

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

911 WRIT PETITION NO. 9983 OF 2016

MUKARAM KHAN MOHD USMAN KHAN

VERSUS

THE UNION OF INDIA AND OTHERS

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Advocate for Petitioner : Ms. P. S. Talekar i/by
Talekar And Associates

Advocate for Respondents 1 to 3: Mr. Sanjeev B.
Deshpande

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

DATE : 29th September, 2016

ORDER:

1. Ms. P. S. Talekar, the learned counsel appearing for the petitioner strenuously contends that the writ property was purchased by the great grandfather of the petitioner. A letter by the Tahsildar, Khultabad to that effect was issued in the year 1310 Fasli i.e. equivalent to the year 1900. The learned counsel further submits that there are many communications placed on record which would show that the great grandfather of the petitioner was the owner and possessor of the writ land. According to the learned counsel, even on 5th September, 1912, the respondents, through its Major- Coopar, had acknowledged that the possession of the writ property i.e. Survey Nos. 14, 15, 16 and 19 has been given to the petitioner's

predecessor. The said document is also placed on record. The learned counsel submits that under coercion, one admission certificate was got executed by the respondents on 8th January, 1975. The predecessor of the petitioner had no option but to give the same as the name was to be recorded in the G.L.R. According to the learned counsel, there is no dispute about the factum of possession of the petitioner through the times of his ancestor.

2. The learned counsel further submits that one Mr. Ingale has filed a Civil Suit against the Defence. The same is in respect of G.L.R. No. 2014, Survey No.16. The possession which the respondent has unauthorizedly and forcibly taken is of Survey No.19 GLR No. 209. The said GLR 209 Survey No. 19 is not disputed property in any court of law. The learned counsel submits that as the respondent State has taken illegal action and unauthorizedly taken possession, this Court can invoke its jurisdiction under Article 226 of the Constitution of India. The learned counsel submits that right to property is a constitutional right under Article 300-A of the Constitution of India and as the action is arbitrary, the same is violative of Article 14 of the Constitution.

3. Mr. Deshpande, the learned ASG submits that predecessor of the petitioner himself has admitted that the Defence is the owner of the property in the admission deed. The learned counsel submits that the property is situated in the Cantonment area and the respondent is owner of the same and no unauthorized action has been taken by the respondent.

4. We have considered the submissions.

5. The petitioner seeks possession of the land on the ground that the petitioner is the owner of the property and the respondent has no authority over the said land.

6. The matter involves the disputed question of facts with regard to the ownership so also the possession. In one admission deed, predecessor of the petitioner had admitted the ownership of the respondents. Be that as it may, it would not be possible for us in the writ jurisdiction under Article 226 of the Constitution of India to decide the said aspect. As the disputed question of facts with regard to the ownership and possession of the petitioner and his ancestor is involved, the same cannot be resolved in writ jurisdiction and without adducing evidence.

The writ petition, on the said count, cannot be entertained. The writ petition, as such, stands disposed of.

7. The petitioner is at liberty to file appropriate proceedings before the Civil Court/competent court for redressal of his grievance. In that case, all contentions of the respective parties are kept open.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC