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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 7317 OF 1999

Dadaji Shankar Patil & Ors. ... Petitioners

Vs.

The Secretary,
Revenue & Forest Department & Ors.... Respondents

Mr. Amey Deshpande, for the Petitioners.

Mr. S. L. Babar, AGP for Respondent Nos. 1 to 4.

Mr. P. N. Joshi, for Respondent No. 5.

CORAM : UJJAL BHUYAN

DATE : DECEMBER 16, 2019

ORAL JUDGMENT :

1. Heard learned counsel Mr. Amey Deshpande for the Petitioners; learned AGP Mr. S. L. Babar for Respondent Nos. 1 to 4 - State; and learned counsel Mr. P. N. Joshi, for Respondent No. 5.

2. By filing this petition under Article 226 of the Constitution of India, Petitioners have assailed legality and correctness of order dated 2.12.1998 passed by the

Principal Secretary and Officer on Special Duty (Appeals), Government of Maharashtra, Revenue and Forest Department, allowing the revision application filed by Respondent No. 5 and setting aside the order dated 16.10.1996 passed by the Collector of Nashik i.e. Respondent No. 2 as well as the order dated 31.3.1997 passed by the Additional Commissioner, Nashik Division, Nashik.

2.1. Fourteen Petitioners have joined together and have instituted the present common proceeding, seeking the reliefs, as indicated above.

3. According to the Petitioners, they are residing at village Gosarane, situated within the limits of taluka Kalwan, district Nashik. It is stated that land covered by Gat Nos. 1 and 2 falls within the said village limits and belongs to the State Government. As a matter of fact, land covered by Gat No. 2 is used for funeral of people belonging to Bhilla community and is also used for grazing

of cattle. Government of Maharashtra had planted 8650 trees over the said land during the year 1984-85. Respondent No. 5 belongs to the said village and is serving in the Indian Army as Havaldar. Petitioners have stated that Respondent No. 5 hails from a rich family, owning nearly 20 acres of land.

4. In the year 1971, State Government framed a set of rules called the "Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971". Under the said Rules, Government is empowered to grant unoccupied land, not required for any government or public purpose, or not reserved for any purpose, to any person in terms of the priority mentioned in Rule 11 of the aforesaid Rules. Rule 17 lays down the procedure to be followed while making such grant.

5. Respondent No. 5 made an application in the year 1991 for allotment of government land to him. It is alleged that in the year 1996, Respondent No. 5 in

collusion with the village Talathi and some members of the Gram Panchayat, hatched a plan to take over government land, situated in the village. Acting on such plan, Respondent No. 5 again made an application to the Collector for grant of land covered by Gat No. 2 for cultivation. He made that application as a member of Armed Forces with salary less than Rs.10,000/- per annum.

6. Petitioners have stated that Respondent No. 3 i.e. Tahsildar, without following the procedure as laid down in the Rules, more particularly in Rule 17, passed an order on 16.3.1996, granting 2 hectares of land along with 88 trees standing thereon out of Gat No. 2 to Respondent No. 5 for a sum of Rs. 74/-. According to the Petitioners, they and the other villagers came to know about the said allotment on 26.3.1996, and immediately thereafter made an application before the Collector i.e. Respondent No. 2 for cancellation of the said allotment. Respondent No. 2, after due inquiry, passed an order dated 16.10.1996

whereby allotment of land to Respondent No. 5 vide order dated 16.3.1996 was set aside.

7. Aggrieved by the said decision dated 16.10.1996, Respondent No. 5 preferred an appeal before the Commissioner of Nashik Division, which was registered as Appeal No. 1 of 1997. Additional Commissioner passed an order dated 31.3.1997, rejecting the said appeal.

8. Against such rejection of appeal, Respondent No. 5 filed a revision application before the State Government, which was heard by Respondent No. 1. By order dated 2.12.1998, the said revision application filed by Respondent No. 5 was allowed whereby orders dated 16.10.1996 and 31.3.1997 passed by the lower authorities were set aside.

9. It is this order dated 2.12.1998, which has been impugned in the present proceeding.

10. Learned counsel for the Petitioners have strenuously referred to the provisions of Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971, more particularly Rules 11 and 17 thereof to contend that the procedure prescribed under Rule 17 was not followed by Respondent No. 3 while allotting the land to Respondent No. 5. This was rightly taken note of by the lower authorities, but the revisional authority completely misdirected itself and came to an erroneous conclusion that since there was only one application for allotment of land i.e. by Respondent No. 5, provisions of Rule 17 were not required to be followed. The impugned order is, therefore, wholly illegal and liable to be set aside.

