

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

WRIT PETITION NO.9189 OF 2016

Nature Lovers Club Ahmednagar,
37/1, Prashant, Amit Bank Colony,
Rasne Nagar, Savedi, Ahmednagar
A registered NGO Through it's Secretary,
Shri. Nitin s/o.Madhavrao Thorat,
Age 41 years, Occu. Business,
R/o. as above.

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-400 032.
2. The Divisional Commissioner of Revenue,
Nasik Division, Nasik.
3. The Collector,
Ahmednagar, Dist. Ahmednagar.
4. The District Commandant,
Home Guard, Ahmednagar.
5. The Ahmednagar Zilla Prashikshan
Prabodhini, Ahmednagar.

RESPONDENTS

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Mr.A.A.Nimbalkar, Advocate for the Petitioner
Mr.S.B.Yawalkar, Addl.G.P.for Respondent Nos.
1 to 4 / State

...

**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 06.02.2018
Pronounced on : 23.02.2018

JUDGMENT: (Per S.S.Shinde, J.):

1] Heard. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

2] This Petition is filed with the following prayers:

A) *By issuing a writ of mandamus or any other appropriate writ, order or directions in the like nature the respondents may kindly be directed to allot the petitioner institution land admeasuring 1 H. 91 R. out of land Gut No.169, situated at village Nimblak, Tq. & Dist. Ahmednagar.*

B) *By issuing a writ of certiorari or any other appropriate writ, order or directions in the like nature the orders / communications dated 02/03/2013 and 31/10/2014 issued by the respondent no.3 Collector, thereby refusing / rejecting the petitioner's request for allotment of land admeasuring 1 H. 91 R. out*

of land Gut No. 169, situated at village Nimblak, Tq. & Dist. Ahmednagar, may kindly be quashed and set-aside.

C) By issuing a writ of certiorari or any other appropriate writ, order or directions in the like nature the orders dated 21/01/2014 and 20/02/2014 issued by the respondent no.2 thereby allotting the land admeasuring 2 H. 15 R. out of land Gut No.169 situated at village Nimblak, Tq. & Dist. Ahmednagar to the respondent No.4 may kindly be quashed and set-aside.

D) By issuing a writ of certiorari or any other appropriate writ, order or directions in the like nature the order dated 21/11/2013 issued by the respondent No.3 Collector thereby allotting land admeasuring 5 H. 96 R. to the respondent no. 5 may kindly be quashed and set aside.

E) To hold and declare that the Government Resolution dated 12th July, 2011 issued by the Principal

Secretary, Revenue and Forest Department, Mantralaya, Mumbai as ultra-vires Articles 14, 294, 295, 296 of the Constitution of India r/w. Schedule IX of the Constitution of India; as well as Section 20 and 35 of the Maharashtra Land Revenue Code, 1966 and the Rules framed there under.

3] Brief facts stated in the Petition are as under:

It is the case of the petitioner that the petitioner is a public trust and society, registered under the provisions of the Maharashtra Public Trusts Act and the Societies Registration Act. The petitioner society has *inter alia* for its objects the protection of the wild animals and birds. The petitioner-institution endeavors to protect the rare species of animals and birds that are scarce and are nearing extinction. The petitioner-institution has also for its

objects propagation of education in wild life and environment and promoting activities connected therewith and incidental thereto. In the year, 1998, the petitioner-institution, in pursuance of its aforesaid objects, had sought for land admeasuring 1 H. 91 R. out of Gut No.169 situated at village Nimblak, Taluka and District Ahmednagar from respondent no.3 Collector, Ahmednagar. Since the year 1998-2011, the petitioner has been constantly pursuing the said proposal with respondent no.3 and concerned authorities. The petitioner has made all the compliances directed by the respondent authorities. However, in the year 2011, the instrumentalities of the Government, namely, the Home Guard, Zilla Parishad, Ahmednagar i.e. respondent no.4 and the Zilla Prashasakiya Prashikshan Prabodhini i.e. respondent no.5 also applied for allotment of the land in their favour.

