

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7896 OF 2019

Shankar Baban Chalekar and anr .. Petitioners

Versus

The State of Maharashtra, The Secretary
and others .. Respondents

...

Mr. Y.B. Lengare for the petitioners.
Mr.K.S. Thorat, AGP for respondent nos.1 to 5, 5A, 6 and 7.
Mr.Sanjiv Sawant with Mr.Abhishek Deshmukh and Abhishek
Matkar for respondent nos.8A to 8C.

CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.

DATED : 9th DECEMBER, 2019

ORDER:- [Per Smt. Bharati Dangre, J.]

1 Land bearing Gat No.27/A1/2B admeasuring 1H, 20
Ares at Village Warale, Taluka Maval, District Pune appears to be
the cynosure for the parties litigating before us in the present Writ
Petition.

2 The petition is instituted by one Shankar Baban
Chalekar and his spouse and the grievance is focused on the
allotment of the above land mentioned in his favour. Respondent
No.8 is Shri Eknath Shripati Kokate who is represented through

Tilak *This order stands corrected as per speaking to the minutes order
dated 19.12.2019.*

his Legal Representatives and three other agriculturists who are residents of Taluka Maval, District Pune and are the allottees of the said land.

3 The petitioners are the Project Affected Persons of Gunjavani Project. Being aggrieved by the non-distribution of the alternative land for rehabilitation and non-payment of compensation, the petitioners approached this Court by filing Writ Petition no.550 of 2002. An order came to be passed in the Petition, directing the Government to release the amount of compensation as well as the subsistence allowance in favour of the Petitioners within four weeks. As far as rehabilitation is concerned, the State Government made a statement before the Court, that steps would be taken to rehabilitate the persons affected by Gunjavani project. On non-compliance of the said undertaking, the Civil Application came to be filed by the petitioner which came to be disposed of by an order dated 18th July 2009 when it was disclosed to the Court that the land applied for by the petitioners is not available for the project affected persons affected by Gunjavani project but it is earmarked for Andhra Project. Liberty was granted to the petitioners to chose any other land available for purpose of rehabilitation of persons affected by Gunjavani project and their right to receive any other benefits under the Resettlement Scheme was directed to remain unaffected by the choice being exercised.

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4 On 19th April 2012, the Sub-Divisional Officer, Bhore informed the Collector that on carrying out the survey, the land was available for allotment to the petitioners and he referred to the mutation entries in regards to the plots available for rehabilitation. The Petitioners came to be allotted land admeasuring 80 Are in Gat No.704 and 40 Are in Gat No.708/1 of Village Kamthadi. The occupancy price of the said land was determined as Rs.49,500/- and it also set out that the amount of 65% of the compensation received to the tune of Rs.10,566/- shall be deposited by the Project Affected Persons. The petitioners' case is that they were never put into possession of the said land. Repeatedly they requested the concerned authority to allot land bearing 27/A1/2B at Village Warale as the original land holder of Gut No.704 and 708 which was allotted to the petitioner from village Kamthadi restrained the petitioner from cultivating the said land.

5 The inaction to put the petitioners in possession of land resulted in proceedings initiated with the hierarchy of authorities, and initially at the level of Tahsildar, Bhore, who allowed an application preferred by the petitioner and restrained the original land owner from creating any impediment in the petitioners enjoying the land. The Circle Officer and Talathi was directed to take action against the original land owner and even a

penalty of ₹ 13,51,000/- came to be imposed. The amount becoming payable, the land was put for auction. The Collector, Pune also imposed a penalty of Rs.89,13,000/-. While these proceedings were being prosecuted, the petitioners approached the Court by filing Writ Petition No.6101/2016 which resulted into a favourable order being passed in favour of the petitioner and the Court returned a finding that the respondents/original owners have acted in defiance of the orders passed by the authorities and continued to obstruct and restrain the petitioners from cultivating the land allotted to the petitioner in Gat No.704/708 at Mauje Kamthadi. The Court gave a declaration that the respondents had no right to interfere with and/or obstruct the possession of the petitioner on the said parcel of land and the Collector was directed to implement the order passed under Section 21(4) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 and recover the fine amount from respondent nos.5 to 16 in accordance with law. The Court recorded that considering the totality of facts and having regard to the fact that the petitioners are in lawful possession of the said land, they are entitled to protect their possession and protect respondents from disturbing their possession by taking recourse to the remedy including that of suit. It is this order which stands as on today and petitioner admittedly is in possession of land at Gat No.704 and 708/1 of Mauje Kamthadi, Taluka Bhor, District Pune.

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6 While these proceedings were in progress, at the same time, on the other front, the Sub-Divisional Officer, Bhore passed an order on 30th June 2016 thereby taking note that Respondent No.8 Jaganath Eknath Kokate is also a Project Affected Person of Gunjavani project and entitled for 0.80 Are of land. He came to be allotted the land in Gat No.244 of Village Rahu Taluka Daund, District Pune and he was held to be entitled to hold the said land as Occupant Class-I. The said Respondent preferred a series of representations and some of them being addressed to the Hon'ble Minister of Revenue and Rehabilitation, praying that he should be allotted alternative land. By an order dated 13th October 2016, his allotment in Gat No.244 of Mauje Rahu, Taluka Daund, District Pune came to be cancelled and instead he was allotted land in Gat No. 27/A1/2B of Mauje Warale, Taluka Maval, District Pune. The respondent no.8 was put in possession of the said land on completion of the required formalities.

