

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1903 OF 2009

Narayan Vitthalrao Dhabadge,
Age 37 years, Occupation labour,
R/o Bhudhanagar, Manwath,
Dist. Parbhani.

.. Petitioner

VS.

- 1) The State of Maharashtra,
Through the Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai – 32.
- 2) The Divisional Commissioner,
Aurangabad.
- 3) The Collector, Parbhani.
- 4) The Tahsildar, Manwath,
Dist. Parbhani.
- 5) Amrut Ambadas Bhadarge,
Age 70 years, Occupation Agri.,
R/o Bhudhanagar, Manwath,
Tq. Manwath Dist. Parbhani.
- 6) Janardhan Haribhau Kirtane,
Age 45 years, Occupation labour,
R/o Manwath Tq. Manwath,
Dist. Parbhani.

.. Respondents

Mr. V. D. Salunke, Advocate holding for Mr. N. S. Kadam,
Advocate for the petitioner.

Mr. A. R. Kale, Asstt. Government Pleader for respondents No.1 to 4/ State.

Mr. S. S. Choudhari, Advocate holding for Mr. K. S. Chavan Advocate for respondent No.5.

**CORAM : R. M. BORDE &
SMT. VIBHA KANKANWADI. JJ.**

DATE : 07-12-2017

ORAL JUDGMENT (Per Smt. Vibha Kankanwadi. J.)

1. Heard all the concerned learned counsels.
2. The petitioner has invoked the writ jurisdiction of this Court under Article 226 and 227 of Constitution of India in order to challenge the order dated 20-06-2008 passed by respondent No.2 permitting the respondent No.5 to convert his land into non-agriculture and to sale the land to respondent No.6. Further by way of amendment, the petitioner has challenged the Government Resolution dated 08-09-1983 and seeks to quash it on the ground that it is unconstitutional and ultra virus.
3. It will not be out of place to mention here that, by way of order dated 20-09-2013 by this Court, perusing the orders dated 13-07-2009 and 16-09-2009, the grievance in the writ petition was accepted as public interest litigation. Further by order of this Court on

04-10-2013 it was observed thus,

“We find that larger question involved is whether the land allowed to be occupied by encroacher and regularized by way of a concession, can be permitted to be sold for non agricultural purposes.”

Thereafter, the petition was registered as public interest litigation.

4. The factual matrix leading to the petition are that, in the year 1993 the revenue authorities had allotted 2 Hectar of land from Survey No. 264 /9 situated at Manwath Dist. Parbhani, in the name of one Walabai who was the mother of respondent No.5. In fact the said land Gut No.264 admeasuring 26 Hectare was allotted by the Government to 33 different persons and accordingly the names of these allottees came to be mutated in the revenue records. Respondent No.5 and his sons were holding different pieces of land situated at village Khadakwadi Tq. Manwath Dist. Parbhani. Thereafter, respondent No.5 got his name mutated to the said land which was given to his mother. He has also received compensation from the Government during the heavy rainfall occurred in the year 2005-2006. He thereafter sent a proposal to Tahsildar through Circle Inspector which was further forwarded by Collector, Parbhani to Divisional Commissioner, Aurangabad, to convert the land into non

agriculture and sell it. Each authority has given its remark on the proposal at the appropriate stage. Respondent No.2, the Divisional Commissioner, Aurangabad gave permission to sell the land admeasuring 2 Hectare from Gut No.264/9 at the rate assessed for the year 2007-2008 and 70 % of that amount was directed to be deposited to the Government. However, according to the petitioner this order is illegal and it ought to have been considered that respondent No.5 has taken disadvantage of the provisions of law. He was the beneficiary of welfare scheme under which the land was allotted to his mother. He had cultivated it for years together but when he saw that Manwath has developed into a town and was about to be a Taluka place, there was need of residential places, he decided to get the land converted into non-agriculture. The order passed by the respondent no.2 is based upon false information. There was absolutely no enquiry about the financial ability of respondent No.6 who was to purchase the land from respondent No.5. When in the affidavit in reply it was pointed out that the action has been taken by the respondent No.2 in view of Government Resolution dated 08-09-1983, by way of amendment, the said Government Resolution has been challenged being ultra virus and unconstitutional. It has been submitted that, such resolution by the Government is against the duties of a democratic Government. A

democratic Government cannot lay down arbitrary and capricious standards from the choice of persons to whom alone it will deal. It was also pointed out by the petitioner that, respondent No.5 is the habitual offender and known criminal. He was the President of Municipal Council, Manwath in the year 1998-1999. Many criminal cases have been filed against him as well as his family members in Manwath Police Station. Therefore, the order obtained by him is with the influence, and therefore, it was prayed that the said order dated 20-06-2008 passed by respondent No.2 should be quashed and set aside. The Government Resolution dated 08-09-1983 should be declared as unconstitutional and ultra virus. Directions have also been sought against respondent No.1 State that, it should initiate enquiry against the officers involved in the submissions of proposal of the respondent No.5 till the order was passed on 20-06-2008.

