12.2011, ad-interim order was passed directing no further allotment / transfer by any mode be made by the respondent - authorities of the writ land. Thereafter, on 11.1.2012, the petitioner filed an affidavit expressing his desire to withdraw the PIL. This Court negatived the request of the petitioner and directed the petitioner to deposit Rs.1,00,000/- within a period of one week and if the petitioner fails to deposit the amount, the Court would consider taking *sue motu* action against the petitioner. The amount of Rs.1,00,000/- was thereafter deposited by the petitioner. On 18.1.2012, the Court declined to allow the *Purshis* filed by the petitioner for withdrawal of the petition and this Court appointed Shri P.V. Barde, learned Advocate to act as *amicus curiae* to assist the Court. From time to time, orders were passed by this Court. The affidavits are filed by the officers from the Forest Department so also from the Revenue Department. During the pendency of the PIL, even the measurement was directed to be done. We

- 7 -

had asked the District Superintendent of Land Records to file an affidavit to explain the details of the measurement carried out. During the pendency of the present Public Interest Litigation, intervention applications are filed by the interested persons. On 10.10.2016, we had directed the learned AGP to file a detailed affidavit clarifying about the allocation of alternative land so also clarifying the contents of the affidavit dated 30.6.2016. Thereafter, a detailed affidavit has been filed.

3] Writ Petition No.389/2009 is also in respect of the same subject matter wherein the petitioner claims similar relief i.e. to cancel the allotment of the Government land to the extent of 34 Hectares 90 Aares from Gut No.276 in favour of respondent nos.8 to 17 therein and restore the land to the Government. Mr.Bhapkar, learned counsel for the petitioner in the said writ petition has adopted the arguments of Mr.Barde, learned *amicus curiae*.

4] Mr.Barde, learned counsel, has taken us through various Government resolutions, provisions of the

- 8 -

Hyderabad Forest Act and the orders passed by the Revenue Department from time to time. Mr.Barde, learned counsel eruditely canvassed that the land bearing Survey No.276 at Jalna was notified as a forest land under notification dated 16 Farwardi 1354 Fasli to the extent of 34 H 90 R. Land Survey No.276 totally admeasures 96 H 23 R. The same is subsequently bifurcated into Survey No.276/1 to the extent of 23 H 13 R and Survey No.276/2 admeasuring 2 Acres 10 Gunthas. Mr.Barde, learned counsel submits that the notification was issued u/s 7 of the Hyderabad Forest Act, 1326 Fasli notifying the land under the said notification and within the boundaries delineated therein as proposed reserved forest. The same was to the extent of 34 H 90 R in Survey N.276 at Jalna. According to the learned counsel, once the land is declared as a proposed reserved forest, the same continues to be a reserved forest until and unless a notification is issued for de-forestation of the said land.

5] In the present case, no notification is published by the Central Government thereby releasing the said land from being a proposed reserved forest.

- 9 -

According to the learned counsel, if any person has got a claim or interest in the land, which is proposed reserved forest, then that person has to lodge a claim before the Settlement Officer. No such claims are lodged before the Settlement Officer. According to the learned counsel, once a land is declared as a proposed reserved forest, no activity of whatsoever nature is permissible in the said land. The Revenue Department in the year 1980 granted allotment letters in favour of individuals, which is beyond the authority of the officers of the Revenue Department. The authorities under the Revenue Department could not have exercised their powers over the land, which is a proposed reserved forest. The said allotment itself is not in tune with the provisions of the Forest Act.

6] Mr.Barde, the learned counsel further submits that the Indian Forest Act came into force from 24.10.1980 and the said Act has got retrospective operation. The learned counsel relies on the judgment of the Apex Court in a case of *Nature Lovers Movement v. State of Kerala* reported in **AIR 2009 Supreme Court (Supp) 1573**. According to the learned counsel, the officer of

- 10 -

the Forest Department has filed an affidavit before this Court clearly asserting that the land in question is declared as a proposed reserved forest and no subsequent notification has been issued for deforestation of the said land. According to the learned counsel, in the year 2006, it was stated that the meeting has been held to award alternative land for the Forest Department. No steps are taken even pursuant thereto. The forest land is to be protected to maintain the ecology and environment.

