

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

WRIT PETITION NO. 2470 OF 2014

Kadubal Baburao Salunke
Age: 40 years, Occu.: Labour,
R/o Amrapur Wagghundi, Tq. Paithan,
Dist. Aurangabad

..PETITIONER

VERSUS

1. State of Maharashtra
Through its Revenue & Forest and Rehabilitation
Department, Mantralaya,
Mumbai-400 032
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The Collector, Aurangabad,
Collectorate Office, Aurangabad.
4. The District Rehabilitation Officer,
Aurangabad Collectorate Office, Aurangabad.
5. The Special Land Acquisition Officer,
Jaikwadi Project, Aurangabad.
6. Tahsildar Paithan,
Tq. Paithan, Dist. Aurangabad.

..RESPONDENTS

....
Mr. S.D. Ghatol Patil, Advocate for petitioner
Mr. S.S. Dande, A.G.P. for respondents
....

**CORAM : SUNIL P. DESHMUKH AND
R.G. AVACHAT, JJ.**

DATED : 15th APRIL, 2019

ORAL JUDGMENT (PER : SUNIL P. DESHMUKH, J.)

Rule. Rule made returnable forthwith and heard finally

with the consent of learned Counsel for petitioner and learned Assistant Government Pleader for respondents.

2. Petitioner is before this Court seeking possession of 2 *Acre* of land pursuant to allotment made to his predecessor, who was his mother, having been rendered landless for acquisition of her land for *Jayakwadi* project. Pursuant to the scheme of government making available alternate lands to the persons whose lands have been acquired, petitioner's mother had applied for allotment of alternate land. Her application had been granted and order came to be passed on 25th November, 1987, allotting her lands situated at Hiradpuri admeasuring 2 *Acre* from Survey No. 102 and 2 *Acre* from Survey No. 119. Altogether 4 *Acre* land had been allotted to her. An amount of Rs.552/- as deposit towards first installment for each piece of 2 *Acre* land had been sought. Subsequently, it appears that Respondent No.4 handed over 2 *Acre* piece of land from Survey No.102 to petitioner's mother in 2012. There is no dispute on that. However, rest of 2 *Acre* piece of land from Survey No. 119 had not been handed over. Correspondence ensued in this respect. It appears that petitioner's mother had been communicated in September 2012 that the 2 *Acre* piece of land allotted to her from Survey No. 119 was not available and she may seek alternate land from office of the Collector, Aurangabad. Accordingly, it appears that petitioner had applied to

the concerned authorities i.e. Respondents No. 4 and 6 in 2013 alongwith affidavit seeking allotment of land, since the land allotted earlier from Survey. No. 119 had already been allotted to some other person. Petitioner requested respondents for land admeasuring 2 Acre from Survey No.7 situated at Hiradpuri as land had been available in said Survey No. However, respondents had not responded and the petitioner is before this court.

3. Learned Counsel for petitioner took us through allotment order, position of Survey No. 7 situated at Hiradpuri, correspondence in respect of allotment of another land in Survey No.119 and said land having been allotted to some other person. In the circumstances, alternate land from Survey No.7 for allotment was available but no communication had been received in this respect from the concerned officers, and therefore, this petition is filed.

4. Learned counsel has also referred to an order passed by this court dated 06th October, 2016 in Writ Petition No. 9193 of 2015 in the case of *Ek Nath Ravan Avdhoot Vs. State of Maharashtra and Others* which according to him is relevant since circumstances are similar. Learned counsel submits that paragraphs no. 2 and 3 thereof would show the same. In said case, the court had considered that alternate land was allotted to the predecessor of petitioner on the ground of

acquisition of land and that the contention has been raised that since there is failure to deposit 75% of the amount of compensation, allotment of land to the petitioner is not possible. Possession of the land had admittedly not been given to father of the petitioner. The court had observed that Government Resolution dated 20th June, 1973 would come to the aid of the petitioner. Considering relevant aspect, the court directed the respondents that on petitioner paying all installments of the occupancy price and complying with all other legal requirements, it shall hand over possession of land whichever is vacant and available and shall take steps to handover possession of 2 Acre land as per the allotment order in favour of father of the petitioner.

5. Learned Assistant Government Pleader on the other hand contends that demand for allotment of land is belated i.e. long after order is passed in 1987. He submits that having regard to the inordinate delay, petitioner would not be entitled for allotment of alternate land as considered in order dated 17th October, 2012 passed by this court in Writ Petition No. 5847 of 2014 and connected petitions. He refers to letter dated 29th January, 2015 issued by Respondent No.1, directing not to allot lands to those project affected persons who has not deposited requisite amount of compensation with the government at the relevant time in accordance with

Government Resolution. He, therefore, urges not to consider the request made under the petition.

6. In the present case, there is no dispute that petitioner's mother had been allotted 2 *Acre* land each from lands Survey Nos. 102 and 119 situated at Hiradpuri. While 2 *Acre* piece of land from Survey No. 102, pursuant to order dated 25th November, 1987 had been handed over in 2012, another 2 *Acre* piece of land from Survey No. 119 could not be handed over for the reason that same was not available for allotment having been occupied by some other person. Petitioner, in the circumstances, had been advised to seek allotment and possession of other alternate land. Accordingly, petitioner had requested the concerned authority i.e. Respondent No.4 – District Rehabilitation Officer, Aurangabad and Respondent No.6 – Tahsildar, Paithan. From the affidavit-in-reply filed on behalf of respondents, it is clear that it is not the case of respondents that no alternate land was available for allotment pursuant to order dated 25th November, 1987. The suggestion and request of petitioner to have land from Survey No.7, which according to petitioner, has been meant for allotment to persons whose lands are acquired, has not been disputed. Another defence is being taken on the ground that request is belated. It is not disputed that land allotted to petitioner's mother from Survey No. 119 could not be allotted for same being occupied by

some other person. It is also not the case of respondents that situation would not be governed by stipulation under Government Resolution dated 20th June, 1973, particularly clause 3(d)(1) and clause 4 thereof, for inability to hand over possession of allotted land for the reason referred to in correspondence particularly one dated 28th September, 2012. Entitlement of petitioner to have allotment of alternate land would not be questioned.

7. It appears that factual position in the present matter would be governed by Government Resolution dated 20th June, 1973 and as observed by Division Bench of this Court in Writ Petition No. 9193 of 2015 in the case of *Eknath Ravan Avdhoot Vs. State of Maharashtra and Others (supra)* shall come to the aid of petitioner.

8. Considering aforesaid position, contention of the respondents on the pretext that demand is belated, would not stand to reason and is believed by the act of allotment of land pursuant to order dated 25th November, 1987 in 2012 while alternate land has been demanded in 2012-13 is impelled by failure to deliver the allotted land.

9. In the circumstances, the respondents shall, on petitioner paying all the installments and complying with all the requirements,

hand over possession of 2 *Acre* piece of land, whichever is vacant and available preferably from Survey No.7, Hiradpuri, Tq. Paithan, if same is available for allotment and shall take steps to hand over possession of 2 *Acre* piece of land as expeditiously as possible.

10. Writ Petition is allowed and is accordingly disposed of. No costs.

11. Rule is made absolute.

SSD (R.G. AVACHAT, J.)

(SUNIL P. DESHMUKH, J.)