10.1. He also placed reliance on two decisions of the Supreme Court, viz. (i) ***State of U.P. Vs. Singhara Singh***¹; and (ii) ***Babu Verghese Vs. Bar Council of Kerala***² in support of his contention that when the law requires a thing to be done in a particular manner, it

1 AIR 1964 SC 358

2 (1999) 3 SCC 422

has to be done in that particular manner, as prescribed, and not in any other manner. Rule 17 is the provision which provides for the procedure for disposal of government land. It is evident that Respondent No. 3 did not follow the procedure for allotment of government land. This aspect of the matter was clearly overlooked by the revisional authority, thereby vitiating the impugned order.

11. On the other hand, learned counsel for Respondent No. 5 has questioned the *locus standi* of the petitioners as they were not claimants for grant of government land under the aforesaid Rule. Therefore, they could not have raised objection to allotment of land in favour of Respondent No. 5. His further contention is that while granting land, Tahsildar has acted as a delegatee of the government. If that be the position, then Collector had no jurisdiction to hear the objection of the Petitioners, leading to order dated 16.10.1996. That apart, order dated 16.10.1996 was an *ex parte* order,

which was rightly interfered with by the revisional authority. He also contends that Respondent No. 5 is in possession over the land in question since 1996. Referring to Rule 19 of the aforesaid Rules, he submits that State Government has power to relax any of the provisions of the Rules. He, therefore, finally concludes by submitting that no case for interference is made out and seeks dismissal of the writ petition.

12. Learned AGP supports the order passed by the revisional authority.

13. Submissions made by learned counsel for the respective parties have been duly considered; also perused the materials on record.

14. A perusal of the order passed by Respondent No. 2 dated 16.10.1996 would go to show that Respondent No. 2 had come to the conclusion that Respondent No. 3 while passing the order dated 16.3.1996

had not considered as to whether the annual income of the Respondent No. 5 was below or more than Rs.10,000/-, because the relevant Rule required that annual total income should not be more than Rs. 10,000/-. He also took the view that Respondent No. 3 did not make inquiry as to whether Respondent No. 5 had more than three children, and also as to whether he had any other land. Since such inquiry was not made, order of Tahsildar dated 16.3.1996 was set aside.

14.1. Again from a perusal of the order dated 16.10.1996, it does not appear that any of the parties were heard by Respondent No. 2 before passing the said order. At least, the order does not disclose as to whether the complainants were heard or the opponent was heard. What was however, decided was that, according to the Collector – Respondent No. 3 did not make proper inquiry as to the annual total income of Respondent No. 5, and also whether Respondent No. 5 had any other land, besides the land allotted.

15. In appeal, the Additional Commissioner arrived at a finding of fact that yearly income of the Appellant was more than Rs. 12,000/-. Father of the Appellant Mr. Santosh More was having land in his own name, situated at Mauze Gosarne, taluka Kalwan. He also noted that at the time of allotment of land, Respondent No. 3 had not considered these factors. As such, allotment of land in favour of Respondent No.5 was found to be erroneous. He, therefore, came to the conclusion that order passed by Respondent No. 2 dated 16.10.1996 was just, proper and valid and that there was no need to interfere with the said order. Accordingly, appeal filed by Respondent No. 5 was dismissed.

16. Under Rule 5, the State Government has been conferred power to make revenue free grants. As per sub-rule (1) of Rule 5, except as provided in Rules 6,7 and 8, no land shall be granted free of occupancy price or free of land revenue or both without the sanction of the State

Government. Under sub-rule (2), where any land is granted under sub-rule (1) with the sanction of the State Government, the form of sanad to be issued by the Collector shall be such, as may be specifically determined by the State Government in this behalf, regard being had to the nature or purpose for which the land is granted.

16. Thus, a reading of Rule 5 would go to show that except under Rules 6, 7 and 8, in case the land is to be granted, then it can be so done only with the sanction of the State Government, in which event the form of sanad shall be specifically determined by the State Government.

17. Rule 6 empowers the Collector to make revenue free grant. However, the Collector may grant such land whether in perpetuity or for a term, for the purpose specified in Column I of the Table, forming part of Rule 6.

18. Insofar the revisional order dated 2.12.1996 is concerned, its English translation is not happily worded. Nonetheless what is decipherable therefrom is that the

revisional authority took the view that Respondent No. 3 had given a public notice on 9.1.1996, which was identical to notice prescribed under Rule 17. Respondent No. 5 submitted application on 15.1.1996 and this was the only application received. Respondent No. 5 was found to be eligible by Respondent No. 3, and accordingly allotment of land was made in favour of Respondent No. 5 on 16.3.1996. He also took the view that priority detailed under Rule 11 would be applicable only if there was more than one application. Since there was only one application, provisions of Rule 11 would have no application. A further view was taken that Rule 17 did not provide for any limit of income for those serving in the Armed Forces.