7] Mr.Yawalkar, learned Additional Government Pleader submits that the land was transferred to the Revenue Department under resolution of the year 1969. The said land was in occupation of private individuals and after following the procedure, the Sanad was also issued to those in possession and in whose favour allotments were made. The learned AGP further submits that the meeting was held with the authorities of the Forest Department, Revenue Department and it is proposed to handover alternative site to the Forest Department.

8] We have also heard learned counsel for the

- 11 -

intervenors in the PIL and the writ petition.

9] It is submitted by the learned counsel for the intervenors and the respondents that under the resolution dated 22.3.1969, the land was released in favour of respective Ek Sala lease-holders. Thereafter, under order dated 16.4.1980 of the Sub-Divisional Officer, Jalna, exercising powers u/s 51 of the Maharashtra Land Revenue Code and referring to the Government resolutions dated 16.2.1973, 27.12.1978 and 22.3.1969, granted the land of about 33 H 20 R to the persons, who were shown as encroachers therein and regularized the possession. According to them, thereafter even allotment letters are issued and certificates are granted.

10] Mr.P.R.Patil, learned counsel relies on the judgment of the Division Bench of this Court delivered in Writ Petition No.503/1984 dated February 13, 1987, to submit that the Division Bench had held that in 1969 itself, the Government had deforested the land when the Government resolution dated 22.3.1969 was published and the Court proceeded on the basis that the lands were in fact deforested in the year 1969 itself. The learned

- 12 -

counsel further submits that the Jalna Municipal Council published a development plan and this writ land is shown in the residential zone. The said development plan is sanctioned on 4.4.1989. Thereafter, construction permissions are granted and the houses are erected. More than 600 persons have erected the houses and residing therein. Mr.P.R.Patil, the learned counsel also relies on the judgment of the Apex Court in the case of *Tata Housing Development Co.Ltd. & another v. Goa Foundation & other* reported in (2003) 11 SCC 714 and the judgment of the Apex Court in the case of *Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra* reported in (2014) 3 SCC 430, to submit that unless further steps are taken of issuing notification of land being a reserved forest, the land cannot be said to be a forest land.

11] Considering the documents placed on record and the submissions canvassed by the learned counsel for the respective parties, it is manifest that the land admeasuring 34 H 90 R in Survey No.276 was declared as a proposed forest land under the notification dated 16 Farwardi 1354 Fasli i.e. equivalent to the year 1944. At the relevant time, the provisions of the Hyderabad Forest

- 13 -

Act, 1326 Fasli were applicable to the region (hereinafter referred to as the Act of 1326 Fasli).

12] The said notification appears to have been published resorting to Section 7 of the Act, 1326 Fasli. The procedure is laid down for further notifications. Section 10 of the said Act states that when a notification has been issued u/s 7, the Forest Settlement Officer shall publish in Urdu and in the local vernacular in the Jarida (official gazette) and at the headquarters of the Taluka in which any portion of the land included in the notification, is situated and in every village and town situated within or adjoining the land. The details to be given in the proclamation are also specified. After the issuance of the proclamation, enquiry is required to be conducted by the Forest Settlement Officer and the procedure is laid down for the enquiry, thereafter final notification is required to be issued u/s 18 of the Act, 1326 Fasli to be published in Jarida (official gazette) specifying the limits of the forest land, which is intended to be reserved and declaring the same to be reserved from a date to be fixed by such notification.

13] From the record made available to us, it transpires that except issuance of notification u/s 7, declaring that it is proposed to constitute such land to be reserved forest, no further steps at any point of time have been resorted to. No proclamation is published u/s 10 nor any final notification u/s 18 is published. The only notification on record is u/s 7 declaring that it is proposed to constitute the land notified therein as a reserved forest.

14] It is also not disputed that the said land was occupied by various persons. In the year 1969, more particularly 22.3.1969, the Government of Maharashtra issued a resolution thereby resolving to release permanently for cultivation of forest lands to the Ek-Sala lease-holders. Some of the relevant clauses of the said resolution are produced hereunder:-

- "i] All forest lands given on eksali basis should now be released permanently for cultivation to the respective eksali lease holders;
- ii] Such of these lands as are on the border of forest should be deforested and transferred to revenue Department for release to respective eksali lease-holders;

- 15 -

iii] Such of these lands as are in the midst of the forest should also be deforested and released to the respective lease holders. However the control over the lands should remain with the Forests department. For this purpose the forest officers should be empowered to exercise the power of revenue officers on the lines of the orders issued in respect of forest villages and settlements vide Government Resolution no.FLD-426/1/Y, dated 22nd May 1967."

