

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2275 OF 2016

Saxant s/o Madhavrao Maske,
Age : 61 years, Occu: Agri & Pensioner,
R/o Lamjana, Taluka Ausa,
District Latur.

... Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Department of Resettlement
of Project Affected persons
Mantralaya, Mumbai – 32.

2. The Divisional Commissioner,
Aurangabad.

3. The Additional Collector,
Latur, District Latur.

4. Smt. Parwatabai Machindra Adsule,
Age : Major, Occu: Household,
R/o Nagarsoga, Taulka Ausa,
District Latur.

... Respondents

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Mr. B. N. Patil, Advocate for the Petitioner.

Mr. A. S. shinde, AGP for Respondent Nos. 1 to 3.

Mr. G. L. Awale, Advocate for Respondent No.4.

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CORAM : V. K. JADHAV, J.

DATED : 28th November, 2019

PER COURT:-

1. By this Writ Petition, the petitioner is assailing the judgment

and order dated 09.10.2015 passed by respondent no.2-Divisional Commissioner, Aurangabad in file no. 2015/Est./GA/Desk-1/F.N. 15/Kavi thereby dismissing the appeal preferred by the present petitioner and confirming the order passed by respondent no.3-Additional Collector, Latur dated 18.07.2014 in File No.2014/Earthquake Rehabilitation/Kavi-261/348. The said application was made by the petitioner to respondent no.3-Additional Collector, Latur seeking allotment of house no.7/127 situated at village Lamjana, Taluka Ausa, District Latur.

2. Brief facts giving rise to the present petition are as follows :

a. The petitioner is resident of village Lamjana, Taluka Ausa, District Latur. He was in service under Central Government and after retirement he is settled at his native place. He is having agricultural land at village Lamjana. The said village was affected due to the earthquake in the year 1993. Respondent no.1 thereafter resettled the village. However, petitioner's name was not included by the authorities in the list of beneficiaries since he was out of village at Himachal Pradesh due to his service. It is contention of the petitioner that though he was serving in Himachal Pradesh at

the relevant time, his family was residing at village Lamjana and was carrying on the agricultural activities.

b. During the process of resettlement, the house bearing house no. 7/127 of village Lamjana was earmarked in favour of one Mathurabai Ronge who died before the 1993 earthquake. It is the contention of the petitioner that said Mathurabai Ronge was having only one son, namely, Chandar, who also expired at Mumbai and there are no other successors of deceased Mathurabai. Therefore, the Grampanchayat office bearers permitted the family of the petitioner to occupy and/or possess said house no. 7/127. The petitioner thereafter did certain construction work as the house was incomplete. Petitioner was permitted to secure electricity and water supplies. He also continued to pay all the taxes levied by the Grampanchayat. The petitioner continued to possess the said house since last 18 years without interruption.

c. However, as the petitioner did not support the Grampanchayat members during Grampanchayat elections, respondent no.4 started making claims in respect of the said house on the ground that she is the legal heir of deceased Mathurabai on

the basis of false documents. The petitioner therefore, made application before the Collector, Latur seeking allotment of the said house in his name and also seeking directions to the Grampanchayat to take entry in Form No. 8 to that effect. Said application remained pending for a considerable period. The petitioner therefore, filed Writ Petition No. 2253 of 2014 before this Court and this Court while deciding the said Writ Petition, directed the Collector, Latur to decide the application filed by the petitioner within the stipulated time. Respondent No.3 herein i.e. the Additional Collector, Latur, decided the application against the petitioner observing that respondent no.4 is the legal heir of deceased Mathurabai Ronge. Being aggrieved, the petitioner preferred appeal before respondent no.2-Divisional Commissioner, Aurangabad raising all the grounds available to him. However, the Divisional Commissioner dismissed the appeal by the impugned order. Hence this Writ Petition.

3. Learned counsel for the petitioner submits that said Mathurabai Ronge expired before the allotment of house in her name. Her only successor i.e. her son Chandar Ronge is also dead. Therefore, allotment of the house in favour of Mathurabai cannot

sustain as there cannot be allotment in favour of a dead person. Learned counsel submits that the house property in question is not ancestral nor self acquired by deceased Mathurabai. Hence, there is no question of succession. Learned counsel submits that after getting directions from this Court in Writ Petition No. 2253 of 2014, the Collector called report from the Tahsildar. Copy of the said report and also the another documents were not provided to the petitioner. It was found that the petitioner is residing in the said house since last 18 years. He is permitted by the Grampanchayat authorities to secure water connection and electricity connection. He is regularly paying all the Government taxes and is in continuous possession of the said house since last 18 years. Learned counsel submits that the succession certificate produced by respondent no.4 reveals that Mathurabai Ronge expired at Nagarsoga, taluka Ausa and even the house where she was residing was shown at Nagarsoga. Learned counsel submits that the petitioner was not party to the proceedings bearing M.A. No. 44 of 2013 filed by present respondent no.4, wherein the Civil Judge, Junior Division, Ausa, by order dated 08.01.2014, granted succession certificate in favour of respondent no. 4 since her evidence remained unchallenged and nobody contested the matter.

However, from the application made by respondent no.4 itself, it appears that the said certificate was obtained by playing fraud and the same could not have been given weightage as deceased Mathurabai was resident of village Nagarsoga and she died on 09.08.1994. However, respondent no.3 held that the petitioner is residing in the said house unauthorizedly and dismissed his application vide order dated 18.07.2014.

