

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.7812 OF 2016

Grampanchayat Khandala,
Through its Up-Sarpanch,
Dinkar Jagannath Sadaphal,
Age-47 years, Occu:Agril.,
R/o-Khandala, Tq-Shrirampur,
Dist-Ahmednagar.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Principal Secretary,
Revenue Department,
Mantralaya, Mumbai-32,
- 2) The Collector, Ahmednagar,
Tq. & Dist-Ahmednagar,
- 3) The Additional Collector,
Ahmednagar, Dist-Ahmednagar,
- 4) The Sub-Divisional Officer,
Shrirampur, Dist-Ahmednagar,
- 5) The Tahsildar, Shrirampur,
Tq-Shrirampur, Dist-Ahmednagar
- 6) The Maharashtra State Farming
Corporation, Head Office at
Senapati Bapat Road, Pune,
Through its Managing Director,

- 7) Narayan Savleram Douchwale,
Died through L.Rs.:
- 7A) Bhagwat s/o Narayan Douchwale,
Age-62 years, Occu:Agril.,
- 7B) Bhaskar s/o Narayan Douchwale,
Age-52 years, Occu:Agril.,
- 7C) Dashrath s/o Narayan Douchwale,
Age-47 yers, Occu:Agril.,
- 8) Hari s/o Savleram Douchwale,
Died through L.Rs.:
- 8A) Madhav s/o Hari Douchwale,
Age-54 years, Occu:Agril.,
- 8B) Annasaheb s/o Hari Douchwale,
Age-47 years, Occu:Agril.,
- 8C) Balasaheb s/o Hari Douchwale,
Age-42 years, Occu:Agril.,

Respondent Nos.7 to 8C all
R/o-Khandala, Tq-Shrirampur,
Dist-Ahmednagar,

- 9) Sachin s/o Shivaji Douchwale,
Age-22 years, occu:Agril.,
R/o-Khandala, Tq-Shrirampur,
Dist-Ahmednagar.

...RESPONDENTS

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Mr.R.A. Tambe Advocate for Petitioner.
Mr.P.N. Kutti, A.G.P. for Respondent Nos.1 to 5.
Mr.P.V. Barde Advocate for Respondent No.6.
Mr.N.B. Narwade Advocate for Respondent Nos.
7A to 7C, 8A to 8C and 9.

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WITH

**CIVIL APPLICATION NO.12577 OF 2016
IN
WRIT PETITION NO.7812 OF 2016**

- 1) Raosaheb s/o Baburao Dethe,
Age-65 years, Occu:Labour,
- 2) Ganesh s/o Nivrutti Sawant,
Age-30 years, Occu:Labour,
- 3) Sanjay s/o Trimbak Salve,
Age-37 years, Occu:Labour,
- 4) Ashok s/o Bhagwat Wagh,
Age-45 years, Occu:Labour,
- 5) Anil s/o Pandit Godhade,
Age-35 years, Occu:Labour,
- 6) Sanjay s/o Rambhau Parve,
Age-39 years, Occu:Labour,
- 7) Tukaram s/o Rama Sonwane,
Age-60 years, Occu:Labour,
- 8) Ramnath s/o Maruti Gawali,
Age-42 years, Occu:Labour,
- 9) Jai s/o Dattatraya Kale,
Age-37 years, Occu:Labour,
- 10) Chandrakant s/o Raghunath Barde,
Age-32 years, Occu:Labour,
- 11) Arjun s/o Runja More,
Age-47 years, Occu:Labour,

12) Narayan s/o Mahadu Halpad,
Age-46 years, Occu:Labour,

13) Anil s/o Tulshiram Bagul,
Age-47 years, Occu:Labour,

All R/o-Chitranjanwadi,
Tq-Shrirampur, Dist-Ahmednagar.

...APPLICATNS.

