

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 10 OF 2016

|                                               |   |                |
|-----------------------------------------------|---|----------------|
| Pandurang Bapu Khavare                        | ) |                |
| Age:50 years, Occu. Farmer.                   | ) |                |
| Residing at Post Chikhalwadi, Tal-Shirala,    | ) |                |
| dist- Sangli.                                 | ) | ...Petitioner  |
| <i>Versus</i>                                 |   |                |
| 1.State Of Maharashtra                        | ) |                |
| 1.a Through its Chief Secretary               | ) |                |
| 1.b Through its Principal Secretary, UD       | ) |                |
| 1.c Through its Principal Secretary,          | ) |                |
| Water resources                               | ) |                |
| 1.d Through its Principal Secretary,          | ) |                |
| Revenue Dept.                                 | ) |                |
| All having office at Mantralaya, Mumbai-32    | ) |                |
|                                               | ) |                |
| 2. The Collector, at Sangli, Dist.Sangli      | ) |                |
| 3. The Tehsildar, Taluka Shirala, Dist.Sangli | ) | ...Respondents |

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*Ms.Radhika Samant i/b. Mr.Pradeep Havnur, for the Petitioner.*

*Ms.S.S.Bhende, AGP for the State-Respondents.*

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**CORAM :- DR. MANJULA CHELLUR, C.J., &**  
**G. S. KULKARNI, J.**

**RESERVED ON:- FEBRUARY 1, 2017**

**PRONOUNCED ON :- MARCH 8, 2017**

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**JUDGMENT : (Per G.S.Kulkarni, J.)**

1. The Petitioner who is a farmer by occupation has filed this Public Interest Litigation inter alia seeking a direction against State authorities praying that the land new Gut No.38 and 39 at Chikhalwadi, Taluka Shirala, District Sangli (for short 'the said land'), be permitted to be used as 'Gairan' (land for grazing of cattle) as also water pond situated therein be permitted to be used for the purpose of drinking water for the cattle for common use by the villagers. The Petitioner seeks a further direction that any illegal ploughing by unknown persons on the said land be prohibited.

2. The case of the petitioner is that the land in question was initially owned by one Ramchandra Dattatray Garware who had gifted the said land to the villagers for grazing of cattle. It is stated that in pursuance thereto names of the village panchas came to be recorded in the revenue records in the column of "other rights", which indicate that they were representatives of the villagers. It is stated that out of these persons four persons are deceased. The petitioner contends that since last more than 100 years, the said land is used by the villagers for grazing of cattle as also the water pond in the land is used for the village cattle. It is contended that the land revenue for the said land was paid by the villagers. The Petitioner refers one of the proceedings under Section 32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "the BTAL Act") by a person interested in the land, initiated for recording his name as a tenant, whereupon an inquiry was undertaken by Mahalkari and it was found that no crops

are taken in the said land and the said land is used for grazing of cattle and the proceedings came to be dropped by an order dated 18 June 1963. It is stated that this order supports the contention of the petitioner that the land is used for grazing of cattle by the villagers and thus belongs to the villagers. It is then contended that recently certain unknown persons started visiting the land and carrying out certain activities in a corner of the land. The petitioner accordingly made inquiries and learnt that the legal heirs of the aforesaid four persons whose names are recorded in the revenue records are in the process of selling the land. The petitioner therefore has serious apprehension that the land would be sold and the villagers would be deprived of its use for grazing of the village cattle being used since last 100 years. In support of this contention, the petitioner has relied on the decision of the Supreme Court in the case “*Jagpal Singh & Ors. Vs. State of Punjab and Ors.*”<sup>1</sup>

3. The Respondent – State had appeared as also has filed a reply affidavit of the Tahsildar, Shirala, to oppose the prayers as made in this public interest litigation. On behalf of the State, it is denied that the land in question was gifted by Mr. Ramchandra Dattatraya Garware, to the villagers of Chikhalwadi for grazing cattle, and that the names of the village management panchas were therefore recorded in the revenue record in the 'other rights' column. It is also denied that the land revenue was paid by the villagers by taking contribution from the villagers. The Petitioner's contention that as per

