

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

WRIT PETITION NO.7576 OF 2013

Pune Zilla Sahakari Doodh
Utpadak Sangh, Pune

.. Petitioner

V/s.

The State of Maharashtra & Ors.

.. Respondents

.....
Mr.J. Shekhar a/w. MrAkshay R. Kapadia i/b. J. Shekhar & Co.,
Advocate for the Petitioner.

Mr. Rushikesh C. Barge, Advocate for Respondent No.5.

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**CORAM : S.C. DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.**

DATED : APRIL 6, 2018.

P.C. :

By this petition, under Article 226 of the Constitution of India, the petitioner claims that it is aggrieved and dissatisfied with an order dated 31st August, 2009, whereby a piece or parcel of land was allotted to respondent nos.5 and 6.

2 The petitioner claims that it is a Co-operative Federation and engaged in the business of procuring, collecting, processing, disbursing and manufacturing of milk products within Pune District. The respondent no.1 is the State of Maharashtra,

through the Department of Revenue and Forests, and Respondent Nos.3 and 4 exercise powers under the Maharashtra Land Revenue Code, 1966.

3 The respondent nos.5 and 6 claim to be the Educational Institutions/Charitable Trusts in the field of education.

4 The claim of the petitioner is that, on 10th April, 1969, approximately 20 acres of land was allotted to it by the State Government / the District Collector. This land is within the limits of the Pune Municipal Corporation. The petitioner states that it has made construction of about 47,413 sq.ft. on this land. After the period of lease expired and application for renewal was made on 24th December, 1979, a request was again made to extend this lease. It is claimed that, either the land should be sold or lease should be extended. However, it is admitted that, from the year 1996 till the year 2006, beyond making repeated requests, there was no Deed or document executed, much less, in the nature claimed by the petitioner. Then it is alleged that, the 4th respondent to this petition, who is a Tahsildar, entered the property, made inspection thereof and, thereafter, submitted a

report to the Collector. Thereafter, a show-cause notice was issued to the petitioner alleging as to why some portion of the land allotted to it should not be taken away.

5 The correspondence continued and thereafter the 3rd respondent passed an order dated 13th February, 2007. It is stated that, being aggrieved and dissatisfied with this order, the petitioner approached the State Government by preferring Revision Application No.55 of 2007 and the Divisional Commissioner was seized of the matter.

6 In the meanwhile, the 5th respondent made some application for allotment of certain land to it. From the record, it is alleged that about 2 ½ acres of land came to be allotted, firstly, to 5th respondent and, thereafter, to 6th respondent. Thus, they were allotted 2 ½ acres land each. It is alleged that, the petitioner was served with a notice of this nature, which is dated 31st August, 2009. Aggrieved and dissatisfied with that, the Writ Petition was filed in this Court being Writ Petition No.12528 of 2009. That Writ Petition was subsequently disposed of. However, the petitioner alleged that, it has been deprived of the portion of five acres of the land.

7 Pertinently, there are affidavits filed by the Government, in which it is stated that the petitioner is in breach of the terms and conditions, on which the land came to be allotted to it. Apart therefrom, the 5th respondent to this petition filed a Writ Petition in this Court being Writ Petition No.9727 of 2015. That Writ Petition complains that a Revision Application was preferred by the present petitioner, aggrieved and dissatisfied with the interference by the State Government, allegedly, with regard to the allotment made in favour of 5th and 6th respondents.

8 In that Writ Petition, on 16th February, 2018, a Division Bench of this Court has passed the following order:

“1 The petitioner Bharati Vidya Peeth - a public charitable trust has challenged the order passed on 7th August 2013 and 20th August 2013 by which it says that it is seriously aggrieved.

2 It is aggrieved because the Revision Application has been filed by Pune Zilla Sahakari Doodh Utpadak Sangh, Pune a respondent to this petition, namely, Respondent no.5. That proceedings styled as “Revision Application” at the instance of this Sangh, claims that the land Survey No.130 to 133 is a public property. The State Government had allotted allegedly 20 acres land on lease basis to this Sangh. Out of that, 5 acres land

was resumed because the Sangh allegedly breached the terms and conditions of allotment/lease. That order of 13th February 2007 was challenged and before the Additional Commissioner on 26th February 2007, that proceeding is pending.

