

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2859 OF 2019
WITH
INTERIM APPLICATION NO. 906 OF 2021
IN
WRIT PETITION NO. 2859 OF 2019**

Soni Gurmukhdas Jagiasi ...Petitioner
Versus
Sub-Divisional Officer cum-Managing Officer
Ulhasnagar Div & Ors ...Respondents

Mr GS Godbole, with Girish Payani, i/b A&G Legal Associate LLP,
for the Petitioner.

Mr Atul Damle, Senior Advocate, with Hitesh Vyas, for Respondents
Nos. 5 and 6.

Mr GR Agrawal, with M Bhatia, for Respondent No.7.

Mr AI Patel, AGP, for the State.

**CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 17th November 2021**

PC:-

ARUN
RAMCHNDRA
SANKPAL

1. Heard.

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2. We have heard Mr Godbole for the Petitioners, Mr Damle for Respondents Nos. 5 and 6, Mr Patel for Respondents Nos. 1 to 3 and Mr Agrawal for Respondent No.7.

3. Affidavits in Reply have been filed. We have considered these.

4. The Petition under Article 226 of the Constitution of India is unfortunately one that is too expansive in what it seeks to achieve at the instance of this particular Petitioner. The challenge is to orders passed on 27th December 2016, 20th February 2018 and 7th February 2019 relating to a disputed property described as Plot No.1480, Sheet No. 84 and 85, Ulhasnagar-5.

5. The facts lie in a relatively narrow campus. The Petitioner claims to be in possession of this land along with the other occupiers.

6. Respondents Nos. 1 to 4 are the State Government and its authorities who exercise duties and perform functions inter alia under the Displaced Persons (Compensation and Rehabilitation) Act 1954 (“**DPCR Act**”).

7. In paragraph 5 of the Petition, the Petitioners says that one Tukaram Bhoir, the grandfather of the constituted attorney of Respondents Nos. 5, 6 and 7, approached the 1st Respondent State for a Conveyance Deed in respect of the land in question. This request was rejected. Respondents Nos. 5, 6 and 7 challenged the order and obtained a judgment on 27th December 2016 for an

allotment of an alternative site in lieu of the disputed property. The basis of the claim made by Respondents Nos. 5, 6 and 7 was that that they were occupants of the land since 1947. In a Revision filed by Respondents Nos. 5, 6 and 7, the order of the 1st Respondent was set aside and remanded. The 1st Respondent reserved judgment on 5th December 2017, but without pronouncing judgement, on 20th February 2018 issued a letter to Respondents Nos. 5, 6 and 7 to submit a list of plots to be identified as alternative sites.

8. The Petitioner claims that it is actually she (and other persons) who are in possession and occupation of the disputed property under an Agreement of Sale of 21st August 1984. This is the first difficulty in the Petitioner's way. The land is not of the ownership of Respondents Nos. 5, 6 and 7 or their ancestor, Tukaram Daji Bhoir. The land is the property of the Government.

9. The Petitioner claims that she has obtained possession through the Bhoirs.

10. The Petitioner also says that she is a displaced person within the meaning of DCPR and it is she or someone else who is also covered by that Act who is or are entitled to the land. In any view of the matter, the Bhoirs are not entitled to an allotment of any part of that land is the submission.

11. Factually, we note that the land is said to have been acquired for police barracks and is in occupation of the police. The Petitioner denies this, but that denial is fatal to a writ petition — it is

immediately a disputed question of fact that can only be determined in a civil proceeding.

12. Mr Godbole points out that by two circulars that have been challenged in the Petition by amendment, the provisions of the DPCR Act have been purportedly extended by executive notification to non-displaced persons as well i.e. those who are not refugees from West Pakistan etc. He invites attention to the two impugned circulars of 31st October 1981 and 9th March 1983. In our view, this submission is not well founded. The circular of 31st October 1981 does not in fact purport to extend the DPCR to non-displaced persons. It could not. It only addresses itself to a frequent and recurring problem in this country — that of encroachments on lands, especially public or government lands. The Government Resolution recognizes the existence of the problem and then formulates a policy of regularization of encroachments by non-displaced persons on DPCR land and which encroachments are said to be done prior to 11th May 1965. For some time, the Government has been concerned about this problem. There was no definite policy in that regard. In the past, some encroachments made by non-displaced persons prior to 11th May 1965 had been regularized by the screening committee at a reserved price and came to be regularized at market rates prevalent at the time. The Government had then decided in 1981 that all unauthorised occupations prior to 11th May 1965 made by non-displaced persons should be regularized at a reserved price. “No discrimination should be made” is the wording of the Government circular. Those cases should not be re-opened. In fact, the Government circular that Mr Godbole challenges is perfectly consistent with the past Government

practice. It seeks to give a quietus to any possible discrepancy or unevenness in application and does away with ad hoc decisions taken in the absence of a consistent policy. It does not extend the benefits of the DPCR to non-displaced persons. It recognizes an unfortunate ground reality and presents a carefully calibrated solution. It stipulates a cut-off date and recognizes that those who have been in possession historically for a considerable period of time in the past should not be rendered without possession or abruptly evicted.

13. At page 99-B is the circular of 9th March 1983, which brings together a number of standing orders. Mr Godbole invites attention to page 99-O, Item 6. This again is in regard to the regularization of unauthorised constructions prior to 11th May 1965. Clarifications have been issued in partial modifications of previous circulars of 1975. The Government permitted regularization at reserved prices open areas genuinely required by the encroachers for the purposes of the approach, ventilation or courtyards, subject to certain conditions. Once again, this is a recognition of a historically pre-existing problem and is not and cannot be said to be what Mr Godbole describes it as i.e. the conferring of benefits on non-displaced persons.

14. In our considered view, Mr Damle is correct in saying that the fundamental flaw in the Petition is that the Petitioner has not first established her legal right before she seeking a remedy from this Court. She claims rights on the basis of, and only of, the 21st August 1984 Agreement of Sale. But she has at no point approached the Civil Court for an adjudication of her rights. If, even according to

the Petitioner, the Bhoirs or their ancestor did not have title to the land, then under the 1984 Agreement, no title could have passed to the Petitioner from the Bhoirs (or their ancestor). What, therefore, is the precise legal right and entitlement the Petitioner seeks is unclear and has never been adjudicated. We fail to see how the Petitioner can claim a legal right to any part of the land in specie.

15. It is not, as Mr Damle says, as if the Petitioner has espoused some larger public cause so as to be able to sustain a challenge to these circulars.

16. In any case, as we have noticed, the challenge to the circulars is prima facie entirely misconceived and misdirected. Recognizing and regularising an encroachment is not the same as extending the benefit of the Act to persons not entitled to statutory benefits. The two are entirely distinct.

17. There may be some substance after all in Mr Damle's submission that the Petitioner's approach seems to be that if she cannot have the land herself, neither should the Bhoirs under any circumstances and irrespective of any other circumstances. This cannot serve as the basis of a Writ Petition under Article 226 of the Constitution of India.

18. We find no substance in the Petition. It is rejected. There will be no order as to costs. Previous orders stand vacated.

19. There is a previous order of status quo ordered on 5th March 2019. The request is that this should be extended. We would be willing to do so if there was any agreement between the rival parties as to what that status quo is. From the submission of the Petitioner, it is clear that there is no such agreed understanding of the status quo. Specifically, the 7th Respondent contends that the possession is not with the Bhoirs at all but is with the police. The Petitioner, without filing any substantive civil suit to establish her rights, claims that the possession is with her. There is nothing on record to show this. We are not inclined to continue the order of status-quo in such circumstances.

20. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)