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<sup>1</sup> (2011)11 SCC 396

the revenue record, Mutation Entry no.2791 (dated 22 August 1948), names of Mr.Ramchandra Dattatraya Garware, Mr.Digambar Dattatraya Thakar and Mr.Shankar Dattatraya Thakar were mentioned as owners and names of Mr.Ganu Tuka Watharkar, Mr.Ishwara Bhau Sawant, Mr.Krishna Babaji Sawant and Mr.Hari Lakuba Sawant were recorded as 'protected tenants' of the said land in the 'other rights' column, is also denied. The State has placed these revenue extracts on record. It is stated that as noticed from the revenue records, even prior to 22 August 1948 the names of these four persons have been recorded as 'protected tenants' under the 'other rights' column. It is stated that in a reasoned order dated 11 April 2012 the competent authority under the BTAL Act has decided an application under Section 70(b) that the legal heirs of the said four persons namely Mr.Ganu Tuka Watharkar, Mr.Ishwara Bhau Sawant, Mr.Krishna Babaji Sawant and Mr.Hari Lakuba Sawant are protected tenants of the land in question. It is stated that thereafter, by an order dated 17 December 2012 passed by the Tahsildar and Land Tribunal, Shirala under Section 32G of the BTAL Act, declaring that the legal heirs of the protected tenants have purchased this land from Mr.Ramchandra Dattatraya Garware, one of the co-owners of the lands in question. The reply affidavit further states that on 27 December 2012 the Tahsildar and the Land Tribunal, Shirala issued a certificate under Section 32M of the BTAL Act to the legal heirs of the said protected tenants, that legal heirs of the protected tenants have become the owners of the land in question. The affidavit also points out that against the order dated 17 December 2012 passed by the Competent

Authority under Section 32G, the aggrieved party had filed an appeal before the Sub-Divisional officer, Walwa Division Islampur. By an order dated 16 July 2016, the Appellate Authority rejected the appeal and confirmed the order dated 17 December 2012 passed by Tahsildar and Land Tribunal, Shirala. It is further stated that thereafter an application came to be made by the legal heirs of protected tenants to the Sub-Divisional Officer, Walwa, Taluka Islampur who passed an order dated 24 November 2014 under Section 43 of the BTAL Act thereby granting permission to sell the said lands. It is stated that in pursuance of the said order (dated 24 November 2014), the names of the purchasers of the land as mentioned in the order have been entered in the revenue record. It is thus contended that the land in question is a “private land” and not the “gairan land” and that the owners of the land in question can thus deal and dispose of the land in question in accordance with law. It is submitted that the decision of the Supreme Court in *Jagpal Singh & Ors. Vs. State of Punjab and Ors.* (supra) would not be applicable in the facts of the case.

4. Learned Counsel for the Petitioner and the learned Assistant Government Pleader on behalf of the Respondents have supported their respective contentions on the basis of the pleadings as we have noted above. Having heard the learned Counsel for the parties, we are not persuaded to accept the contention of the petitioner that the land in question is “gairan” (land for grazing of cattle by the villagers.). The various orders as placed on record on behalf of the State indicates that the names of the private persons are

recorded in the revenue records. Further the State has pointed out certain orders, whereby permission to sell certain portion of the land was given by the appropriate authority. All this would go to show that the land in question is not of the ownership of village panchayat so that they can assert a legal rights to be freely used by the villagers. It may be that a portion of land was used for the purpose of grazing or the water pond in the land was used for providing drinking water for the cattle, however, these factors cannot affect the ownership of the land, so as to permit the petitioner to contend or assert any legal rights of villagers to use the land for grazing of cattle. In any case, if any easementary or any other legal rights as asserted by the Petitioner are created in favour of the villagers or any other persons, it is for the petitioner or for these persons to assert these legal rights before appropriate forum by leading evidence. This inquiry cannot be undertaken in exercise of jurisdiction under Article 226 of the Constitution of India in a Public Interest Litigation.

5. In view of the above clear facts, the decision of the Supreme Court in the case ***Jagpal Singh & Ors. Vs. State of Punjab and Ors.*** (supra) would not assist the petitioner, inasmuch as the said decision concerned with the encroachment on land, which was admittedly a Grampanchayat land. In this case the revenue record indicates that the land does not belong to Grampanchayat but is of private ownership. This is also not a case of any encroachment on the gram-panchayat land. The revenue record clearly indicates names of private persons.

6. Resultantly, we see no merit in the Public Interest Litigation and it is accordingly dismissed. We, however, clarify that the Petitioner is free to adopt any other remedy to assert the ownership and title of the villagers in respect of the land in question, in appropriate proceedings.

**(G. S. KULKARNI, J.)**

**(CHIEF JUSTICE)**