3 In that, there is a reference to a Government order dated 31st August 2009 allotting allegedly five acres of the Government land to the petitioner before us and to one to Pune Zilla Shikshan Mandal. For implementing this order, the Doodh Sangh was directed to hand over the five acres of land. However, aggrieved and dissatisfied against that notice to hand over the land Doodh Sangh which is respondent no.5 before us filed a writ petition being Civil Writ Petition No.10528 of 2009. On this petition, an order came to be passed by this Court, copy of which is at page 38 of the paper book dated 25th April 2013. That order reads as under :“

“1 Learned counsel for the parties, after arguing the matter for some time, request that the petition be disposed of with following directions and no reasons in support thereof be given.

- i. The petitioner will file a Revision Application challenging the order passed by the Respondent No.2 – District Collector, Pune, dated 13th February 2007 to the State of Maharashtra.*
- ii. The Principal Secretary (Revenue),*

State of Maharashtra will hear the Revision Application filed by the petitioner.

- iii. The Revision Application will be filed by the petitioner within a period of three weeks from today and the Secretary will decide the same within four weeks thereafter.*
- iv. The ad interim protection granted by this Court by order dated 16th December 2009 will continue to operate during the pendency of the Revision Application and for a period of three weeks after service of the order on the petitioner. If the order is adverse to the petitioner.*
- v. All contentions of the parties on merits are expressly kept open.*

2 The Writ Petition is disposed of in the above terms".

4 It is stated that preceding this order, an order came to be passed on 8th February 2010 at the instance of the present petitioner in Civil Application No.296 of 2010 directing the respondent no.5 Sangh to implead it as a respondent to that writ petition. Therefore, the grievance is that even this Revision Application cannot proceed unless and until the petitioner is impleaded as a party respondent to that Revision Application.

5 Such an application seeking joinder or alternatively permitting intervention was made before the State Government and on 7th August 2013, by the impugned order, that application is rejected. After that, the final order has been passed in the Revision Application on 20th August 2013. Both are challenged on the ground that the petitioner ought to have been heard particularly when in substantive proceedings such as a Civil Suit, as also a Civil Writ Petition before this Court, the petitioner was made party by this Doodh Utpadak Sangh.

6 Mr.Sawant, learned Advocate appearing for the petitioner would submit that the impugned orders are contrary to law and in any event have resulted in miscarriage of justice. The petitioner should have been made a party or at least allowed to intervene for the real position could be pointed out to the Government by them. It is likely that the facts are distorted and misrepresented by both the respondent no.5 and 6 to this writ petition.

7 We are unable to agree with Mr.Sawant for more than one reason. Firstly, the proceedings are arising out of the Maharashtra Land Revenue Code, 1966. By Sections 20 onwards, for such of the lands belonging and vesting in the State for management and administration, the State is in the position of a trustee for the public. The Law permits the State to grant a lease of these properties or dispose them of in accordance with the provisions of the Maharashtra

Land Revenue Code, 1966 and particularly the Maharashtra Government Lands Disposal Regulations 1971 made thereunder. When such allotments are made by the State and there are disputes in relation to that because if the same land is allotted to another party, or if the same land is claimed by both parties in equal shares, which of them may not be defined, then, the grievance partake the character of an interse dispute. That means two private parties relying upon the grant or order of allotment claim the land to be allotted to them individually or jointly or in distinct shares which are not demarcated. Such litigation then ought to be fought between them by approaching the competent civil courts. If one does not make other the party, in proceedings before the Government, wherein neither such issues are settled, much less conclusively decided, then we do not see how there is any miscarriage of justice or the order under challenge can be said to be suffering from perversity or an error of law apparent on the face of the record. The petitioner is not prevented from bringing in substantive proceedings and relying on the order of allotment of land, particularly Government land to it and disputing the assertions of both the respondent nos.5 and 6 to this petition. If the proceedings before the State Government are understood in the proper perspective and as aforesaid, then we do not see any prejudice much less serious in nature. Merely because in writ petitions brought by the respondent no.5 to this Court concerning the dispute, the petitioner was directed to be made a party and was indeed a party, but the orders therein which are

brought to our notice have not dealt with the issues of right, title and interest in the immovable property which is claimed by the petitioner.