5. Respondent No.5 has filed his affidavit-in-reply and thereby denied all the allegations against him. He has stated that, one Rangnath Siras and his family members are behind the petitioner. He has given the details of the rivalry between him and Siras family. He has also submitted that, he has been acquitted from all the cases except in Crime No.13 of 2005. His name was in the list of persons

who are below poverty line. Further taking into consideration his income and caste, he made application for issuance of certificate to the Municipal Council, Manwath, accordingly certificate has been issued on 15-03-2008. Survey No.264 was Gairan land. His mother being a landless lady, was cultivating portion of the land to earn her livelihood. Taking into consideration her possession and cultivation over the land, the Government allotted 5 Acres of land to her in accordance with the provisions of Section 50 of the Maharashtra Land Revenue Code, 1966. After her name came to be entered in the revenue record by way of mutation entry No.1753, she became the owner. She gave the land to him in partition. Thereafter, his name came to be mutated vide mutation entry No.2499 on 03-11-1993. He was cultivating the said land as owner since then. Thereafter, there was heavy rainfall in the territory of Manwath. The crops taken by him in the land were completely destroyed, and therefore, Government had given him financial assistance in the year 2005-2006. Thereafter, there was shortage of rainfall in the area and it become difficult for him to cultivate the land. Around the said land several buildings came up. Only the land in his possession was used for agriculture purpose, thereby he was put to loss. He therefore, approached Collector for the permission to alienate the said land in favour of respondent No.6.

After the authorities had given their reports, his application has been allowed by the Divisional Commissioner in whose jurisdiction the subject fell. There is absolutely no illegality in the order. The petition is stated to have been filed because of rivalry, and therefore, he prayed for rejection of the application.

6. Affidavit-in-reply has been filed on behalf of respondents No.2 and 3 separately, however the contentions are almost same. They are admitting the fact that, initially the land was allotted to mother of respondent No.5, and thereafter, name of respondent No.5 came to be mutated. Respondent No.5 made an application for converting the land into non agriculture, and thereafter, selling it to respondent No.6. The allotment of the land to the mother of the respondent No.5 was by virtue of order No.1983 LND – encroachment / CR, dated - 3/1983. The permission to sell the land has been granted by virtue of the Government Resolution dated 08-09-1983 and as per the Rule 31 (c) of the Maharashtra Land Revenue (Disposal of the Government Land) Rules, 1971. Conditions have been imposed and the cost of the Government has been recovered. They all are saying that, there is absolutely no public interest involved in the writ petition.

7. Affidavit in rejoinder has been filed by the petitioner who has negated the statements made by the respondents. It appears from the record that, further affidavits-in-reply have been filed by respondent No.5 and again rejoinder by the petitioner. All of them are reiterating the same facts.

8. It has been pointed out by the learned counsel appearing for the petitioner that, the land was allotted to the mother of the respondent No.5 under a beneficial scheme. Thereafter he managed to get it mutated in his name by showing that there was a partition. The mutation entry No.2499 shows that, he got it mutated in his name by virtue of partition. However, thereafter when he himself was cultivating the land till 2005-2006 there was no problem at all. The 7/12 extract of the land would show that, he was taking crops. Thereafter, all of a sudden he has come with a case that, the said land has become barren, he managed to get a panchanama made when he made the proposal to convert it into non-agriculture. It is his own case that, the land is surrounded by buildings, and therefore, now he wants to earn profit out of the land. The very purpose for which the land was allotted to his mother has got frustrated. Further when the land was allotted for cultivation only to his mother, the question is whether

the Government would be justified in giving permission to convert the same to non-agriculture. Though the government authorities are relying upon the Government Resolution dated 08-09-1983, they ought to have seen that such conversion or concession could have been given only in genuine cases. The said Government Resolution uses specific words, "Only in genuine cases". When respondent No.5 has received compensation for alleged destruction of his crops due to heavy rains for the year 2005-2006 then how within a year his land will become barren is a question. The learned counsel for the petitioner tried to demonstrate that, respondent No.5 is an influential person and has tried to take advantage of all the Government schemes in order to earn profit. He also pointed out that, now the respondent No.5 has divided the land into plots and he is selling each of the pieces of the plot.

