

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

905 WRIT PETITION NO.8748 OF 2018  
WITH CA/3687/2019

MOHINIRAJ PRABHAKAR RAJHANS  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Kanade Angad L  
AGP for Respondents State: Mr. P.S.Patil  
Advocate for Respondents 4 & 5: Sudhir G. Bhalerao  
WITH  
WRIT PETITION NO. 8234 OF 2018

SANJAY PADMAKAR JOSHI  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the petitioner : Mr. Sanket S. Kulkarni  
Addl.GP for the respondents State: Mr. P.S.Patil  
Advocate for respondent No.2 : Mr. Sudhir G. Bhalerao

**CORAM : S. V. GANGAPURWALA &  
A. M. DHAVALA, JJ.**

**DATE : 28th March, 2019**

**PER COURT :**

1. Mr. Kanade, the learned Advocate for the petitioner in Writ Petition No. 8748/2018 submits that land bearing Gat No.629/2 admeasuring 6H 28R, situated at Sonai, Taluka Newasa, District Ahmednagar was acquired by the respondents from the ancestors of the petitioner in the year 1967 for the purpose of Mula Canal Maxim (Minor Irrigation Storage Tank). According to the learned counsel, the respondents have not used

the property for the purpose for which it is acquired nor it is used for any other purposes. The petitioner is entitled to get the property back. If the respondent is not ready to give the property back to the petitioner, then the petitioner is entitled to lease of that property.

2. The learned Advocate for the petitioner relies on Schedule 17 of Para 248 of the P.W.D. Manual. The learned Counsel further submits that on 19th August, 2015 the Executive Engineer, Mula Irrigation Department, Ahmednagar, has passed an order giving the writ land to the petitioner for cultivation. Pursuant to the said order, the petitioner deposited an amount of Rs.1,62,000/-. However, the petitioner was not delivered possession of the property even for a day. The encroachment is made by one Sanjay Joshi, as is observed in the order dated 9th August, 2015 by the Executive Engineer. According to the learned counsel, the un-utilized land has to be given to the owner from whom the land is acquired on lease basis. The respondents are not adhering to their own policy as is enunciated under the Government Resolution dated 10th

October, 1973.

3. Learned Additional G.P. submits that once the land is acquired, award is passed and the possession is taken, the land vests with the Government. If it is not used for a particular purpose, it can be used for any other purposes. Unused land cannot be given to erstwhile owner. Learned Additional G.P. relies on judgments of the Apex Court in **State of Kerala & ors Vs. M. Bhaskaran Pillai & Anr.**, reported in (1997) 5 Supreme Court Cases 432 and in the case of **C. Padma and others Vs. Dy. Secretary to the Government of T.N. & ors.**, reported in (1997) 2 Supreme Court Cases 627. The learned AGP further submits that notification dated 4th October, 1973 was the subject matter of consideration before the Division Bench of this Court in **Vishnu Namdeo Kumar & others Vs. State of Maharashtra and others**, reported in (2003) 2 Bom CR 200 and it has been held that such a land has to be given by a public auction.

4. We have also heard Mr. Kulkarni, learned Advocate for the intervenor and the petitioner of writ

petition No.8234/2018.

5. Reliance placed by Mr. Kanade, the learned Advocate for the petitioner on Schedule 17 of para 248 of the P.W.D. Manual would not enure to the benefit of the petitioner. Inasmuch as, Para 248 of the P.W.D. Manual is applicable in case the land is acquired for the purpose of tank and the land is alluvial land (Galpera) and the person becomes landless. It is only in these circumstances, Schedule 17 under Para 248 of the P.W.D. Manual would be operative. The learned counsel for the petitioner fairly accepted that petitioner owns some other land. In view of that, Schedule 17 of Para 248 of the Manual would not apply in the present case. Moreover, even as per Sub Rule 2 of Schedule 17 under para 248, maximum land that can be allotted as contemplated therein is 1.2 to 1.6 hector. Land in the present case is 6 H 28 R.

6. There cannot be any dispute with the proposition that once the land is acquired, it absolutely vests with the Government and if the land is not used for the purpose for which it is acquired, it can be used

for any other purposes also. Notification dated 4th October, 1973 was also the subject matter of consideration before the Division Bench of this Court in case of **Vishnu Namdeo Kumar (Supra)**. Division Bench of this Court observed that expropriated owner cannot insist on restoration of land even if the land has not been utilized for the purpose it was acquired or for other purpose. If the land has not at all been used, the land of the Government should be sold through public auction and not to the expropriated owner. The Division Bench further observed that the Government Resolution dated 10th October, 1973 cannot be enforced.

7. In the light of above, the petitioner would not be entitled to the writ land as of right.

8. It is contended that the respondents have received amount of Rs.1,62,089/- from the petitioner pursuant to the order dated 19th August, 2015 and possession has not been delivered to the petitioner. The petitioner may approach the authorities for the refund of the said amount. The authority, on receipt of the application, shall consider the said application

and, if the authority concludes that possession could not be handed over to the petitioner, then to pass order for the refund of the amount.

9. The respondents Authority may deal with the writ land for the purpose for which the respondents want to use it and if it dose not want to use it for any other purpose, then may further proceed with the writ land for public auction of lease or for sale through public auction.

10. Writ petitions are accordingly disposed of. No costs.

11. Intervention application is also disposed of.

**(A. M.DHAVALÉ, J.)**

**(S.V.GANGAPURWALA, J.)**

JPC