8 *Hence, reliance placed on these orders does not carry the matter any further nor are they binding on us.*

9 *In the circumstances, without expressing any opinion on the merits of the controversy, we dispose of this petition.*

10 *While we dispose it of, we are extremely cautious and careful in clarifying that this Court has not expressed any opinion on the entitlement of either parties and if the petitioner is prejudiced by any acts of the Government as also the private respondent, the petitioner can bring in substantive proceedings, including approaching the State Government. All such avenues and contentions therein are kept open."*

9 Thus, what we have noted is that, in the present petition, the petitioner claims that no portion of the land, namely, 20 acres, allotted to it could have been resumed in the manner done by the Government. Further, that portion could not have been allotted to 5th and 6th respondents to this petition.

10 Everything concerns a public property/Government land. Nobody can claim an absolute right insofar as such

Government lands/public properties are concerned. The petitioner may claim that the order passed on 31st August, 2009 is contrary to law in the sense that the entire 20 acres land was allotted to it, however, the terms and conditions of this allotment are allegedly not obeyed by it. Therefore, a portion of five acres therefrom could not have been resumed and that resumption is illegal, but, everything concerns the Government land / public property. It is entirely for the Government to decide as to how public properties should be distributed and allotted for being used by even Educational and Charitable Organizations. The Maharashtra Land Revenue Code, 1966, particularly Section 20 or Section 40 thereof, may empower the State Government to dispose of the Government land or public property, but that cannot be disposed of contrary to the judgment rendered by the Hon'ble Supreme Court of India, laying down the guiding principles therein, in the case of **Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh & Ors.**¹ The Hon'ble Supreme Court has summarized the principles as under:

“32 We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations or institutions de hors an invitation or advertisement by

1 AIR 2011 SC Page 1834

the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favoritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

33 *This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the Society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution.*

34 The allotment of land by the State or its agencies/instrumentalities to a body/organization/institution which carry the tag of caste, community or 5 religion is not only contrary to the idea of Secular Democratic Republic but is also fraught with grave danger of dividing the society on caste or communal lines. The allotment of land to such bodies/organisations/institutions on political considerations or by way of favoritism and/or nepotism or with a view to nurture the vote bank for future is constitutionally impermissible."

11 To our mind, therefore, the petitioner cannot claim an absolute right of allotment, nor can it claim that no portion of the land allotted, allegedly, to it should be resumed. At best, it can say that the resumption order should be passed after a show-cause notice and an opportunity of personal hearing. But, even if such order is passed and resumption is already made, later on, if that order is set aside, the land cannot come back to the petitioner automatically. In other words, the five acres land / portion, which is taken away from the petitioner, cannot come back to the petitioner even if the petitioner succeeds in its challenge to the resumption order. Eventually, public property/Government land must dispose of strictly in terms of the above guiding principles. All the more, when the petitioner has not obtained any renewal of the lease in its favour till date. Thus,

prima facie, no right accrues in its favour or the other respondents 5 and 6.

12 In the above circumstances, we do not see any reason to grant the relief and particularly to quash and set aside any order impugned in the Writ Petition. It is entirely for the Government to decide how it should distribute the land. If it has proceeded to distribute the land, not in accordance with the above guiding principles, then, such allotment or distribution can always be challenged, but the petitioner cannot make a grievance that the portion of the land illegally resumed could not have been allotted by the Government to anyone else, much less, the 5th and 6th respondents. Even if its challenge to the resumption order succeeds, this portion cannot come back to the petitioner. The Writ Petition is, therefore, has no merits and is dismissed.

13 At this stage, a request is made by learned counsel for the petitioner to continue the ad-interim order passed on this petition, particularly, on 21st January, 2014, for a period of eight weeks.

