

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

WRIT PETITION NO.2267 OF 2018

1. Bhima Shivram Salunke, Aged 52
2. Ramesh Laxman Sonavane, Aged 51
3. Shravan Shahadu More, Aged 59
4. Vishwanath Namdeo Pagare, Aged 58
5. Sampat Shamrao Pawar, Aged 63
6. Baliram Sampat Pawar, Aged 28
7. Vasant Bansi Jagtap, Aged 58
8. Ambadas Santu Khurasne, Aged 48
9. Raosaheb Damu Barde, Aged 38
10. Navnath Trymbak Sonavane, Aged 51
11. Gorakh Sukhdeo Pimple, Aged 58
12. Dagagu Karbhari Pokalghat, Aged 58
13. Hiranman Bapurao Gangurde, Aged 63
14. Deepak Appasaheb Mali, Aged 32
15. Balu Bapu Rajput, Aged 28
16. Kisan Bapu Rajput, Aged 28
17. Sunil Shravan Barde, Aged 30
18. Shravan Budha Barde, Aged 58
19. Ratan Murlidhar Pawar, Aged 60
20. Sunita Kishor Mali, Aged 29
21. Jyoti Changdeo Barde, Aged 31
22. Kishor Appasaheb Mali, Aged 27

23. Machindra Sukhdeo Pimple, Aged 59
24. Mina Rajendra Mali, Aged 31
25. Somnath Mohan More, Aged 38
26. Bhanudas Murlidhar More, Aged 37
27. Dattu Ramchandra Barde, Aged 58
28. Gajanan Sampat Pawar, Aged 33
29. Ganesh Punja Rajput Aged 25
30. Changdeo Ramesh Sonawane, Aged 25
31. Machindra Khandu Mali, Aged 38
32. Sukhdeo Ramchandra Barde, Aged 48
33. Nandu Sahebrao Rajput, Aged 49
34. Mahendra Dada Gangurde, Aged 25
35. Somnath Vitthal Khurasne, Aged 25
36. Nandu Tukaram Mali, Aged 48
37. Bhika Navnath Sonawane, Aged 25
38. Kisan Vaman Bhavar, Aged 48
39. Bhaskar Nivrutti Pawar, Aged 58
40. Daulat Ramnath Jadhav, Aged 45
41. Sunil Bhima Salunke, Aged 33

Occupation of all: Agricultural,
All Petitioners R/o- Rastapur,
Tal Rahata, Dist- Ahmednagar.

...Petitioners

Versus

1. State of Maharashtra through Principal Secretary, Revenue and Forests Department, Mantralaya Annex, Mumbai, MS. 400 032.

2. The Collector of Ahmednagar,
At, PO & Dist- Ahmednagar.
3. Maharashtra State Farming
Corporation Ltd; through its
Managing Director, 270 Bhamburda
Senapati Bapat Marg, Pune. 16.
4. Estate Manager, Maharashtra State
Farming Corporation Ltd;
Laxmivadi Mala, Shingavewadi,
Mauje Rastapur, Tal- Rahata,
Dist- Ahmednagar.
5. Hon'ble Revenue Minister,
The State of Maharashtra,
Mantralaya Annex, Mumbai 400032.
(Deleted as per order dated 19.03.2018). ...Respondents

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Mr. V.Y. Bhide, Advocate for the Petitioners.

Mr. A.S. Shinde, AGP for Respondent Nos.1 & 2.

Mr. P.V. Barde, Advocate for the Respondent Nos.3 & 4.

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CORAM : ROHIT B. DEO, J.
DATED : 12th FEBRUARY, 2020.

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

2. The petitioners, who concededly are encroachers, are assailing the order dated 05.12.2017 rendered by respondent 5 in revision, whereby and whereunder respondent 5 held that the notice dated 18.05.2015 issued by respondent 4, Estate Manager, Maharashtra State Farming (Corporation) calling upon the petitioners to vacate

the encroached land, is legal.

3. The petitioners contend that the encroached land is occupied by the petitioners before 1990, and that, in view of the policy of the State Government as is manifested in the Government Resolutions dated 28.11.1991 and 14.08.2001, the petitioners are entitled to regularization of the encroached land. The petitioners contend that they belong to the Bhilla Adivasi community which is a scheduled tribe.