19. As per Rule 11, allotment of land may be made to any person in the order of priority, mentioned therein, which includes a serving member of the Armed Forces at Sr. No. (iii). As per sub-rule (5) of Rule 11, no land shall be granted thereunder to any serving member of the Armed

Forces or ex-servicemen whose gross annual income from all sources exceeds Rs. 10,000/- (since enhanced to Rs.35,000/-).

20. Rule 17 lays down the procedure for disposal of land, which is given more in detail in sub-rule (1). The Collector or the Tahsildar shall first select the village for the purpose of disposal of allotable land. He shall thereafter draw up detailed programme starting from fixing the date for receiving the applications, including the date for consideration of the applications. The programme so made shall be given wide publicity by beating of drums in the village concerned, calling upon the villagers to send their applications to the Tahsildar within the specified time. Copies of such programme shall be displayed in village Chavdi, in the office of the village panchayat, and also in the office of the village Tahsildar, as well as its intimation to be given to the Secretary, District Sailors, Soldiers and Airmen's Board.

21. Rule 19 provides that State Government may relax any of the provisions of the Rules when the State Government is of the opinion that such relaxation is necessary.

22. Having noticed the legal provisions as above, order of allotment made by Respondent No. 3 may now be adverted to. From the order dated 16.3.1996 it is not discernible that sanction of the State Government was obtained before granting land to Respondent No. 5, which is a requirement of Rule 5(1). It is also not evident that Respondent No. 3 had applied his mind to the requirements of Rule 17 of the Rules, more particularly, sub-rule (5) thereof. This was rightly pointed out by the Collector in his order dated 16.10.1996 who also stated that Respondent No. 3 had not made proper inquiry before grant of land to Respondent No. 5. This finding of fact was affirmed by the Additional Commissioner in his appellate order dated 31.3.1997.

23. Revisional authority was correct in saying that when there was only one application, question of any priority would not arise. However, the revisional authority fell in error in coming to the conclusion that Rule 17 did not provide any direction regarding limit of income of a serving member of the Armed Forces for the purpose of giving priority. The revisional authority clearly overlooked the fact that sub-rule (5) of Rule 17 clearly bars allotment of land to any serving member of the Armed Forces, whose gross annual income from the source i.e. army exceeds Rs. 10,000/- at the relevant point of time. This is a condition precedent for allotment of land to a serving member of the Armed Forces. Without coming to the conclusion that Respondent No. 5 had complied with the said requirement, the land could not have been allotted to him. As a matter of fact, Additional Commissioner in appeal had returned a clear finding of fact that yearly income of respondent No.5 was more than Rs.12,000/- at the relevant point of time. Therefore, allotment of land to

Respondent No. 5 was clearly untenable in law, being in contravention of Rule 11(5) of the aforesaid Rules.

24. Now, coming to the contention of learned counsel for Respondent No. 5 that Petitioners are not claimants of the land like Respondent No. 5, even if that is correct, then also they had an interest in the land, which was used for community purpose and they being residents of the village, where the land is situated. The second contention that Tahsildar is a delegatee of the government, and therefore, the Collector could not have interfered with the order of the Tahsildar, in my view, is not a correct reading of the Rules, relevant portions of which have been discussed above. All that Rule 5 says is that except under the provisions of Rules 6, 7 and 8, no land shall be granted without the sanction of the State Government. Therefore, in case of allotment of land to a private individual like Respondent No. 5, it was necessary to have sanction of the State Government. This provision, therefore, is against Respondent No. 5 and renders initial

allotment of land illegal. Regarding power of relaxation as provided under Rule 19, Government has not stated anything that it may relax any of the provisions of the Rules in favour of Respondent No. 5. This writ petition is pending since 1999, and during this long span of 20 years, government has not made any statement to the effect that it would relax the requirement of the Rules in favour of Respondent No. 5.

25. In such circumstances, the revisional order dated 2.12.1998 cannot be sustained and is accordingly set aside and quashed. However, there shall be no order as to costs. Rule is accordingly made absolute in the aforesaid terms.

26. At this stage, learned counsel Mr. Joshi, for Respondent No. 5 makes a prayer for stay of this judgment for a reasonable period. I see no ground to accede to the prayer made on behalf of Respondent No. 5.

Sd/-
[UJJAL BHUYAN, J.]