14 Learned counsel for the petitioner seems to be

unaware of the fact that this order reads as under:

“ Issue notice to the Respondents, returnable on 5th March, 2014. The learned counsel appearing for Respondent No.5 waives service. The learned AGP waives service for Respondent Nos.1 to 4. In addition to service through Court, private service is permitted for Respondent No.6. By way of ad-interim relief, we direct that if the possession of five Acres of land described in prayer clause (D) is not yet taken over, the same shall not be taken over till the next date.”

15 After this order, on 15th September, 2014, this Court passed the following order:

“ On the prayer made by the learned counsel appearing for the Respondent No.5, only by way of indulgence, we grant four weeks' time to the Respondents to file a reply. No further time shall be granted. Stand over till 3rd November, 2014. The ad-interim relief granted earlier to continue till further order.”

16 The Writ Petition was then listed on several occasions, and on 8th March, 2015, it was brought to the notice of this Court that the State Government has not filed any reply. This order of 18th March, 2015 is very important and it reads as under:

“ Learned counsel appearing for the respondent no.5 seeks time.

2 The State Government has not filed a reply. The State Government will have to file a reply and satisfy the Court that allotment made under order dated 31st August, 2009 is in accordance with law, and the same has been made after following a fair and transparent procedure.

3 Reply shall be filed by the State Government within a period of one month from today.

4 Place the petition on daily board of 21st April, 2015.

5 In the meanwhile, issue a fresh notice to the respondent no.6, returnable on the same date.

6 Humdast allowed.

7 Ad-interim relief granted on 21st January, 2014, will continue to operate till further orders.”

17 After this order, the petition was listed on 9th July, 2015, 12th August, 2015, 16th September, 2015 and 16th October, 2015 and, eventually, after the reply was filed. On every occasion, the order was continued till the next date. The Writ Petition was placed on 12th July, 2017, that order reads as under:

"1 We have perused the affidavit filed by Mr. Prashant Suresh Pisal, Tahsildar, Haveli, District - Pune on behalf of respondent nos.3 and 4 dated 4/7/2017. The deponent has referred to an order passed by the Collector, Pune on 5/5/2016 in the said affidavit. It is not known about further steps taken at the State level consequent to passing of order by the Collector. It would have been appropriate if the responsible officer at State level had filed affidavit.

2 Learned counsel appearing for the contesting parties submit that it seems that after passing of the order by the Collector, the matter would rest with the State Government to take a final decision in respect of the observations made by the Collector regarding non compliance of Condition No. 3 of Lease dated 10/4/1969 executed in favour of the predecessor of the present petitioner.

3 We direct the State Government to take appropriate decision in respect of the issue, which was discussed and deliberated by the Collector in his order dated 5/5/2016. After the State Government takes a

decision, the further hearing in the petition would take place.

4 Responsible Officer at the State level shall file an affidavit.

5 Stand over to 19/7/2017. Ad-interim relief granted earlier to continue till the next date.

6 Learned AGP to communicate this order to the State Government."

18 On a bare perusal of this order, it is apparent that the Government has yet not taken a final decision.

19 If the Government is yet to take the decision, then, it is evident that the Government has not physically dispossessed the petitioner from the distributed portion of five acres. The matter is still with the State Government.

20 The State Government cannot pass an order contrary to the judgment of the Hon'ble Supreme Court of India, as cited above. We would not allow the Government then to take sides

either of the petitioner or respondent nos.5 and 6. The Government is free to decide whether it should resume any portion of the land allotted to the petitioner and thereafter deal with it in accordance with law or otherwise. The Government must also decide whether the petitioner is in breach of the terms and conditions.

21 If Government is yet to pass a final order, then, there is no question of continuing the ad-interim relief. The request in that behalf is refused.

22 The Government must now take a decision either way and as expeditiously as possible. The issue be decided by the Government within a period of three months from today. Until then, the Government must not take any final steps in the matter.

(PRAKASH D. NAIK, J.) (S.C. DHARMADHIKARI, J.)