7 The petitioner when gained knowledge that the land which he had chosen in village Warale, Taluka Maval for rehabilitation was allotted to Namdev Eknath Kokate on 1st March 2017, obtained the Record and Proceedings in respect of the said allotment under the Right to Information Act and based on the notings which he received preferred a representation to the Secretary, Revenue and Forest Department on 6th April 2018,

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levelling the allegations that certain favours have been conferred upon Shri Kokate through the MLA of Kothrud Constituency Pune and one Section Officer working in the Department. The objection was raised that the said land falls in the residential and semi-public utility in Pune Regional Development Plan and the valuation of the said land is approximately Rs.3,41,32,000/- and therefore, allotment made in favour of Respondent no.8 for a meager amount is liable to be cancelled since it resulted into a revenue loss to the Government. The said act of the authorities was charged an intentional dereliction and ignorance of duty. The petitioner also displayed his readiness and willingness to pay the occupational price of ₹ 60 lakhs and ₹ One Crore 20 lakhs in terms of the offer letter issued by the SDO, Pune on 14th September 2009. He therefore prayed for cancellation of allotment of land bearing Gat No.27/A1/2B of village Warale and also sought for an inquiry to be made in respect of the allotment of the said land in favour of Namdeo Kokate.

8. The Additional Collector and the Deputy Collector, Rehabilitation, Pune dealt with the objection of the petitioner for allotment of the land at Mauje Warale in favour of Namdeo Kokate and considered the objections in regards to the violations of the conditions subject to which the land was allotted. As a sequitur, the application filed by the petitioner was partly allowed and the order dated 1st March 2017 regarding allotment of land in

Gat No.27/A1/B2 came to be cancelled and the name of the Collector was directed to be mutated as against the said parcel of land. The amount of occupancy price to the tune of ₹ 55,43,367/- was directed to be refunded to the Project Affected Persons.

9 Shri Jagannath Eknath Kokate mounted a challenge under Section 247 of the Maharashtra Land Revenue Code before the Commissioner, Pune Division, Pune. The Additional Commissioner by his Order dated 26th April 2019 set aside the order of the Collector and also directed the deletion of entries in the records of the Revenue made pursuant to the said order. The Additional Commissioner held that the conditions which were found to be valid by the Collector in his impugned order dated 28th June, 2018 in fact ought not to have been imposed since the Respondent No.8 Shri Kokate was allotted the land as project affected person and the said land was granted as Occupant Class-I in terms of Section 29 of the Maharashtra Land Revenue Code. By virtue of the Class-I Occupancy, they were entitled to hold the land in perpetuity without any restriction on the right to transfer. Consequently, the Sale Deed executed by them on 18th December, 2017 in favour of Respondent Nos.9, 10 and 11 cannot be faulted with. The Appellate Authority held that the imposition of conditions itself was contrary to the rights of the Class-I Occupancy. It was held that since the land of Shri Kokate which

was acquired was Class-I land in terms of Section 16(1)(b), he was entitled for the same occupancy status, as held by him earlier i.e. Class-I.

11 The perusal of various orders placed on record would reveal that the Petitioners were always desirous of owning the land in Gat No.27/A1/2B. Their whole grievance is centered around the said land and it reached its pinnacle when the land was allotted to Respondent No.8 and which was subsequently sold by him to Respondent Nos.9 to 11. They made every attempt to nullify the transfer of the land in favour of Respondent No.8 and availed every possible remedy to make the allotment otiose. Due to the timely intervention by the Additional Commissioner who rightly construed the terms of allotment of land in favour of Respondent No.8, attempts of the Petitioners were sabotaged. The Petitioners are attempting to ride on two horses; on one hand, they were fighting litigation for enjoying their right of cultivation of land in Gat Nos.704 admeasuring 80 Are and Gat No.708/1 admeasuring 40 Are situated at Village Mauje Kamthadi, Taluka Bhor, District Pune, which is allotted to the Petitioners as project affected persons. They took various proceedings to protect their rights to the said land which resulted into imposition of costs and penalties against the erstwhile owners of Gat Nos.704 and 708 of Mauje Kamthadi. The Division Bench of this Court on 16th October, 2018 confirmed their right

to the said parcel of land as project affected persons and categorically held that the Petitioners are in lawful possession of the land and they are entitled to protect their possession. Irrespective of this order favouring the Petitioners, they continued with their request to allot land at Village Warale, Taluka Maval, District Pune and they were deprived of the said land initially on the ground that it was made to accommodate villagers from Andhra Project and in the second round, on the ground that it was allotted to Respondent No.8. In any case, the Petitioners have fought both the battles and now it is time for them to settle down with their land which is allotted to them and the protection in relation to which has been conferred on them by various authorities by passing orders against the Respondents who were attempting to interfere with their possession and lastly at the hands of this court in Writ Petition No.6101 of 2016. The position has been put to rest on 16th October, 2018 when this Court upheld their possession over the land at Village Mauje Kamthadi. Respondent No.8 has already sold the land to Respondent Nos.9 to 11 and the same has also reached finality. In the backdrop of these facts, we do not intend to continue with the proceedings and in order to put a quietus on the part of the Petitioners for allotment of land as project affected persons, we dismiss the Writ Petition. No order as to costs.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE

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