4. The petitioners contend that some of the petitioners or their predecessors were parties to Writ Petition 1778 of 1986 Pradip D. Prabhu Vs. State of Maharashtra and Others, in which the Hon'ble Supreme Court passed an order dated 07.03.1995 directing the State of Maharashtra to appoint responsible officers in different districts to examine the claims of Adivasis who are in possession of land and decide their claims for regularization in accordance with law and the extant instructions. The Hon'ble Supreme Court further observed that while deciding rights of the adivasis for regularization, the concerned officers shall give an opportunity to them to be heard and to adduce evidence in support of their claims and till the matters are finally disposed of, the adivasis shall not be

dispossessed. The petitioners contend that notwithstanding the directions issued by the Hon'ble Supreme Court, the State Government has not initiated steps to regularize the possession of the adivasis qua government lands.

5. The petitioners contend that applications were preferred before the authorities of the State Government seeking regularization of possession over the government lands, which applications were kept in cold storage. The adivasis, including most of the petitioners, approached the Hon'ble High Court in Writ Petition 454 of 2001 under the aegis of an unregistered organization named and styled as "Bhumi Hakka Andolan Samiti". The petitioners submit that the High Court disposed of Writ Petition 454 of 2001 by observing thus:

"We however observe that if the Government Officers have initiated the proceedings, as per the applications of the petitioners, it is desired that the Government shall complete such enquiries in accordance with law and policy decision taken by the Government as early as possible. It is also desired that the procedure and the protection offered by the Apex Court in Writ Petition No.1778 of 1986 should also be looked into by the Government Officers while disposing of the applications made by the members of the petitioner association."

6. The petitioners contend that the State

Government did not take the directions issued by the High Court seriously and the enquiry was not taken to the logical end, although the adivasis including the petitioners were willing, and indeed eager, to adduce evidence in support of their claim. Dissatisfied with the inaction of respondent 2, the petitioners and others filed Revision 309 of 2004 before the Additional Divisional Commissioner, Nashik, which came to be allowed vide order dated 27.09.2011 and the Sub-Divisional Officer, Shrirampur was directed to conduct and complete the enquiry. The petitioners contend that the Sub-Divisional Officer has neither completed the enquiry nor has otherwise decided the matter and that it is safe to assume that the claim of the petitioners is pending. The petitioners submit that while respondents 1 and 2 and their subordinate officers did not decide the lawful claims of the petitioners, respondent 4-corporation issued communication dated 18.05.2015 directing the petitioners to vacate the encroached land. It is this communication dated 25.05.2015, which is assailed in the present petition.

7. The corporation has filed an affidavit in response dated 05.12.2019. The corporation contends that in proceedings under the Maharashtra Agricultural Land (Ceiling on Holding) Act, 1961 (Ceiling Act), the lands owned by Godavari Sugar Mills Ltd were declared surplus, as is

discernible from the gazette notification dated 14.03.1963. The land covered by the government notification initially vested with the State Government free from all encumbrances. The State Government took possession of the land from Godavari Sugar Mills Ltd on 20.05.1968 and delivered the same to the corporation on even date for cultivation and management under Section 28 of the Ceiling Act. The corporation contends that the land situated in village Rastapur and other lands which were owned by Godavari Sugar Ltd vested with the corporation in occupancy rights in view of the order of grant dated 13.08.1970, which is issued in exercise of power under Section 28(1AA) of the Ceiling Act.

8. The corporation contends that the land is duly mutated in the 7/12 extract and the relevant entry is 2927. The corporation contends that the land which is encroached by the petitioners forms part or portion of the land which initially vested with the State Government and then vested in ownership rights in the corporation in view of the order of grant dated 13.08.1970. In essence, the submission of the corporation is that the land which is encroached by the petitioners is not government land and is owned by the corporation.

9. The corporation contends that a policy decision

was taken to make available land owned by the corporation for joint cultivation and tenders were published. Successful bidders were finalized and agreements were executed. In the process, the encroachment made by the petitioners came to light which has constrained the corporation to issue notice dated 18.05.2015. The corporation contends that the petitioners assailed the notice/s dated 18.05.2015 in Writ Petition 5523 and 5524 of 2015, which came to be disposed of by the learned Division Bench vide order dated 02.08.2016. It would be relevant to reproduce paragraph 3 of the order of the Division Bench.

“3. It appears that pursuant to order passed by the Apex Court and this Court in the proceedings referred to above, some panchnamas were conducted, however, no decision was taken by the State Government for regularization of their possession over the land Respondent - State Government may take decision upon the same as expeditiously as possible preferably within six months from the date of this order. Before taking any decision the authority concerned of State shall hear the petitioners as well as the Corporation. Respondents - Corporation cannot take law in its hand. Notice issued by the Corporation itself suggest that if petitioners do not remove their constructions then the Corporation would take action as per the Government Rules which would presuppose that they would follow procedure of law. In that case, the petitioners may take up proceedings as may be permissible in law.”

