

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2225 OF 2016

Vasant Shantaram Gavad

..Petitioner

V/s.

The State of Maharashtra
Through Principal Secretary
Revenue & Forest Dept. & Ors.

..Respondents

Mr.D.B. Savant a/w Mr.Vinayak R. Salokhe for the Petitioner.

Ms.M.S. Bane, AGP for the Respondent Nos.1 to 3-State.

CORAM : C.V. BHADANG, J.

DATE : 10th JANUARY 2020

P.C.

1. The challenge in this petition is to the order dated 15th July 2015 passed by the Secretary, Revenue and Forest Department, thereby confirming the order passed by the Divisional Commissioner, Kokan Division, Kokan, Mumbai on 13th November 2013, which in turn confirms the order dated 03rd October 2011 passed by the Collector, Thane, refusing to regularize the encroachment of the petitioner, over land bearing Gat No.610 (Survey No.44), admeasuring about 1 Hectar 40 Ares situated at Village-Nandgaon, Taluka-Tarapur, District-Palghar. The regularization has been refused on the ground that the land is a “Gurcharan land” and the Supreme

Court in the case of *Jagpal Singh and Ors. Vs. State of Punjab and Ors.*¹ has directed that in no case the encroachment on “Gawran, Gurucharan, Arwak” lands should be regularized.

2. I have heard the learned counsel for the petitioner and the Assistant Government Pleader for the respondent. Perused record.

3. The learned counsel for the petitioner has placed reliance on the Government Resolution dated 28th November 1991 which makes provision for regularization of the encroachments on the government fellow lands and “Gawran” lands. The learned counsel for the petitioner pointed out that the report dated 30th June 2011 given by the Tahasildar, Palghar and which is addressed to the Sub Divisional Officer, Dahanu (SDO) in which the Tahasildar has reported that the encroachment by the petitioner is since prior to 1984. He therefore, submits that in terms of the Government Resolution dated 28th November 1991, the petitioner is entitled for regularization, of his encroachment.

1 2011(11) SCC 396

4. The learned counsel for the petitioner has then placed reliance on the decision of this Court in Case of *R.V. Bhuskute and Anr. V/s. State of Maharashtra & Anr.*¹, in order to submit that Division Bench of this Court had issued direction to the State Government to publish list of all the encroachers as on 14th April 1990, on the official website and the notice board of the Village Panchayats, where the concerned persons are residing. This was with a view to enable the concerned persons to produce documents and move for regularization of their encroachment if it is otherwise permissible. It is submitted that even according to the decision of this Court in the case of *R.V. Bhuskute (Supra)*, the petitioner is entitled for regularization. The learned counsel for the petitioner submits that the petitioner be granted an opportunity to apply to the State Government afresh for regularization of the encroachment on its own merits.

Except these, there are no other contentions raised.

5. The learned Assistant Government Pleader, has supported the impugned order. It is submitted that, inasmuch as the land has been found to be Gurcharan land no regularization is permissible as per the order of the Supreme Court.

1 (PIL No.204 of 2010), decided on 28th March 2014

6. I have considered the rival circumstances and the submissions made. The Government Resolution on which the petitioner has placed reliance is of the year 1991 while the order of the Hon'ble Supreme Court, on the basis of which, the regularization has been refused is of the year 2011. The Supreme Court in the case of Jagpal Singh has held thus, in paragraph 22 of the judgment.

"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."

7. It is submitted by the learned counsel for the petitioner that there are certain exceptions carved out by the Hon'ble Supreme Court, where such regularization can be allowed. However, the learned counsel in all fairness did not dispute that there is neither any lease granted to the petitioner of the subject land nor the regularization is in respect of any school, dispensary and other public utility land. Incidentally this is also not a case made out in this petition. Thus, the petitioner possibly cannot take advantage of the limited exception which have been carved out by the Hon'ble Supreme Court in paragraph No.22 of the judgment in the case of *Jagpalsingh*. It can clearly be seen that in terms of the order of the Hon'ble Supreme Court as aforesaid, no regularization can be permitted on lands which are set apart as "*Gawran, Gurucharan, or Arwak*" lands.

8. A perusal of the report dated 30th June 2011 made by the Tahasildar to the SDO (page 22 of the compilation) at Serial No.11 clearly shows that the subject land on which the encroachment is made is a Gurucharan Land. There is no specific challenge raised to this part of the report in the petition. In that view of the matter it is difficult to see as to how the petitioner can seek regularization of his encroachment.

9. The reliance placed on the Division Bench judgment of this Court in the case of ***R.V Bhuskute*** is entirely misplaced. All that the Division Bench has directed was for the State Government to publish a list of the encroachers as on 14th April 1990 so as to afford the concerned persons an opportunity to get their encroachment regularized on the basis of the documents, if it is otherwise permissible.

10. Considering the overall circumstances no case for interference is made out. The petition is without any merit and is accordingly dismissed, with no order as to costs.

Nilam
Kamble

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by Nilam Kamble
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C.V. BHADANG, J.