

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

WRIT PETITION NO.8569 OF 2011

Rajendra s/o Bhimrao Shendge,
Age: 55 years, Occ.: Agril.& Labour
R/o.: Plot No.23/2, Khanapur, Tq.
Majalgaon Dist. Beed.

...Petitioner.

Versus

- 1) The State of Maharashtra, through its Secretary, Department of Revenue & Resettlement, Mantralaya, Mumbai - 400 032.
- 2) The Divisional Commissioner, Aurangabad Division, Aurangabad.
- 3) The Collector, Beed, Dist. Beed.
- 4) The District Resettlement Officer, Beed, Dist. Beed.
- 5) The Tahasildar, Majalgaon, Tq. Majalgaon, Dist. Beed.
- 6) The Grampanchayat, Khanapura, Tq. Majalgaon Dist. Beed, through its Gramsevak.

...Respondents.

Mr. Sudarshan J. Salunke, Advocate for petitioner
Mr. S. K. Tambe, Asst. Govt. Pleader for respondents no.1 to 5.
Mr. Raghvendra Bhise, Advocate h/f Mr. N.L. Jadhav, Advocate for respondent no.6.

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

DATE : 3rd October, 2017

ORAL JUDGMENT : (PER: SUNIL P. DESHMUKH, J.)

The petitioner is before this court under present writ

petition, purporting to be aggrieved by communication dated 13-09-2011 under which respondent no. 3 - Collector, Beed, has communicated to Tahsildar, Majalgaon - respondent no. 5 that sanction to allotment of plot of land to petitioner under letter dated 2/10-08-2011 has been recalled and stands cancelled, for, the said plot was reserved for bus stand and in the same, it has been referred to that people from the vicinity had resented the allotment.

2. Mr. Sudarshan J.Salunke, learned counsel for the petitioner submits that the petitioner had been native of village Shelapuri. His house and agricultural properties there, have been acquired for public project way back in 1980. The petitioner has not received allotment of any residential property/plot under implementation of resettlement / rehabilitation policy for project affected persons. Since 1980, he and his family members have been continually making representations to the State authorities for allotment and allocation of land plot / property. The matter had been moved around 2010 by the Divisional Commissioner, directing the Collector to take suitable action. In movement thereafter, the Tahsildar, Majalgaon considered a plot ad-measuring about 5000 square feet in Khanapur Gram Panchayat limits that can be made available. Accordingly, on 15-07-2011, the Collector had allotted a plot of land ad-measuring around 432 square metres to the petitioner. Possession had been

handed over and petitioner's name had been entered the record of village panchayat in respect of the said plot. Since it had been a valuable property, people had become envious resulting into passing of resolution by village panchayat for cancellation of the allotment made.

3. Learned counsel for the petitioner goes on to submit that thereafter the Collector without hearing the petitioner and without following procedure had purportedly cancelled the allotment of plot in favour of the petitioner, under communication dated 13-09-2011 referred to above. In furtherance of the said communication, Tahsildar, Majalgaon had been directed to take action accordingly cancelling the proceedings of allotment of the plot.

4. Learned counsel hastens to add that a civil suit for declaration and injunction had been instituted since immediate threat had been posed to petitioner's said plot holding and an interim order of status-quo is running in his favour. It is submitted that subsequently, a pursis for withdrawal of the said suit had been filed.

5. Learned counsel for the petitioner purports to refer to and rely on a decision of the Supreme Court in the case of *Lily Thomas vs. Union of India*; A.I.R. 2000 SC 1650, contending that the order of the Collector regarding cancellation of allotment of land holding

impugned in the writ petition tantamounts to review of allotment order while such powers are not vested in Collector. In the absence of statutory empowerment, particularly under the enactment for resettlement and rehabilitation, such an exercise is impossible and not legal. He lays emphasis on observations under paragraph no. 52 thereof.