10. The corporation contends that in view of the order of the learned Division Bench, which petitioners invited in the context of the submission that the issue of regularization was pending, the respondent 5 decided the issue and held that the action of eviction initiated by the corporation by issuing notice dated 18.05.2015, is legal.

11. The corporation contends that in view of the provisions of Section 40 of the Ceiling Act, the corporation is authorized to remove the encroachment. Paragraph 6 of the affidavit in response filed on behalf of the corporation reads thus:

“6) Answering respondents states and submits that, after giving sufficient opportunity and vouching entire record available before Hon’ble Minister vide order dated 05.12.2017 Hon’ble Minister was pleased to hold that notices issued by Corporation answering respondents are legal and valid. In such circumstances petitioners have no right to remain in possession on the encroached portion. Respondent No.2 is having every authority to remove encroachment as per Section 40 of Maharashtra Agricultural (Ceiling on Holding) Lands Act, 1961. As per the provisions of Section 21 the said Act, the own lands of industrial undertakings and lands leased to them were declared as surplus and were taken in possession by the State Government. As per Section

21(2) and (4) of the said Act, the said surplus lands are vested with the State Government free from all encumbrances. Thereafter as per Section 28 of the Act those lands were given to Respondent Corporation for management and cultivation. Answering Respondent has also paid necessary occupancy price of the said lands to State Government. Thus, these lands since notification absolutely vests with the answering Respondents Corporation free from all encumbrances. therefore it is not a Government land. Therefore, now it is not a Government Land. The pleadings of petitioners that the land belongs to State Government are specifically and persistently denied by this Respondent. In above mentioned situation the Government Resolutions dated 28.11.1991 and 14.08.2001 as referred by petitioners are not applicable to the land owned and possessed by Respondent Corporation. The Government Resolutions are very clear and it unequivocally states that the encroachments on Government land only can be regularized. Petitioners are making factually incorrect and frivolous statement about the area of encroachment. In fact there is no such encroachment as alleged by petitioners to the extent of area. The foregoing paragraph clarifies the situation. Reference to judgment in SLP Civil No.1778/1986 of Hon'ble Apex Court dated 07.03.1995 and Writ Petition No.454/2001 is not applicable in case in hand as lands are owned by Corporation and not by the State Government. Claim of petitioners that land should be allotted to them is beyond provisions of Maharashtra Agricultural (Ceiling on Holding) Lands Act, 1961, said demand as not within four corners of law cannot be granted."

12. The petitioners have filed a rejoinder affidavit dated 10.02.2020, which is handed over across the bar. The petitioners assert that the notice dated 18.05.2015 is issued only to 18 out of 41 petitioners. The petitioners contend that the mutation entry 2927 makes no reference to order of grant dated 13.08.1970 and further the copy of order dated 13.08.1970 is incomplete and illegible. The alternate contention in the rejoinder affidavit is that the order dated 13.08.1970 was not acted upon and that the proposal to lease the land covered by the grant order for joint cultivation is violative of the terms and conditions of the grant. It is further stated that the corporation did not pay the occupancy price till 2005 and therefore, the order of grant dated 13.08.1970 does not confer title in favour of the corporation. A desperate submission is finally made that the petitioners have perfected title by adverse possession.

13. Before considering the submissions canvassed on behalf of the petitioners, it would be necessary to note the articulation of the Hon'ble Supreme Court in Jagpal Singh and Ors Vs. State of Punjab and Ors, 2011 AIR SCW 990.

14. The Hon'ble Supreme Court cautioned that illegal encroachment on Gram Panchayat land, which invariably

occur in collusion with the State Machinery and the Gram Panchayat, must be dealt with iron hand and the blatant illegalities cannot be condoned. The Hon'ble Supreme Court observed that even if houses are built on the encroached land, the construction must be demolished and the possession of the encroached land must be handed over to the Gram Panchayat. While parting with the judgement, the Hon'ble Supreme Court issued the following directions:

“22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha / Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other

public utility on the land.”

15. The petitioners are relying on Government Resolutions dated 28.11.1991 and Government Resolution dated 14.08.2001. Perusal of the said government resolutions would reveal that it is only the encroachment on government land *stricto sensu*, which is the subject matter of two government resolutions. By virtue of government resolutions dated 28.11.1991, the State Government took policy decision to regularize encroachments. The policy underwent a change in view of the subsequent government resolution dated 12.07.2011. The implication of the change in policy is considered by a learned Single Judge in *Bhagwan Kisan Wagh and Ors Vs. State of Maharashtra and Ors.* 2016(5) ALL MR 847, thus:

“8] It would be first necessary to consider whether the petitioners can claim a vested right for seeking consideration of their applications for regularization of encroachments in terms of Government Resolution dated 28-11-1991. This would have to be considered in the light of the fact that when the applications for regularisation were pending, another Government Resolution dated 12-7-2011 indicating a change in policy came into effect.

