

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

WRIT PETITION NO. 11478 OF 2016

Shikshan Prasarak Mandal
Indira Kale Prashala, Jalkotwadi,
Osmanabad, Dist. Osmanabad
Through its President,
Shivaji s/o Nagnath Kale,
Age: 70 years, Occ: Agri.,
R/o. Jalkotwadi, Osmanabad

..PETITIONER

VERSUS

1. The State of Maharashtra
(Through the Secretary of
Revenue and Forest Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad
3. The Collector,
Osmanabad, Dist. osmanabad
4. The Sub Divisional Officer,
Osmanabad
5. The Tahsildar,
Tuljapur, Dist. Osmanabad

..RESPONDENTS

Mr Anandsingh Bayas, Advocate for petitioner;
Mr P.G. Borade, A.G.P. for respondents/State;

**CORAM : PRASANNA B. VARALE
AND
R.G. AVACHAT, JJ.**

DATE : 4th JUNE, 2019

ORAL ORDER:

Heard Mr. Bayas, learned Counsel for the petitioner.

2. The petitioner is an educational institute and challenges the order dated 19th December, 2011, placed on record at Exhibit 'S' whereby, the District Collector, Osmanabad refused and rejected the proposal for grant of part of the Gairan land to the petitioner-institute. The petition is filed in the year 2016 and it is stated in prayer Clause 'B' that this order is given to the petitioner on 17th March, 2016. Thus, without there being any satisfying material, only an attempt is made to submit before this Court that the petitioner had approached this Court by filing a petition in the year 2016 challenging the order passed in the year 2011.

3. Be that as it may. Mr. Bayas, learned counsel appearing for the petitioner-institute invited our attention to the documents placed on record to submit the petitioner-institute is a registered educational institute and working in the field of academic for quite some time.

4. It is also submission of Mr. Bayas, learned Counsel that the petitioner school is running classes from 1st Standard to 8th Standard and the petitioner-institute is an aided institute. He also submitted that there are positive recommendations to the proposal of the petitioner from village level authorities including Talathi and Gram Panchayat. It was also the submission of Mr. Bayas, learned counsel appearing for the petitioner-institute that the petitioner-institute though is having a building and in the building, the classes are being run by the petitioner-institute is in need of open area so as to make the area available to the students as a play ground and the petitioner is ready to give undertaking to the authorities that the petitioner could retain the area, if granted to the petitioner as play ground only and will not change the nature of the land granted to the petitioner.

5. The respondent authorities have filed affidavit-in-reply through one Yogita d/o Sahebrao Kolhe, Tahsildar, Taluka Tuljapur, District Osmanabad. Learned A.G.P. appearing for the respondent authorities vehemently submitted that firstly no

right vests in the petitioner-institute to claim portion of the land from the Gairan land, as the petitioner-institute is a private institute and allotment of the land is for the public utilities or to the proposal submitted by the State authorities. It was also the submission of the learned A.G.P. that except Talathi, every other authority had informed the petitioner to provide necessary details and the proposal was under consideration of higher authorities. By inviting our attention to the documents placed on record along with the petition, learned A.G.P. submitted that the Tahsildar sought for measurement report from Taluka Inspector of Land Records with certain queries to the petitioner-institute and then forwarded communication to the authorities seeking other necessary information and thus, recommendations nowhere speak of any positive recommendations by the Tahsildar.

6. Learned Counsel for the petitioner made an attempt to submit before this Court that as per the Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971, such allotment to the play ground is not prohibited. Rule 7 of the said

Rules reads thus :

"7. Grant of land for play-grounds, gymnasiums, etc.:

(1) Land may be leased at a nominal rent of one rupee (Re.1) a year for play-grounds or other recreational purposes to educational institutions or local authorities or for gymnasium recognised by Government for a term not exceeding Thirty years by the Collector, when the revenue-free value of the land does not exceed Rs. 2,50,000; and with the sanction of the Commissioner, when the revenue-free value of the land exceeds Rs 2,50,000 but does not exceed Rs. 7, 50,000."

7. Perusal of the affidavit-in-reply shows that on receipt of the application, Tahsildar, Tuljapur directed the Talathi to conduct an enquiry and draw panchanama and submit report. Then the Tahsildar submitted the proposal to the superior authorities.

8. The learned A.G.P. invited our attention to the Government Circular placed on record at the instance of the

petitioner. The Government Circular is dated 12th July, 2011, which deals with the very issue of removal of encroachment and allotment of lands. The circular firstly states about the policy of State Government and the same reads that for allotment of the Gairan land, the authority is to see that no other land is available for allotment purposes, such allotment of land is retained the minimum land available for cultivation and then other consideration of the public utility. It is stated in the affidavit-in-reply that the petitioner runs private school. It is further stated that the authority is expected to take decision considering all the relevant factors and merely the application is received by the authorities, it cannot be presumed that on receipt of application, the authorities are duty bound to allot the land.

9. Another striking features emerged from the affidavit-in-reply filed on behalf of the State. The statement is made in the affidavit-in-reply in paragraph No. 14 that the petitioner has already encroached on the land Gut No. 326 and he has constructed the said school in the Gairan land in Gut No. 326. Now, it seems that the petitioner under the garb and guise of

making available playground is approaching the authorities for allotment of land. It is then stated in the affidavit-in-reply in paragraph No. 16 that there is more than 600 acres of land is available as Gairan but the petitioner-institution filed the proposal for getting Gairan land from Gut No. 326 admeasuring 2 hector. In fact, only 80 Are land is remained in Gat No. 326, hence, the proposal of the petitioner cannot be accepted

10. Thus firstly, the authority took into consideration all the relevant factors and secondly, when the petitioner is an encroacher and by encroaching the Gairan land had already constructed school building in Gairan land, we are unable to show any indulgence in the present petition.

11. Resultantly, the petition fails and dismissed accordingly.

(R.G. AVACHAT, J.)

(PRASANNA B. VARALE, J.)