4] It is further the case of the petitioner that on 02.03.2013, respondent no.3 Collector has intimated petitioner that claim of the petitioner for the said land cannot be allowed in view of the provisions of the Government Resolution dated 12th July, 2011. Thereafter again, vide application dated 27.01.2014, the petitioner requested respondent no.3 Collector to re-consider his decision. However, respondent no.3 Collector vide his communication dated 31.10.2014 once again expressed his dissent predicated upon the provisions of the Government Resolution dated 12.07.2011. The petitioner was shocked and surprised to find that the Divisional Commissioner, by order dated 21.01.2014, allotted the land out of the said Gat No. 169 admeasuring 2 Hectar 15 R. to respondent no.4 i.e. District Commandant Home Guard, Ahmednagar. Also the petitioner became aware

of the order dated 21.11.2013 issued by respondent no.3 Collector, thereby allotting land admeasuring 5 Hectar 96 R. land out of the said Gut No.169 to respondent no.5 Zilla Prashikshan Prabodhini.

5] Learned counsel appearing for the petitioner submits that the Government Resolution dated 12.07.2011 issued by the Principal Secretary to the Government, Revenue and Forest Department, Mantralaya, Mumbai-32 is *ultra vires* Articles 14, 294, 295 and 296 r/w. item / entry No. 231 of the IXth Schedule of the Constitution of India and at the same time runs counter to the sovereignty of the State and therefore is unconstitutional. The Government Resolution dated 12th July, 2011 is *ultra vires* Section 12 of the Maharashtra Land Revenue Code, 1966 [for short 'MLR Code'] as well as the Rules, 1971. The Government of Maharashtra cannot undermine supremacy of the legislature and at

the same time sovereignty of the State. The Government Resolution dated 12th July, 2011 is contrary to the several provisions in MLR Code including Sections 20 and 31 and at the same time, statutory rules framed under Section 328 of the MLR Code. Respondent no.3 Collector ought to have appreciated that the administrative instructions cannot override the provisions of MLR Code, particularly when the said Act i.e. MLR Code, is saved even from the challenge on the ground of violation of fundamental rights by its inclusion in IXth Schedule of the Constitution of India. Respondent no.3 Collector has erred in giving primacy to the administrative instructions issued by the State Government over the mandate of the legislature contained in Section 20 and 31 of the MLR Code. The order of respondent no.3 i.e. Collector, suffers from total non application of mind. The said order

tantamount to abdication of powers vested upon it by the MLR Code and the Rules framed there under. It is submitted that respondent authorities and particularly respondent no.3 Collector while passing the impugned orders dated 02.03.2013 and 31.10.2014 is swayed away by the policy decision contained in Government Resolution dated 12.07.2011. The impugned order dated 29.11.2013 passed by the Collector, Ahmednagar, would render the State of Maharashtra powerless and negates the sovereignty, which every Government possesses as an inherent attribute. Respondent no.3 was wrong in sitting over the statutory provisions as well as statutory rules and also the judgments of the Supreme Court rendered subsequent to the case of *Jagpal Singh & Ors. Vs. State of Punjab & Ors.*¹. Respondent no.3 collector, while issuing the impugned orders dated 02.03.2013 and 31.10.2014, ignored the judgments of the

¹ 2011 [11] SCC 396

Supreme Court in the case of *Jagpal Singh [supra]*. Respondent no.3 miserably failed to appreciate that the administrative instruction or guidelines issued by the State of Maharashtra cannot over ride the statutory provisions.

6] It is submitted that the impugned orders dated 02.03.2013 and 31.10.2014 are arbitrary, discriminatory, unjust and violative of Articles 14, 294, 295 and 296 of the Constitution of India read with item 231 contained in the IXth Schedule of the Constitution of India. Respondent no.3 seems to have lost sight of the fact that the petitioner's claim is pending since the year 1998; whereas the claim of the respondent nos.4 and 5 are as late as in the year 2012 and 2013. Thus, the petitioner's claim is pending since 17 years and this fact has been very astutely concealed by the respondent authority in order to see that the land is

allotted to respondent nos.4 and 5. The respondent authorities have unreasonably kept the claim of the petitioner pending for a long period i.e. 17 years, notwithstanding the continuous persuasion of the petitioner and compliances with every requirement as laid down by the respondents. Thereafter, the Government Resolution came to light in the year 2011 i.e. 13 years, after the proposal of the petitioner was filed. The petitioner's claim was rejected by the respondent authorities predicated upon the stipulations contained in the said Government Resolution. However, the respondent authorities have on account of their own inaction and inertia kept the petitioner's claim pending since such a long time. They should, therefore, be not permitted to take advantage of their own wrong for justifying the refusal of the petitioner's proposal.