The question whether an applicant would have a vested right to seek consideration of his request on the basis of the date when he had so applied has been considered by the Hon'ble Supreme Court in [Howrah](#)

Municipal Corpn. v. Ganges Rope Co. Ltd. (2004) 1 SCC 663. In said case, an application for sanction for construction was made by a Company. As the sanction was neither granted nor refused within the prescribed period, the Company had approached the High Court in that regard. The High Court had directed the Municipal Corporation to consider grant of sanction subject to fulfillment of requirements. When the application for sanction was pending, the Building Rules were amended due to which the sanction as sought was not granted. In that background while considering the question as to whether any vested right had been created in favour of the Company despite subsequent amendment to the Building Rules, it was observed by the Hon'ble Supreme Court that with long usage the word "vest" has also acquired a meaning as "an absolute or indefeasible right." What the Company had was only a "legitimate" or "settled expectation" to obtain the sanction. The same did not create any vested right to obtained the sanction. The following observations in para 37 of the aforesaid judgment clarify the position.

"37.....What we can understand from the claim of a "vested right" set up by the respondent Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a "legitimate" or "settled expectation" to obtain the sanction. In our considered opinion, such "settled expectation", if any, did not crate any vested right to obtain sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if

the State Government, in exercise of its rule-making power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such "settled expectation" has been rendered impossible of fulfilment due to change in law. The claim based on the alleged "vested right" or "settled expectation" cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such "vested right" or "settled expectation" is being sought to be enforced. The "vested right" or settled expectation has been nullified not only by the Corporation but also by the State by amending the Building Rules, Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon."

From the aforesaid observations, it is clear that the petitioners merely had a "settled expectation" in the matter of regularization of their encroachment under Government Resolution dated 28-11-1991 and not any vested right. "

16. The implication of the change in the policy apart, the question is whether there is any legal right existing in favour of the petitioners, even for consideration of regularization, much less a vested legal right. In my considered view, the answer must be in the negative. The government resolutions on which reliance is placed, has no

applicability to the factual matrix. Notwithstanding the desperate argument, that in view of the delayed payment of the occupation charges, the corporation is not the owner of the land in question, I have no hesitation in holding that in view of the provisions of the Ceiling Act and the order dated 13.08.1970, the land which is encroached vests in the corporation, which is a distinct juristic entity. The land owned by the corporation cannot be equated with the land owned by the State Government, and therefore, the submission which is constructed on the edifice of the government resolutions needs consideration only for rejection.

17. In response to a specific query, the learned counsel for the petitioners fairly states that the only basis of the claim for regularization is the government resolutions. In view of my finding, that the government resolutions do not take within their land owned by the corporation, and the refutable and indubitable position that the encroached land is owned by the corporation, there cannot be even an iota of doubt that the petitioners have no right to claim regularization of the encroached land.

18. I cannot be unmindful of the ground reality that dishonesty is often rewarded. The petitioners are

encroachers and openly and if I may say so audaciously, claim to have encroached on the government land. The policy of regularization of encroachment, even if it is assumed that the validity of such policy is not in issue, would have to be strictly construed. The petitioners were under heavy burden to demonstrate that they have a semblance of right to protect the illegal possession. The petitioners have miserably failed to discharge the burden. The petition is wholly substanceless and is rejected.

19. This Court hopes that the action of eviction shall be taken to the logical end, as expeditiously as possible and in any event within 90 days.

20. At this stage, the learned counsel for the petitioners states that he is instructed by all the petitioners to undertake that the possession of the entire encroached land shall be voluntarily and peacefully delivered to the corporation on or before 30.03.2020. The learned counsel for the petitioners further states that the petitioners are aware that breach of the undertaking may entail initiation of contempt of Court proceedings.

21. In view of the undertaking, the possession of the petitioners is protected till 30.03.2020.

22. The learned counsel for the petitioners states that the petitioners shall also file in the registry individual undertakings within two weeks. It is made clear that whether or not individual undertakings are filed, the statement made on behalf of the petitioners by the learned counsel shall continue to operate as an undertaking solemnly given to this Court.

23. Rule is discharged.

(ROHIT B. DEO, J.)

Mujaheed//