VERSUS

1) The State of Maharashtra,
Through its Principal Secretary,
Revenue Department,
Mantralaya, Mumbai-32,

2) The Collector, Ahmednagar,
Tq. & Dist-Ahmednagar,

3) The Additional Collector,
Ahmednagar, Dist-Ahmednagar,

4) The Sub-Divisional Officer,
Shrirampur, Dist-Ahmednagar,

5) The Tahsildar, Shrirampur,
Tq-Shrirampur, Dist-Ahmednagar

6) The Maharashtra State Farming
Corporation, Head Office at
Senapati Bapat Road, Pune,
Through its Managing Director,

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- 8B) Annasaheb s/o Hari Douchwale,
Age-47 years, Occu:Agril.,
- 8C) Balasaheb s/o Hari Douchwale,
Age-42 years, Occu:Agril.,

Respondent Nos.7 to 8C all
R/o-Khandala, Tq-Shrirampur,
Dist-Ahmednagar,

- 9) Sachin s/o Shivaji Douchwale,
Age-22 years, occu:Agril.,
R/o-Khandala, Tq-Shrirampur,
Dist-Ahmednagar.
- 10) Grampanchayat Khandala,
Through its Up-Sarpanch,
Dinkar Jagannath Sadaphal,
Age-47 years, Occu:Agril.,
R/o-Khandala, Tq-Shrirampur,
Dist-Ahmednagar.

...RESPONDENTS

...

Mr.A.C. Darandale Advocate for Applicants.
Mr.P.N. Kutti, A.G.P. for Respondent Nos.1 to 5.
Mr.P.V. Barde Advocate for Respondent No.6.
Mr.N.B. Narwade Advocate for Respondent Nos.
7A to 7C, 8A to 8C and 9.
Mr.R.A. Tambe Advocate for Respondent No.10.

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

DATE OF RESERVING ORDER : 25TH JANUARY, 2018

DATE OF PRONOUNCING ORDER : 31ST JANUARY, 2018

ORDER [PER S.S. SHINDE, J.] :

1. This Petition under Article 226 of the Constitution of India, is filed with following prayers:

"B. Issue writ of certiorari or any other writ, order or directions in the nature of certiorari thereby quashing and setting aside the impugned order dated 16th June, 2016 passed by the respondent No.3 and for that purpose issue necessary orders.

C. Issue writ of certiorari or any other writ, order or directions in the nature of certiorari thereby quashing and setting aside the impugned list annexed at Exhibit "I" to this Petition

and for that purpose issue necessary orders.

D. Issue writ of mandamus or any other appropriate writ, order or directions in the nature of mandamus thereby directing respondents to consider the request of petitioner for allotment of 9 Acres 26 Gunthas land from Gut No.141 and 1 Acre 26 Gunthas from Gut No.158 at village Khandala, Tq-Shrirampur, Dist-Ahmednagar in accordance with law and for that purpose issue necessary orders."

2. It is the case of the Petitioner that the Petitioner is a Grampanchayat, village Khandala and the dispute revolves around Gut Nos.141 and 158 in which there are about 131 families residing for whom the Grampanchayat has provided several civic amenities including primary school, water supply scheme, Anganwadi, Temples, street lights, hand pumps, concrete roads and other basic amenities, for which huge funds have been spent by

the Grampanchayat. The people residing over the said land are the ex-employees or legal heirs of the ex-employees of Respondent No.6 - Maharashtra State Farming Corporation, from whom Respondent No.6 is collecting rent. Respondent No.6 Corporation has agricultural lands in village Khandala. Respondent No.6 was cultivating the lands acquired by State Government under the Ceiling Act. Now the Government has taken a policy decision to restore the lands to the original land owners. The land in Gut Nos.141 and 158 is out of the said area.