4. Learned counsel submits that vide impugned order dated 09.10.2015 respondent no.2-Divisional Commissioner, Aurangabad dismissed the appeal preferred by the petitioner, holding that the house in question was allotted to son of Mathurabai, namely, Chandar Satwa Ronge in the year 1999 who is dead and there is succession certificate in favour of respondent no.4. Respondent No.2-Divisional Commissioner, Aurangabad further observed that the father of the petitioner was allotted a house in the said village bearing house no. C-7/A-8 and Smt. Parwatabai Adsule - Respondent no.4 herein, being the successor of deceased Mathurabai, is eligible for possession of house no. 7/127.

5. Learned counsel further submits that both the authorities did not consider that respondent no.4 is not residing at village Lamjana and even deceased Mathurabai Ronge was also residing at village Nagarsoga, Taluka Ausa during her lifetime. Respondent No.4 or her predecessors were not having any ration card of village Lamjana. On the other hand, the petitioner holds ration card no. 0209787 and is resident of village Lamjana and he was out of station at Himachal Pradesh due to service. Village Lamjana is resettled and even the petitioner cannot purchase a plot in the said village. Therefore, the then Grampanchayat office bearers permitted the petitioner and his family to reside in the house lying vacant. However, the authorities did not consider that the claim of the petitioner is genuine and he is in need of house/accommodation. The house allotted in favour of the father of the petitioner is small and not sufficient to accommodate the petitioner alongwith his other brothers. The long standing stay of the petitioner is also not considered by the respondent authorities. Learned counsel submits that the claim of respondent no.4 is belated and the same should have been rejected. The succession certificate was obtained by playing a fraud, on the basis of which the impugned order came to be passed. The house in question is

neither ancestral nor self acquired property of deceased Mathurabai. The housing is provided to the earthquake affected persons of village Lamjana and neither deceased Mathurabai nor the alleged successor respondent no.4 were the residents of village Lamjana. As a consequence of the impugned orders, the petitioner and his family would be thrown on the streets. It will become difficult for the petitioner to cultivate his land in village Lamjana.

6. Learned AGP submits that the petitioner is not the beneficiary as per the criteria laid down in Government Resolution dated 01.12.1995 issued by the Revenue and Forest Department, Government of Maharashtra. The petitioners has not produced any record supporting his contention that the Grampanchayat authorities of village Lamjana had permitted him to occupy house no. 7/127 which was originally allotted to the son of deceased Mathurabai Ronge in the month of June-July 1999. The petitioner is illegally occupying the said house since allotment. Learned AGP submits that according to the directions of the High Court in Writ Petition no. 2253 of 2014, the Additional Collector, Latur has decided the petitioner's application dated 22.11.2013 with the observations that house no. C-7/A-8 was allotted to the father of

the petitioner and the petitioner is illegally occupying house in question i.e. house no. 7/127. The Additional Collector, Latur has further observed that house no. 7/127 was actually allotted to Chandar Satawa Ronge, son of deceased Mathurabai Ronge whose name was included in the list of earthquake affected persons of village Lamjana. By order dated 08.01.2014 in M.A. No.44 of 2013 filed by respondent no.4, the learned Joint Civil Judge, Junior Division, Ausa has declared respondent no.4 as the legal heir of deceased Mathurabai Ronge. Learned AGP submits that respondent no.2-Divisional Commissioner, Aurangabad has vide order dated 09.10.2015 dismissed petitioner's appeal on the same grounds. Learned AGP further submits that as deceased Mathurabai Ronge's name was included in the list of Earthquake Affected persons of Lamjana village and as respondent no.4 Parwatabai Adsule has proved that she is the legal heir of deceased Mathurabai, the house no. 7/127 of village Lamjana is allotted to her. Learned AGP submits that thus no interference is required in the impugned orders and the Writ Petition is liable to be dismissed.

7. Learned counsel for respondent no.4 adopts the arguments of learned AGP and supports the impugned orders. Learned counsel

for respondent no.4 submits that the competent court has granted legal heirship certificate in favour of respondent no.4.

8. I have heard learned counsel for the petitioner, learned AGP so also the learned counsel for respondent no.4 at length. With their able assistance I have carefully perused the averments made in the memo of the petition, the grounds taken therein, the annexures thereto and the affidavit-in-reply filed by the respondent-State.

9. I am not inclined to consider this Writ Petition on two grounds. Firstly, as per the findings recorded by the authorities below, and the same is also not disputed by the petitioner herein that, the father of petitioner has been allotted house no. C-7/A-8 as an earthquake affected person. Secondly, the house in question came to be allotted to Mathurabai Satawa Ronge as an earthquake affected person and after her death, respondent no.4 herein held to be her legal heir by the competent court. It thus appears that the petitioner was illegally occupying the said house without any right or allotment by the competent authority. In terms of the Government Resolution dated 01.12.1995 issued by the Revenue

and Forest Department, Government of Maharashtra and only on the basis of his stay in the said house for a long period under the so-called permission of the Grampanchayat, his possession cannot be regularized. I do not find any fault in the impugned orders passed by the authorities below. There are concurrent findings on facts. There is no substance in this Writ Petition. Hence, I proceed to pass the following order:

ORDER

The Writ Petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

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