

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

**WRIT PETITION NO. 7829 OF 2012**

Babasaheb s/o Ganpatrao Batule  
age 40 years, occ. Business  
r/o Rajangaon Shenpunji  
Tq. Gangapur, Dist. Aurangabad

**.. PETITIONER**

**VERSUS**

1. The State of Maharashtra
2. The Additional Divisional Commissioner  
Aurangabad.
3. The Additional Collector,  
Aurangabad.
4. Tahsildar, Gangapur  
Aurangabad.
5. Gram Sevak,  
Gram Panchayat,  
Rajangaon Shenpuji,  
Tq. Gangapur,  
Dist. Aurangabad.
6. Subhash s/o Bhagaji Gore  
age 39 years, occ. Agril & business  
r/o Rajangaon Shenpunji  
Tq. Gangapur,  
Dist. Aurangabad.

**.. RESPONDENTS**

Mr. P.S. Shinde, advocate for petitioner.  
Mr. A.V. Deshmukh, AGP for the State.  
Mr. P.V. Mandlik, Senior Counsel instructed by Mr. S.K. Sawangikar,  
advocate for respondent no. 6.

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**CORAM : S. B. SHUKRE, J.  
DATE : 24<sup>th</sup> JANUARY, 2017.**

**ORAL JUDGMENT :**

1. Rule. Rule made returnable forthwith.

2. Heard finally by consent.

3. The learned counsel for petitioner submits that the impugned order dated 10.07.2012 passed by respondent no. 2 is perverse and arbitrary as it does not take into consideration the encroachment made by respondent no. 6 on the other three properties, reference to which has been specifically made by the Additional Collector in his order dated 20.12.2011. He submits that the Additional Collector has only considered the right of respondent no. 6 in respect of the property which existed in gat no. 2 and has ignored the other properties on which he has also made encroachment. He has also invited my attention to the report of the Village Development Officer to support his contention.

4. The order dated 20.12.2011 passed by the Additional Collector, Aurangabad, places reliance upon the report of the Village Development Officer dated 05.07.2011. Using this report, the learned Additional Collector has found that the property nos. 229, 154/1, 174 and 7567 have been encroached upon by respondent no. 6 and that these properties actually belong to the State of Maharashtra. Perusal of the report of the Village Development Officer would show that these properties are not referred to anywhere in the report except property no. 7567.

5. Learned counsel for petitioner submits that as per the report submitted by the Tahsildar on 09.02.2009, respondent no.6 has been found

to be an encroacher on the Government property. Report dated 09.02.2009, however, cannot be relied upon as it does not show that when the spot inspection was made and that when it was made, respondent no. 6 was present. Therefore, finding recorded by the Additional Collector as regards properties bearing no. 229, 154/1 and 174 will have to be said as based on no evidence. As regards property no. 7567 situate in gat no. 2, I find that thoughtful consideration has been given to the record available in the office of the Tahsildar and, after application of mind, the learned Additional Collector has found that this property is held by respondent no. 6 through his father on the basis of revenue document called 'kabala', which is nothing but allotment of Government property for a specific purpose. This finding, being based on record, cannot be said to be patently illegal or perverse. There is no other evidence available on record to which my attention has been invited by learned counsel for petitioner which would show the position in respect of property situate in gat no. 2 to be otherwise.

6. In the circumstances, I see neither any illegality nor perversity in the impugned order. There is no merit in the petition.

7. Petition is dismissed with costs.

8. Rule discharged.

**( S. B. SHUKRE )**  
**JUDGE**