3. It is the further case of the Petitioner that on 24th September, 2015 Grampanchayat made a representation through the Block Development Officer to the Collector for extension of Gaathan in view of the scarcity of land and persistent demand by the people. Several such representations were made even before 24th September, 2015 however no positive action was taken by the State

authorities. Therefore, the Petitioner preferred Writ Petition No.10014 of 2015 before this Court for seeking directions against the Respondent Authorities for extension of Gaothan. By order dated 8th October, 2015 this Court disposed of the said Petition directing the Collector to decide the proposal dated 24th September, 2015 within four months from the date of the order. On 14th October, 2015 the Petitioner made representation to the Collector to take appropriate steps in view of the order dated 8th October, 2015 passed by this Court in Writ Petition No.10014 of 2015. On 16th June, 2016 the Additional Collector passed the impugned order wherein the proposal of the Petitioner was rejected without hearing the Petitioner or calling upon any of the persons who are likely to be affected by the said order. Hence this Writ Petition.

4. Learned counsel appearing for the Petitioner, referring to the grounds taken in the

Petition submits that the impugned order dated 16th June, 2016 passed by Respondent No.3 - Additional Collector, Ahmednagar is contrary to the provisions of law and without following the principles of natural justice. The impugned order reflects absolutely non application of mind and non recording of reasons by Respondent No.3 while passing the same. While passing the impugned order Respondent No.3 ought to have granted an opportunity to the Petitioner and other affected persons, to put forth their case and only then the order should have been passed. It is submitted that List Namuna No.3 which is prepared by the Respondent Authorities is without appreciating the fact that several persons are residing on the said land, and they would have to be dispossessed and all the civic amenities developed by the Petitioner would have to be destroyed before handing over the disputed land to Respondent Nos.7 to 9. Learned counsel also invites our attention to the other grounds taken in the Petition and

submits that the Petition deserves to be allowed.

5. On the other hand learned A.G.P. appearing for the State, referring to the affidavit in reply filed on behalf of Respondent Nos.2 to 5 submits that present Petition is filed challenging the order dated 16th June, 2016 passed by Respondent No.3. It is submitted that the Petitioner is seeking allotment of land admeasuring 9 Acres 26 Gunthas from Gut No.141 and 1 Acre and 26 Gunthas from Gut No.158 at village Khandala, Tq-Shrirampur, Dist-Ahmednagar. It is submitted that the Block Development Officer, Panchayat Samiti, Shrirampur has submitted proposal dated 24th September, 2015 to Respondent No.5 - Tahsildar, Shrirampur, with request for extension of Gaothan for the persons residing in Gut Nos.141 and 158 at village Khandala, Tq-Shrirampur, Dist-Ahmednagar. It is submitted that in the meanwhile the Petitioner filed Writ Petition No.10014 of 2015 before this Court

seeking directions against the Respondent Authorities for allotment of land from Gut Nos.141 and 158 for extension of Gaothan. This Court disposed of the said Petition on 8th October, 2015 directing Respondent No.2 to take decision on the proposal tendered by the Petitioner to Tahsildar on 24th September, 2015 within the period of four months.

6. Learned A.G.P. further submits that as per the directions given by this Court in Writ Petition No.10014 of 2015, the opinion from the Assistant Director, Town Planning, Ahmednagar has been called. The Assistant Director, Town Planning, Ahmednagar submitted its opinion by letter dated 17th May, 2016 and specifically opined that as per the map of Shrirampur Development Center, the land from Gut Nos.141 and 158 at village Khandala, Tq-Shrirampur, Dist-Ahmednagar, is included in the agricultural zone and the residential use in the said land is not

permissible. After considering all the relevant documents including the opinion submitted by the Assistant Director of Town Planning, Respondent No.3 has rightly decided the proposal dated 24th September, 2015 submitted by the Petitioner, by the impugned order dated 16th June, 2016. Therefore, it is prayed that the Petition deserves to be dismissed.

7. Learned counsel appearing for Respondent Nos.7 to 9 referring to the affidavit in reply, submits that the concerned Respondents are the legal heirs of the original land owners namely Raibhan Sakharam Dhokchaule and Savleram Shahaji Dhokchaule, whose land was taken on lease by the Maharashtra Sugar Mills and to that extent lease deed was executed in the year 1936. In view of the policy of the State Government, it has been decided to allot the land to the legal heirs of the original land owners who had given the land on lease and hence the authorities prepared the list

of Namuna No.3 of village Khandala. It is submitted that land of the forefathers of these Respondents had been leased and they are entitled to the land. It is submitted that from Gut No.141 already the allotment had took place to Parvatibai Sadashiv Hagavane and Baban Damodhar Hagavane therefore, the Petitioner now cannot say that the impugned order passed by the learned Additional Collector is not legal one.

