

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 164 OF 2013
IN
WRIT PETITION NO.9612 OF 2011.

Nisargdeep Shikshan Prasarak
Mandal. = APPLICANT

VERSUS

The State of Maharashtra and
and others = RESPONDENTS

Mr.S.B.Talekar, Advocate for Applicant;

Mr.P.K.Lakhotiya, Assistant Government Pleader for
Respondent-State.

CORAM : SUNIL P.DESHMUKH &
SANGITRAO S.PATIL, JJ.

DATE OF RESERVING ORDER : 21st November, 2017.
DATE OF PRONOUNCING ORDER: 22nd December, 2017

PER COURT :

1. This application is moved seeking review of order dated 6th August, 2013 passed by the Division Bench of this Court (S.P.Deshmukh, J. was a member) turning down challenge to validity of Government Resolution dated 12.7.2011 and request for quashing order dated 30.8.2011 along with direction for allotment of land by Government for running college.

2. The petitioner is an educational institution duly registered under the Societies Registration Act, 1860 and Maharashtra Public Trusts Act, 1950.

3. Learned Counsel Mr. Talekar states that while deciding the matter the Court had been oblivious of that the application for allotment of land for educational purpose had been duly made to the authorities long before the Government Resolution dated 12.7.2011 had been issued.

4. Challenge to validity of Government Resolution was on various grounds, *inter alia*, putting an absolute embargo on allotment of government land, to individuals, private institutions, societies for any purpose is *ultra vires* the Maharashtra Land Revenue Code and the Rules made thereunder.

5. The prohibition occurring through the Government Resolution on allotment of land, it is submitted, is not only inequitable and arbitrary, but the same had been issued without taking into account the purport underlying the order of the Hon'ble Apex court in *Jaspal Singh and Ors. Vs. State of Punjab and Ors.*- (Civil Appeal No.1132/2011). He particularly

refers to paragraph 22 thereof, which reads, thus -

“22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/ Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Casts/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.”

6. He submits that while direction had been issued to provide for scheme for eviction of illegal/unauthorized occupants, vide the discussion in the judgment, however, it had culminated into passing of resolution placing absolute

embargo on distribution or allotment of government land even in the deserving and genuine cases. The restraint is wholly incompatible with the subsisting rules therefor, legitimately and validly made under due legislative process. It completely ignores the needs and requirement of land for educational purpose, which is one of the sovereign functions, as also for needs and requirements of other legitimate and genuine purposes.

7. He further submits that aforesaid position would be amply borne out from an earlier decision delivered by the Division Bench of this Court (wherein S.P.Deshmukh,J. was a member) where-under it had been properly considered that the State Government is not prohibited from granting land in accordance with The Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 to eligible applicants.

8. The learned Asstt. Govt. Pleader for the respondent/State, however, opposes, stating that while validity of the Government Resolution had been considered, stock of the situation had been taken and, may be that the order may not reflect upon the earlier decision in the matter, yet the judgment and order are seldom liable to be faulted with.

9. Learned Counsel Mr. Talekar during the submissions has pointed out that the liberty to file another application as may appear for allotment of land, having regard to the Government Resolution would be only illusory as in all probability the Government is unlikely to digress from the Government Resolution.

10. Government Resolution dated 12.7.2011 is sequel to decision in the case of *Jaspal Singh and others Vs. State of Punjab and others* (supra).

11. Prelude to the resolution dated 12.7.2011 refers to decision in the case of *Jaspal Singh's* case (supra) and that Government resolution has been issued with reference to said decision of the Supreme Court

12. It also appears that judgment dated 6.8.2013 falls short of depicting application of mind to aspect as to whether the application filed by the petitioner before issuing the Government Resolution dated 12.7.2011 would be covered by the decision thereunder.

13. Further the judgment does not appear to take into account the earlier decisions rendered by the Division bench, particularly the one dated 3.8.2012 had not fallen for its consideration.

14. Perusal of the case of *Jaspal Singh and Ors. Vs. State of Punjab and Ors* and particularly paragraph 22 thereof does not appear to have been taken into account while deciding the writ petition. The learned Counsel for the petitioner has also referred to and relied upon a decision of the Hon'ble Apex court in the case of *Akhil Bhartiya Upbhokta Congress Vs State of M.P. and Ors.* - AIR 2011 SC 1834, where-under in paragraph no.32 it has been observed by the Supreme Court that it would not be that a State can never allot the land to the institutions/organizations engaged in educational, cultural activities or rendering services to society.

15. Thus, it appears that while the decision had been rendered on 6th August, 2013, quite a few relevant aspects have been missed out on, which is apparent on its perusal. It would be expedient, in the circumstances, to re-call the order for proper and comprehensive consideration of the matter. Thus, the order dated 6th August, 2013 is re-called. Writ

petition is restored to its position, as was subsisting before 21st November, 2017, for further process.

(SANGITRAO S.PATIL)
JUDGE

(SUNIL P.DESHMUKH)
JUDGE

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