7] It is submitted that there is a

plethora of documents, which go to demonstrate the appreciation of eligibility of the petitioner for the land in fray and also opinions favourable to the petitioner and recommendations on the part of the respondent authorities themselves. Despite the same, the petitioner's claim is averted by the respondent authorities on the basis of the aforesaid Government Resolution, which is itself faulty. The respondent authorities have concealed the long standing claim of the petitioner in the reports made in respect of the allotment of land to respondent nos. 4 and 5. Thus, the intention of the respondent authorities to deprive the petitioner is manifest. The claim of the petitioner's institution is in respect of allotment of land for establishing asylum for injured wild animals and birds and also for the purpose of establishing an educational center for the purpose of propagation of education in

respect of the wildlife and environment. Thus, the objective of the petitioner-institution is laudable and also fall in the meaning of public purpose as envisaged in the provisions of the Land Acquisition Act.

8] It is submitted that the land which the petitioner has sought is a *Gairan* land and is more suitable to it than that of the purposes of respondent nos.4 and 5. The allotment of land is permissible in view of the provisions of Rules 5 and 6 of the Maharashtra Land Revenue [Disposal of Government Lands] Rules, 1971 [for short Rules of 1971']. However, the respondent authorities have failed to reckon the same predicated upon some faulty interpretation of the decision of the Hon'ble Supreme Court in the case of *Jagpal Singh [supra]*. Even the High Court, in the cases like the present one, has quashed the orders rejecting the requests of allotment of land by N.G.O.'s and

other bodies predicated upon the Government Resolution dated 12.07.2011, by holding that the judgment in the case of *Jagpal Singh* [supra] cannot be read to mean that the State Government has been prohibited from granting land in accordance with the Rules of 1971 to the eligible applicant. The High Court, vide such orders, has also held that the Government is competent to exercise its discretion under Rule 27 of the Rules of 1971. Another facet of the matter, which needs reckoning is that the land allotted to respondent nos.4 and 5 is much more than what is required by them. Thus, if the purpose of respondent nos.4 and 5 is satisfied by availing of land actually needed for realizing their goal, still ample of land will be available out of which the land sought for by the petitioner for the orphanage for injured birds and animals. Such land can be thus conveniently allotted to the

petitioner sans the rigmarole of a long drawn litigation.

9] Learned counsel appearing for the petitioner submits that the decision of the Hon'ble Apex Court in *Jagpal Singh [supra]* was primarily predicated upon the fact of encroachment over the Grampanchayat land as occurring in that case. The Hon'ble Supreme Court, with a view to curb the tendency of men with muscle and money power to grab village common lands and to utilize it for their own selfish ends, had given directions to all the State Governments in the country that they should prepare a scheme for eviction of illegal / unauthorized occupants of Gramsabha / Grampanchayat and these lands be restored to the Gramsabha / Grampanchayat for the common use of villagers. The learned counsel appearing for the petitioner also invites our attention to the rejoinder-affidavit, and submits that there are

recommendations on the part of the Chief Executive Officer, Zilla Parishad, Ahmednagar and the District Animal Husbandry Officer, Zilla Parishad, Ahmednagar. No objection certificate has been issued by the Sub-Divisional Officer, Nagar Region, Ahmednagar in respect of allotment of land in favour of the petitioner. Learned counsel submits that since the petitioner's request was under consideration prior to the issuance of the Government Resolution dated 12th July, 2011, the said Government Resolution cannot be made applicable to the facts of the case of the petitioner. Learned counsel also invites our attention to the fact that the petitioner's request for allotment of land is pending since the year 1998, however, without even showing the slightest courtesy to the long standing claim of the petitioners, the respondents allotted the land to respondent nos.4 and 5. It is submitted that the

requirement of the land to the petitioner is 1 Hector 91 R. It is submitted that respondent no.5 has not yet utilized the land allotted to it, and therefore, the land from Gut No.169 can be allotted in favour of the petitioner.