8. Referring to the additional affidavit in reply filed, learned counsel appearing for Respondent Nos.7 to 9 further submits that on 21st July, 2016 this Court issued notices to the Respondents and in the meanwhile the order of maintaining status quo in respect of Gut Nos.141 and 158 of Village Khandala is passed. It is submitted that the Petitioner Grampanchayat is not obeying the order of maintaining status quo and it has passed the resolutions, and it has been resolved that from the concerned Gut Numbers rooms

should be allotted to the concerned persons and in the Gramsabha sanction had been given for the same. The Respondents referred to another resolutions passed by the Petitioner Grampanchayat and submitted that by intentionally passing such resolutions, the Petitioner had committed the contempt of Court and therefore the Petition deserves to be dismissed.

9. We have carefully considered the submissions of the learned counsel appearing for the Petitioner, learned A.G.P appearing for the State and learned counsel appearing for Respondent Nos.7 to 9. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, and the affidavits in reply filed on behalf of the respective Respondents.

10. From the perusal of the documents placed on record it is clear that lands at Gut Nos.141 and 158 were taken on lease by Maharashtra State

Farming Corporation. Now the policy decision has been taken by the State Government to return those lands to the original land owners. As some families are residing in the said land, Petitioner Grampanchayat submitted the proposal dated 24th September, 2015 to the Collector for allotment of the said land for extension of Gaothan. The said proposal was not decided within reasonable time, therefore, the Petitioner Grampanchayat filed Writ Petition No.10014 of 2015 seeking directions against the Respondent Authorities to decide the said proposal. By an order dated 4th August, 2015 passed in the said Writ Petition, this Court directed the Collector to decide the said proposal within four months. In pursuance to the directions issued by this Court, the Collector, Ahmednagar sought opinion from the Assistant Director, Town Planning, Ahmednagar in respect of allotment of land from Gut Nos.141 and 158 situate at village Khandala, Tq-Shrirampur. By letter dated 17th May, 2016 the Assistant Director, Town Planning,

Ahmednagar submitted his opinion and specifically opined that as per the map of Shrirampur Development Center, the land from Gut Nos.141 and 158 at village Khandala is included in the agricultural zone and the residential use of the said land is not permissible. After considering the opinion submitted by the Assistant Director, Town Planning, Ahmednagar and all other relevant documents, by impugned order dated 16th June, 2016, the Additional Collector, Ahmednagar, rejected the proposal submitted by the Petitioner Grampanchayat, for the reasons stated in the impugned order. We have carefully perused the impugned order dated 16th June, 2016. In our opinion, the reasons assigned by Respondent No.3 in the impugned order are in conformity with the policy of the State Government. Therefore, no interference is called for in the impugned order passed by Respondent No.3.

11. In the peculiar facts and circumstances

of this case, we are not inclined to issue any mandatory directions to the Respondent Authorities. However, it will be open for the Petitioner to move representation to the State Government for redressal of their grievances. In case such representation is made, the State Government may direct the competent authority to decide such representation in accordance with law and after hearing the representative of the Petitioner and if necessary, other affected parties.

12. With the above observations, the Writ Petition stands disposed of. Ad-interim relief/ interim relief which was in force during the pendency of the Writ Petition, to continue for six weeks from today. We make it clear that, prayer for extension of ad-interim relief/interim relief beyond the period of six weeks will not be entertained under any circumstances.

13. In view of the disposal of the Writ
Petition, Civil Application No.12577 of 2016
seeking intervention, also stands disposed of.

[S.M. GAVHANE, J.]

asb/JAN18

[S.S. SHINDE, J.]