

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

WRIT PETITION NO.3386 OF 1994
WITH
CIVIL APPLICATION NO.2276 OF 1996

1 Pandu s/o Dhondiba Nikale,
Age : Major, Occupation : Labour,
R/o Mategaon, Tq.Kannad,
District Aurangabad.

2 Laxman s/o Dhondiram Nikale,
Age : Major, Occupation : Labour,
As above.

3 Laxmibai w/o Dada Nikale.

4 Bhaskar s/o Pandu Nikale.

5 Krishnabai w/o Pandu Nikale.

6 Shantabai w/o Kachru Nikale.

7 Sk.Dauood Sk. Ghasibhai.

8 Sayed Mehoob Sayed Babu.

All Age Major, Occupation : Labour,
R/o Mategaon, Taluka Kannad,
District Aurangabad.

...PETITIONERS

-VERSUS-

1 The State of Maharashtra.
Through its Secretary,
Mantralaya, Mumbai 400032.

2 Collector, Aurangabad.

3 Sub Divisional Officer,
Sillod, District Aurangabad.

- 4 Bhikan s/o Sandu Dhupe.
- 5 Bhagirath Rupchand Dhupe.
- 6 Gorakhnath Radhu Shrikhande.
- 7 Shamlal Rupchand Dhupe.
- 8 Harnabai Sheshrao Thorat.
- 9 Thaganabai Manikrao Sathdive.
- 10 Suryabhan Mahipat Sonwane.
- 11 Kashinath Tukaram Sonawane.
- 12 Asaram Rupchand Dhupe.
- 13 Tulshiram Rupchand Dhupe.
- 14 Vishwanath Tanaji Gaikwad.
- 15 Radhuba Bhika Shikhande.
- 16 Babulal Kachru Palhate.
- 17 Padmabai Pandrinath Satdive.
- 18 Ansabai Devrao Satdive.
- 19 Punjabai Damu Satdive.
- 20 Rambhabai Laxaman Satdive.
- 21 Ambadas Saluba Satdive.
- 22 Mahipat Govinda Sonawane.
- 23 Kachru s/o Mahipat Sonawane.
- 24 Tukaram s/o Mahipat Sonawane.
- 25 Chandrabhan s/o Mahipat Sonawane.

- 26 Dada s/o Mahipat Sonawane.
- 27 Vishwanath s/o Bhagaji Satdive.
- 28 Murlidhar s/o Bhagaji Satdive.
- 29 Machindra Radhaba Shrikhande
- 30 Rustum Radhaba Shrikhande, Age : 25.
- 31 Krishna s/o Saluba Divekar, Age : 28.
- 32 Shantilal s/o Kacharu Polhate, Age : 27.

All R/o Devpudi, Occupation : Agriculture,
Tq.Kannad, District Aurangabad.

...RESPONDENTS
(Nos.4 to 32 are intervenors)

...
Shri A.S.Deshpande, Advocate for the Petitioners.
Shri N.T.Bhagat, AGP, for Respondent Nos.1 to 3.
Shri M.G.Kolse Patil, Advocate for Respondent Nos.4 to 32.

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CORAM: RAVINDRA V. GHUGE, J.

Reserved on : 24th January, 2019
Pronounced on : 05th February, 2019

JUDGMENT:

1 The Petitioners are aggrieved by the impugned order dated 13.07.1994 by which, the District Collector, Aurangabad has declared that the Petitioners have no right to the Gairan land and their alleged encroachment cannot be regularized in view of the Government

Resolution dated 28.11.1991 which was aimed at regularizing the encroachments on Gairan Land.

2 On 01.03.1996 this Court had granted ad-interim relief to the Petitioners in terms of prayer clause “E”, by which, the Respondents were directed to allow the Petitioners to “till” the encroached land admeasuring 40 acres in Gat No.62 and Gat No.63 of village Deopudi, Taluka Kannad, District Aurangabad.

3 These Petitioners filed Civil Application No.145/1998 praying to this Court that they have lost possession of the suit land on 30.11.1997 and hence, their possession be restored. This Court heard the learned Advocates at length and held on the basis of the report dated 03.02.1998, which was called for from the revenue authorities, that these Petitioners are not in possession of the property at issue and there is no question of granting any relief to re-enter the lands for the purposes of resorting to agricultural activities.

4 I have heard the learned Advocates extensively on 03.01.2019 and 24.01.2019.

5 Before I deal with the rival contentions of the parties, it needs mention that the State of Maharashtra had a policy of regularizing encroachment on Gairan lands by landless persons. Several Government circulars were introduced in this context and finally, the Government Resolution was issued on 28.11.1991 that the Government lands which

are barren and the Gairan lands which are available, could be allotted to landless persons. The condition of granting such lands was that such landless persons must have encroached upon such lands in between 01.04.1978 till 14.04.1990. In this period, the encroachment should have been continued and the encroacher should have cultivated the land at least for one year. The maximum limit for granting such land was 2 hectores. It was made specifically clear that no encroachment that has occurred after 14.04.1990 would be regularized.

6 I find it appropriate to consider the submissions of the learned Advocates for the respective sides in the light of the above position.