6. Submitting that allotment made to present petitioner after long thirty years, had been suddenly purportedly cancelled in 2011 under the communication impugned, learned counsel refers to decision in the case of *Gurmej Singh vs. State of Punjab*, AIR 2009 SC 2699, and submits that petitioner had not been heard before such cancellation and hence, the action of the authorities cancelling allotment being in breach of the principles of natural justice is amenable for interference in writ petition by this court.

7. He submits, pursuant to allotment of land and possession having been given to the petitioner, further developments have also taken place and in the circumstances, if the allotment is allowed to be cancelled in the manner in which it is being done under impugned communication, he would suffer huge loss. He relies on photographs annexed to writ petition at page 54 to support his contention about having carried out certain development on the plot.

8. He, therefore, submits that the whole process of

cancellation of allotment in favour of the petitioner is in stark breach of principles of natural justice and is, thus, liable to be set aside.

9. Opposing the aforesaid contentions, learned Assistant Government Pleader Mr. S. K. Tambe contends that the situation emerges that the process of allotment of land plot holding to petitioner, appears to have been carried out without taking into account the background as the allotment had been made based on an untenable report. Although the report suggested availability of land for allotment, however, it had been reserved for a bus stand. It appears that under erroneous assumption since only 10000 square feet area has been consumed in construction of bus stand, rest of the land is considered to be liberated. The situation does not appear to be so. He submits that the situation had been realized upon resentment by villagers being evinced and village panchayat coming out with a resolution for cancellation. In the circumstances, the purported allotment of land plot to the petitioner has been recalled and petitioner is being allotted a land / plot in village Punadgaon. He submits that the development which the petitioner is referring to in order to buttress his submissions about loss being caused to him would show that only a tin shed had been shown to have been erected on the plot and the same appears to have been brought about hurriedly and it is not at all a real development

over the plot. He submits, such a tin shed can easily be shifted to other place without causing much damage. In the circumstances, the plot which had not been meant for residential purpose and had been reserved for public purpose of bus stand could hardly be allotted to private person and such an allotment would not be legitimately possible to be regularized. He submits that the obligation cast upon the State is to give plot of land to the petitioner. Pursuant to the same, plot has been made available to the petitioner at other place.

10. Learned Assistant Government Pleader further goes on to submit that the land / plot has been made available to the petitioner at village Punadgaon, however, he is not accepting the said allotment.

11. Learned counsel for the petitioner, on instructions, states that plot of land at village Punadgaon allotted to the petitioner, is far away from village Khanapur. Whereas, learned Assistant Government Pleader states that, according to his instructions, distance between the said two villages is just about 0.8 kilometre (800 metres) and both the villages are abutting the State highway bearing No.222. Allotment of land plot at Punadgaon has been made due to non availability of other land for allocation to the petitioner in Khanapur.

12. The situation thus emerges that that the allotment of land

plot to the petitioner at village Khanapur had been from the land reserved for bus stand. It appears that the piece of land allotted to the petitioner had not been meant for residential purpose but is sated to be reserved for public purpose. In the circumstances, may be that the petitioner had not been called upon before recalling the order of allotment of land plot in his favour yet, since the factual position about the land having been reserved for public purpose – bus stand is not disputed, it does not appear to be a case wherein powers of this court deserve to be exercised. The respondents have been ready to grant alternate piece of property to the petitioner.

13. In view of the aforesaid, the State authorities shall allot to the petitioner alternate land plot. It would be pertinent to note that hereafter the plot holding which had been given to the petitioner under letter dated 2/10-8-2011 and which had been reserved for bus stand – the public purpose can be utilized only for public purpose and would not be allotted to any private person / body and / or for private purpose. The Authorities concerned shall take necessary precaution to see that it is not encroached upon by anybody.

14. Writ petition as such fails and stands dismissed.

15. At this juncture, learned counsel for the petitioner request to maintain status-quo for a period of eight weeks.

16. Request stands granted. It is further made clear that status-quo operating under this order would stand vacated after the period of eight weeks automatically and without requiring further reference to the court.

(SANGITRAO S. PATIL)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

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