10] Pursuant to the notices issued to the respondents, respondent nos.3 and 5 have filed affidavit-in-reply. It is stated that the petitioner-institution has initially applied before respondent no.3 for allotting the government land admeasuring 1 Hector from Gut No.169, situated at Nimblak, Taluka and District Ahmednagar, for the purpose of starting an asylum for the injured animals. In the said application, the petitioner had never mentioned for allotment of the land for starting an educational center for the purpose of creating awareness of wildlife and environment as well as wildlife conservation and environment conservation. The petitioner

has, however, again applied before respondent no.3 by submitting application dated 29.05.2000, and requested to allot 2 Hectar government land from Gut No.169, situated at Nimblak, Taluka and District Ahmednagar, for the said purpose. However, it is important to note that the petitioner has kept changing the requirement of area from the said gut number. The respondent authorities, after receipt of the applications from the petitioner-institution, have promptly called reports from the concerned authorities and the sub-ordinate Revenue Officers. Moreover, for considering the claim of the petitioner, some documents required to be submitted by the petitioner, and accordingly, some time has been lapsed for the said activities. There is no intentional delay on the part of respondent nos.3 and 4 in deciding the claim of the petitioner. It is further submitted that respondent no.3 has never recommended

positively in respect of grant of land to the petitioner-institution. Since the issue of allotment of land needs careful consideration and compliances of the necessary documents, some time has been lapsed while deciding the claim of the petitioner. It is submitted that the respondents have followed the mandate of the Government Resolution dated 12th July, 2011, issued by Revenue and Forest Department, Government of Maharashtra. It is further submitted that the Supreme Court in Civil Appeal No.1132/2011, SLP (C) No.3109/2011 in *Jagpal Singh & others Vs. The State of Punjab and others* has passed detailed order on 28th January, 2011, in respect of the issue of encroachment over the government / *gairan* land. After the said judgment, the Government Resolution dated 12th July, 2011, has been issued. The Additional Government Pleader invites our attention to the clause 9 (1) and (2) of the said

Government Resolution dated 12th July, 2011. It is submitted that in view of clause 9 (1) and (2) of the said Government Resolution, the claim of the petitioner-institution could not be considered. The claim of the petitioner, being a private institution, has been rightly rejected by respondent no.3. The learned Additional Government Pleader further submits that the General Administration Department, Mantralaya, Mumbai has framed State Training Policy in Maharashtra State for effective administration and efficiency of work and skill development at the district levels, and accordingly, issued Government Resolution dated 23.09.2011. For parting the training to the employees of the Government, semi-Government and local bodies of the Government, respondent no.5 was required the land, and therefore, the then Divisional Commissioner, Nashik, vide D.O.letter dated 07.01.2012 has informed respondent no.3 to

fix and make available 25 acres of land for the district level training center near the periphery of the District Headquarter. Accordingly, after following due procedure and after calling the reports from the subordinate Revenue Officers and other Government Authorities, respondent no.3 has allotted 5 Hectar 96 R. land to respondent no.5 from Gut No.169, situated at Nimbalak Taluka and District Ahmednagar. Similarly, after following due procedure and the provisions of the MLR Code and the Rules framed there under, the area admeasuring 2 Hectar 15 R. has been allotted to respondent no.4. Since respondent nos.4 and 5 are the government instrumentalities, the decision of respondent no.3 for allotting the government land to them is just and proper.

11] It is submitted that the land allotted to respondent no.5 i.e. 5 H. 96 R. will be utilized by it in future, and in

furtherance of the same, the land has been got measured through the office of the District Superintendent of Land Record, Ahmednagar. So also the meeting has also been called with the Executive Engineer, Public Works Department, Ahmednagar, and directed to submit the building plan and expenditure cost of the same. The said work is under process. Therefore, learned AGP appearing for the respondent-State submits that the Petition is devoid of any merits and the same may be rejected.

12] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, and learned AGP appearing for the respondent-State. With their able assistance, we have perused the pleadings in the Petition and grounds taken therein, and also annexures thereto, affidavit-in-reply filed by respondent nos.3 and 5 and rejoinder-affidavit filed by the

petitioner. We have carefully considered the provisions of the Government Resolution dated 12th July, 2011, and also all other relevant provisions, and we are of the opinion that, the policy decision taken by the State Government is in the interest of public at large and for the benefit of the community. We do not wish to examine challenge to the said Resolution at the instance of the petitioner. The contention of the counsel appearing for the petitioner that the said Government Resolution dated 12th July, 2011 is *ultra vires* Article 14, 294, 295 and 296 of the Constitution of India, has no force. The petitioner, who is private party, is claiming for allotment of the Government land for the petitioner's benefit, and therefore, we are not inclined to entertain the challenge to the said Government Resolution at the instance of the petitioner. Therefore, we decline relief in terms of prayer clause-E.

13] So far as the relief in terms of prayer clauses-C and D are concerned, upon careful perusal of the affidavit-in-reply filed by respondent nos.3 and 5, and also keeping in view the aforesaid Government Resolution dated 12th July, 2011, we are not inclined to allow the said prayers at the instance of the petitioner, who is a private party. Admittedly, respondent nos.4 and 5, in whose favour the land is allotted, are Government instrumentalities. Therefore, relief claimed in terms of prayer clauses-A, C and D stands rejected.

14] So far as relief in terms of prayer clause-B, we have considered the pleadings in the Petition and the contentions raised in the rejoinder-affidavit. It is contended by the petitioner that since the year 1998 the request of the petitioner to allot the land for the purpose of starting/building an

asylum for the injured animals and for starting an educational center for the purpose of creating awareness in respect of wildlife and environment as well as wildlife conservation and environment protection is pending, and it is also stated that the petitioner, time to time, has clarified queries raised by the respondents. It is also stated that the various authorities have recommended the proposal for the allotment of land in favour of the petitioner. Therefore, keeping in view the purpose mentioned by the petitioner in the petition of allotment of such land, and undisputed position that the petitioner is pursuing the respondent-authorities since the year 1998 for allotment of land, we are inclined to issue certain directions to the concerned respondents keeping in view the prayer clause-B. *Prima facie* it appears that the various authorities have recommended the proposal for allotment

of land in favour of the petitioner. In our opinion, the ends of justice would be met in case the impugned order/communication dated 2nd March, 2013 [Exhibit-E Page 76] issued by Residential Deputy Collector, Ahmednagar addressed to Mr.Ravindra Kulkarni, President of Nature Lovers Club and the order/communication dated 31st October, 2014 [Exhibit-F Colly Page-80] issued by the Tahsildar [Revenue], Ahmednagar addressed to the Nitin Thorat, Secretary of Nature Lovers Club, are quashed and set aside. Accordingly, we quash and set aside the said impugned communications. We direct respondent no.3 to re-consider the request of the petitioner, in respect of allotment of land, keeping in view the purpose for which the request is made in respect of allotment of such land, and the recommendations given by the various authorities as mentioned in the Petition in rejoinder-affidavit, and also the long

standing request of the petitioner for such allotment of land. Respondent no.3 may consider allotment of any other piece of land without disturbing the allotment of land made in favour of respondent nos.4 and 5.

15] However, we make it clear that respondent no.3 shall re-consider the request of the petitioner for allotment of such land in accordance with law, as expeditiously as possible, however, within 6 months from today. If respondent no.3 feels it appropriate and necessary, may call the petitioner and concern State Government Officials for hearing with the necessary documents, and then take appropriate decision in accordance with law.

16] With the above observations, the Writ Petition is allowed in terms of prayer clause-B. Rule is made absolute in terms of

prayer clause-B. The Writ Petition stands disposed of accordingly.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE

DDC