7 The submissions of Shri Deshpande, learned Advocate for the Petitioners, can be summarized as under :-

- (a) The Petitioners are encroachers of the Gairan land from 1974.
- (b) On 16.08.1974, they received the notice for removal of encroachment.
- (c) On 09.07.1982, the Criminal Court convicted these Petitioners for having caused encroachment on the Government land.
- (d) The Government has introduced the policy to regularize such encroachment in 1966.
- (e) The Sub Divisional Officer had called upon these Petitioners

to tender proof of having encroached upon the land, by his letter dated 13.10.1988, in response to the representation of the Petitioners dated 26.09.1988 seeking regularisation of their alleged encroachment.

- (f) On 25.11.1988, these Petitioners submitted proofs of their encroachment. A reminder was also issued on 19.10.1989.
- (g) A panchanama was carried out on 20.10.1990 which indicates that 08 petitioners have committed an encroachment and that they are cultivating the Gairan land.
- (h) The Sub Divisional Officer issued the notice dated 11.06.1993 to the Petitioners for causing a hearing in the matter.
- (i) The Sub Divisional Officer has rejected the claim on the ground that there is no evidence of encroachment.
- (j) The office of the Collector did not consider the order dated 09.07.1982 by which, the Criminal Court convicted the Petitioners for encroachment.

8 The learned Advocate appearing on behalf of Respondent Nos.4 to 32 submits as under :-

- (a) All these Petitioners are from an adjacent village and do not belong to village Deopudi where the land is situated.
- (b) The law mandates that the encroachment should be done

only by persons who reside within the 8 kilometers area from the borders of the encroached land.

- (c) The conviction of these Petitioners is for an encroachment that was only attempted.
- (d) A charge was framed on 09.07.1982 by the learned JMFC, Kannad in CC No.658/1979 that these Petitioners have attempted a trespass on 02.09.1979.
- (e) These Petitioners immediately admitted the charges and prayed that they should be punished.
- (f) Consequentially, the Trial Court convicted these Petitioners on the same date i.e. 09.07.1982.
- (g) It is apparent that that the Petitioners staged an attempt to encroach and accepted the charges so that they would be convicted and the judgment of the Criminal Court would then become a solid piece of evidence regarding their encroachment.
- (h) Reliance is placed upon the judgment of the Honourable Supreme Court in the matter of ***Munshi Ram and others vs. Delhi Administration, AIR 1968 SC 702.***

9 I have perused the entire record in the light of the submissions of the litigating sides. I have also perused the record which

was produced by the rival sides with the permission of the Court.

10 It appears from the statement of these Petitioners recorded by the learned JMFC that they had attempted to encroach upon the land on 02.09.1979. A complaint was received in the Police Station on 03.11.1979. The charges were framed on 09.07.1982 and the statement of these Petitioners was recorded on the same day. Each of them pleaded guilty. No statement was made that they have encroached the land from 1958 onwards or that they have been cultivating the land from 1975-1976. The Trial Court convicted them on the same date by delivering its judgment.

11 The record reveals that none of these Petitioners are the residents of the village Deopudi. The Respondents reside within half a kilometer from the said land and they are landless. These Petitioners are said to be the residents of village Mategaon, which is admittedly beyond 8 kilometers from the concerned Gairan land. The Talathi of village Deopudi, namely, Mr.Khajekar, was from village Mategaon and the Respondents alleged that he had prepared the false panchanama to suit the interest of the Petitioners. The report prepared by the Sub Divisional Officer dated 03.02.1998 indicates that these Petitioners are not in possession of the Gairan lands.

12 Though the Petitioners appear to claim that they have been in possession of the land and were cultivating the said land from 1975

onwards, it is evident that they belong to village Mategaon and the encroachment is allegedly at village Deopudi. A notice was issued by the Tahasildar, Kannad dated 06.10.1979 by which, it is suggested that the encroachment caused by the Petitioners was sought to be removed. Though the Petitioners contend that they never removed their encroachment, the record does not reveal that the encroachment continued, inasmuch as the impugned order dated 11.07.1994 does not indicate that these Petitioners have continued their encroachment. In fact, the villagers from Deopudi seemed to be resisting the attempts of these Petitioners in encroaching upon the land in their village, knowing that they are outsiders.

13 The record also reveals that these Petitioners used to address the Revenue Authorities declaring that they are encroachers. When the revenue authorities asked for proof of such encroachment, the Petitioners have relied upon their representation forwarded to the Tahasildar, Deputy Collector, Collector, Hon'ble Chief Minister, State of Maharashtra and the order of their conviction dated 09.07.1982.

14 I find from the statements of these Petitioners recorded in their criminal case on 09.07.1982 that they had only made an attempt to encroach upon the land on 02.09.1979 and voluntarily accepted the charge levelled upon them and pleaded guilty. This appears to be a stray incident of encroachment. They have gleefully accepted the charge so as

to create some evidence of encroachment.

15 The Honourable Supreme Court has held in *Munshi Ram (supra)* that, it is true that no one including the true owner has a right to dispossess the trespasser by force if such trespasser is in settled possession of the land and in such a case, unless he is evicted by following the due process of law, he would be entitled to defend his possession even against the rightful owner. But, a stray or even intermittent act of trespass does not give such right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner, must be a settled possession extending over a sufficiently long period and acquiesced by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner.

16 In view of the above, I do not find that the impugned order could be termed as being perverse or erroneous.

17 This Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged. Pending Civil Application does not survive and stands disposed of.