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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9018 OF 2021**

Salim S. Momin

...Petitioner

V/s.

Additional Collector of Sangli and ors.

...Respondents

Mr. B. R. Mandlik for the Petitioner.

Mrs. V. S. Nimbalkar, AGP for the Respondent / State.

CORAM : G. S. KULKARNI, J.

DATE : DECEMBER 15, 2021.

PC :

1] Not on board. Taken on board on an application moved on behalf of the petitioner.

2] Heard learned counsel for the petitioner and learned AGP for respondent Nos.1 to 3.

3] A short issue arises for consideration in this petition. The petitioner is aggrieved by an order dated 29.11.2021 passed by the Additional Collector, Sangli whereby a stay application as preferred by the petitioner in an appeal filed by him assailing the allotment of Plot No. 33 vide allotment order dated 12.3.2020, has been rejected.

4] The petitioner is an ex-serviceman, who had served the Indian Army since the year 1987 and so also was a part of the armed conflict at Kargil in the Indo-Pak war in the year 1997. He is native of Sangli. The petitioner during his service tenure, had applied for allotment of agricultural land for

agricultural purpose, which he needed for his livelihood, post his retirement. Initially, land was allotted to him in the year 1997. However, the possession of which was not handed over. Again, the petitioner applied for allotment of land in the year 1998 and in 1999, there was second allotment also failed as the land could not be handed over. Again in respect of third successive application, he was granted allotment on 12.3.2020 to plot No.33 in C.T.S. No. 293 in Village Sakharale, Taluka Islampur, District Sangli. The possession of the said plot was handed over to the petitioner. The petitioner thereafter dug a bore-well, as also installed a compound wall and a shed and also an electricity connection was obtained. It however, appears that at the behest of Sarpanch of Gram Panchayat, Sakharale, Tal. Sangli, the Sub-Divisional Officer vide order dated 18.10.2021 has cancelled the land allotment order dated 12.3.2020 issued in favour of the petitioner.

5] The petitioner being aggrieved by such order has approached the Collector in an appeal, as also by an interim application prayed for stay of the order dated 18.10.2021. The petitioner's stay application has been rejected by the impugned order on the sole ground that the cancellation order dated 18.10.2021 has been passed after hearing the parties namely the petitioner and the said Gram Panchayat.

6] In my opinion, the reasons in rejecting the stay application are totally untenable. The impugned order does not consider as to whether there was any irregularity in the allotment order. Also it is not a case that the petitioner was earlier allotted a land and this was second allotment not entitled to him. Admittedly, earlier allotment made did not bear any fruits and hence, Sub-Divisional Officer by well considered order dated 12.3.2020

had made allotment in question. The Sub-Divisional Officer cannot upset the rights of allotment as created in favour of the petitioner under a valid allotment order dated 12.3.2020 which was acted upon and had attained finality for the reason that the petitioner had changed his position as he has spent money by putting up a compound wall, shed, obtaining electricity connection, digging of bore-well etc. It cannot be so causal and arbitrary for the Sub-Divisional Officer to cancel allotments, after it was validly made, when Article 300-A of the Constitution guarantees a right to property, which cannot be deprived of save by authority of law. Thus merely because the Grampanchayat makes a complaint it cannot happen that the Sub-Divisional Officer would cancel the allotment. An ex-serviceman and that too a soldier who has participated in the Kargil War cannot be meted out such treatment by the Sub-Divisional Officer. The Grampanchayat also ought to consider their position and recognise the petitioner's contribution to the Nation. This was certainly not a case where stay application could have been rejected for the reasons as set out in the impugned order.

6] In the above circumstances, a proper course of law needs to be followed, in my opinion, let the petitioner's appeal itself be heard by giving an opportunity of hearing to the parties.

7] Accordingly, the impugned order dated 29.11.2021 would be required to be set aside and it is accordingly, set aside. The appellate authority would now hear the parties on merits of the appeal and decide the same as expeditiously as possible and preferably within a period of 12 months from today.

- 8] All contentions of the parties are expressly kept open.
- 9] Pending the final disposal of the appeal, the impugned order dated 18.10.2021 shall remain stayed.
- 10] Petition is disposed of in the above terms. No costs.

(G. S. KULKARNI, J.)