9. Per contra, it has been submitted that, every enquiry has been made before the impugned order has been passed. Even the panchanama of the property has been prepared after the Divisional Commissioner got it confirmed that the land is barren. He has given permission to convert it into non-agriculture and sell it. All the other parameters in the Government Resolution have been complied with.

The interest of the Government who is representing the people at large has been secured by way of conditions put to the said permission. The purpose for which the Government Resolution dated 08-09-1983 was brought was in view of instructions contained in paragraphs No.78 and 81 of the Revenue Book Circular No.3 of the Maharashtra Land Revenue Manual, Volume II. The case of the respondent no.5 was felt to be genuine, and therefore, the permission has been granted. There is no illegality in the order and there is no unconstitutionality in the Government Resolution.

10. It is to be noted that, by way of amendment that has been carried out in view of the order passed by this Court on 07-01-2011, the petitioner has challenged the validity of Government Resolution No. LND/1083/27925/CR-3671/G-6 dated 08-09-1983. The first and the foremost fact is that, it appears that since resolution is not convenient for the petitioner, he is challenging the same. The Government Resolution came into force on 08-09-1983 and since then it has been acted. It is in respect of agricultural land held as occupant Class – II i.e. restricted tenure disposal of application regarding ; (1) permission for sell, gift, mortgage of (2) regularization of breach of conditions of (3) permission for sell of agricultural land for non-

agricultural use. It is not in dispute, or in other words, the power of the Government has not been challenged by the petitioner that the Government can pass a resolution on such subject. Further it has not been pointed out that, the said resolution is in any way arbitrary on a class of persons. In order to declare such resolution as unconstitutional, ultra-vires it has to be shown by the petitioner that it is not in consonance with the provisions of Article 14, 21 of the Constitution of India. The petitioner has tried to rely on certain illustrations under which this Court had come to the conclusion that certain activities of the revenue authorities are violating or illegal. But those instances and decisions cannot be made applicable for the simple reason that the facts are different and the circumstances under which the decision was taken by the revenue authority was different.

11. Here in the present case the petitioner has failed to show that there is any of the high-handed act on the part of the respondents-government officials. Contrary statements are made by the petitioner that the rules of Maharashtra Land Revenue (Disposal) of Government Land Rules 1971, framed by the Government, are due to the powers given by the Act to the Government. Rule No. 43 deals with grant of land, both for agriculture and non-agriculture purpose, as to the

encroacher. The power of the regularization of the encroachment is explained under Rule 43. Then the petitioner says that, the Government Resolution dated 08-09-1983 gives rise to whole controversy. The action of regularization or permission has been given by the Divisional Commissioner, Aurangabad on 20-06-2008 based on the said Government Resolution dated 08-09-1983. For all these years the Government Resolution was in force and nobody has questioned its legality in any manner. Possibility of many actions taken on the basis of said resolution by State Government can not be ruled out. Still nobody has challenged the said resolution on the ground of its alleged unconstitutionality. Merely because now the said resolution is not convenient to the petitioner, it appears that he is challenging the vires of the resolution, at a very belated stage, and therefore, the said prayer of the petitioner can not be granted.

12. Secondly, on the merits of the case also, it can be seen that respondent State has taken all the precautions by putting conditions while granting permission to convert and sell the land. If a person is entitled to get benefit under a scheme and then approaches the authorities, then he can not be deprived on some other ground. It appears that there was no challenge to the order of allotment of the

piece of land to the mother of respondent No. 5. Therefore, after the legal allotment of the land, other consequences are bound to follow. Petitioner can not question the act of mother of respondent No. 5 to give the land to respondent No. 5, when he had not challenged the basic allotment of the land to her. After the allotment of land to respondent No. 5, he would be entitled to get benefit of other provisions and schemes. It can not be quashed on the ground of illegality, when it is covered under the resolution. Action of respondent No. 5 to take compensation for heavy rains and then in the next year seeking permission on the ground of barren land can not said to be “not a genuine case”. Therefore, we do not find any merit in the present case. In fact, petitioner had no personal interest in challenging the action of grant of permission, but it appears to have been prompted with some political motive. There is no merit in the present petition, much less public interest.

13. For the above-said reasons, we dismiss the petition.

[SMT. VIBHA KANKANWADI]
JUDGE

[R. M. BORDE]
JUDGE