The said Government resolution was subject matter of consideration before the Division Bench of this Court in Writ Petition No.503/1984 decided on February 13, 1987. It was observed by the Court as under:-

"We also find that Government of India has not taken any steps in the matter for last over seven years when the Government resolution was published by the State Government in the year 1969 for assisting the landless labourers."

15] Consistently, the Government has issued resolutions regularizing the encroachments. On 14.8.1972, Government resolution is issued declaring that the encroached forest lands to be transferred to the Revenue Department. Thereafter, again the Government resolution is issued on 27.12.1978 thereby regularizing

- 16 -

subsequent encroachments on the forest lands subject to certain conditions. Thereafter, on 27.12.1979, the Government further issued resolution for regularization of forest land in favour of the encroachers as on 31.3.1978.

16] On 16.4.1980, the Sub-Divisional Officer has allotted the writ land to the persons prior to coming into force the Indian Forest Act, 1980. The Indian Forest Conservation Act, 1980, came into operation on 25.10.1980 and prior to that, the said land was already allotted as the persons to whom it is allotted were found in possession of the said property. Thereafter, further events have taken place such as issuing allotment orders in favour of the persons in occupation of the said lands. On 31.7.1980, Sanad was issued in favour of the allottees. Thereafter, permission to sell was granted and the said orders were also subject matter of challenge. On 20.8.1981 purchase orders were issued. The permission to sell that was given was subject matter of challenge before the higher authorities and before the State Government. The said permission was upheld upto the State and the same became final.

17] Writ lands thereafter were included in the development plan. The development plan for the Jalna city was sanctioned on 4.4.1989. In the said development plan, these lands are shown for residential purpose. It is not disputed that on these lands, the construction permissions are granted and the buildings are erected long back. No trace of forest exists on these lands. In fact, since beginning, these lands were never used as forest lands. The writ land was cultivated even prior to 1969 as would be clear from the orders. Now the property has been shown as reserved for residential purpose, necessary construction permissions are given and the buildings are constructed for more than 30 years. The persons are in occupation of the same and in absence of any further notifications being issued under the Act of 1326 Fasli and/or the Indian Forest Conservation Act and in the wake of the fact that the said land was deforested and handed over to Revenue Department, it would not be possible to hold as on date that the forest land exists. More over, even the State Government has acted over its decision of handing over the said land to the Revenue Department. It would be clear that from Gut No.276/1,

- 18 -

land admeasuring 58 H 66 R is given to the Police Training Institute and now the same is being used for the activities of Police Training Institute.

18] Considering the aforesaid conspectus of the matter, the reliefs claimed about cancellation of allotment cannot be considered.

19] Though we have not granted any relief in the petition for the reasons discussed supra, however, we express our displeasure for the manner in which the State and its authorities have dealt with the land which was proposed for forest. Instead of proceeding further with issuance of further proclamation and notification, as prescribed under the Act of 1326 Fasli, the State released the land and handed it over to Revenue Department. Efforts ought to have been made to preserve the land and make it a forest. Now as far as writ land is concerned, position has become irreversible.

20] Be that as it may. It is also important to maintain a balance between sustainable development on one hand and ecology and protection of environment on

- 19 -

another. The affidavit has been filed wherein it is clearly stated that the State has agreed to allot alternative land as a forest land. The forest land and the land, which is proposed to be allotted as a forest land, encroachment exists. Initially, the same was decided in the year 2006 and again in 2016, the meeting is held on that count. The State certainly owes responsibility to give some alternative land to be maintained as a forest land, we hope and trust that the State would make positive endeavour to transfer some alternative land to be maintained as a forest land and this would be done on priority basis.

21] We appreciate the efforts of Mr.P.V. Barde, the learned *amicus curiae* in assisting the Court.

22] The Public Interest Litigation and the writ petition accordingly stand disposed of. No further costs.

23] Out of costs of Rs.1,00,000/- deposited by the petitioner in this Court, 50% of the costs be transferred to Legal Aid Sub-Committee at Aurangabad Bench and 50% of

- 20 -

the costs be transferred to Aurangabad High Court Bar Association.

24] All civil applications also stand disposed of.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)