

THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 803 OF 2020

- PETITIONERS:**
- 1] Narayan Vithoba Gawai
aged about 64 years, Occ.
Agriculturist, R/o. Warkhed,
Tq. Chikhli, Dist. Buldhana
 - 2] Prahlad Vithoba Gawai
aged about 50 years, Occ.
Agriculturist, R/o. Warkhed,
Tq. Chikhli, Dist. Buldhana
 - 3] Santosh Tukaram Gawai
aged about 65 years, Occ.
Agriculturist, R/o. Warkhed,
Tq. Chikhli, Dist. Buldhana
 - 4] Sau. Anusaya Irbhan Gawai
aged about 70 years, Occ.
Agriculturist, R/o. Warkhed,
Tq. Chikhli, Dist. Buldhana
 - 5] Bhagwan Daulat Wakode
aged about 62 years, Occ.
Agriculturist, R/o. Warkhed,
Tq. Chikhli, Dist. Buldhana
 - 6] Shobha Attmaram Gawai
aged about 50 years, Occ.
Agriculturist, R/o. Warkhed,
Tq. Chikhli, Dist. Buldhana
 - 7] Pundlik Bhikaji Gawai
aged about 68 years, Occ.
Agriculturist, R/o. Warkhed,
Tq. Chikhli, Dist. Buldhana
 - 8] Radhabai Pundlik More
aged about 61 years, Occ.

Agriculturist, R/o. Warkhed,
Tq. Chikhli, Dist. Buldhana

- 9] Rajaram Kisan Waghmare (deceased)
through his legal heir
Kalabai Rajaram Waghmare
aged about 70 years, Occ.
Agriculturist, R/o. Warkhed,
Tq. Chikhli, Dist. Buldhana
- 10] Uttam Madhu Waghmare
aged about 64 years, Occ.
Agriculturist, R/o. Warkhed,
Tq. Chikhli, Dist. Buldhana

...VERSUS...

- RESPONDENTS:** 1] Gran Panchayat Warkhed,
Through its Secretary
Tq. Chikhli, Dist. Buldhana
- 2] The Divisional Commissioner,
Amravati Division, Dist. Amravati.

Mr. R.V.Gahilot, Advocate for petitioners.
Mr. P.B.Patil, Advocate for respondent No.1
Ms. T. Khan, AGP for Respondent No.2

CORAM : AVINASH G. GHAROTE, J.
DATE : 16/11/2021.

- 1] Heard Mr. Gahilot for petitioner and Mr. Patil, learned
counsel for Respondent No.1. Ms. Khan, learned AGP appears for
Respondent No.2.

2] Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3] The petition challenges the order dated 20.01.2020 passed by the learned Divisional Commissioner, Amravati, in an appeal under Section 53(3-A) of the Maharashtra Village Panchayat Act, which lays a challenge to the notice dated 14.08.2019 issued by Respondent No. 1 to the petitioners under Section 53(2) of the M.V.P. Act, calling upon them to submit document regarding the occupation of the land of Gat No. 123 and 289 of village Warkhed, Tah. Chikhli, Dist. Buldhana. The learned Commissioner by the impugned order dismissed the appeal holding that land of Gat No. 123 was E-class and Gat No. 289 was F-class, which were given to Respondent No.1 for crematorium and extension of village (gaothan) and therefore, directed that the notice impugned be given immediate effect.

4] Mr. Gahilot, learned counsel for petitioners submits that the entire land of Gat Nos. 123 and 289 actually belong to the Government, for which reliance is placed upon 7/12 extract filed by Respondent No.1 on record. He further submits that since the land belongs to the Government, requirement of the provision of

Section 53(2) of the M.V.P. Act, which requires the prior permission of the Collector before directing removal of encroachment, has not been done and non consideration of this aspect vitiates the impugned order.

5] Mr. Patil, learned counsel for Respondent No. 1 submits that the land does not vests in the Government, but has been allotted to Respondent No.1, for which the reliance is placed upon 7/12 Extracts in respect of Gat No. 123 and 289. He therefore justifies the impugned order.

6] A perusal of the 7/12 extracts in respect of Gat No. 123 and 289 indicates that they admeasure 7.64 and 9.28 hectares respectively. What has been allotted to Respondent No.1 is an area admeasuring 1.35 hectare for gaathan, out of the land of Gat No. 289 and area admeasuring 0.20 acres for crematorium. Mr. Patil, learned counsel for Respondent No.1 does not dispute that the land of Gat No. 289 and that of Survey No. 78 is one and the same. This would clearly indicate that the land of Gat No. 123 and 289 belongs to the Government and what has been given to Respondent No.1 is

only a part thereof, which is not the subject matter of the notice dated 14.8.2019.

7] That being the case, in view of the provisions of Section 53(2) of the M.V.P. Act, it was necessary for Respondent No.1 before issuing the impugned notice, to have obtained the prior permission of the Collector or any officer authorized by him in this behalf, which admittedly has not been done, in view of which position, the impugned order cannot be sustained and is accordingly quashed and set aside. The notice dated 14.08.2019 is also quashed and set aside for the same reason. It is however made clear that Respondent No.1 shall be entitled to take appropriate action in exercise of the power under Section 53(2) of M.V.P. Act, after obtaining the prior permission of the Collector in this regard. It is also made clear that in case the encroachment is on the land allotted to Respondent No.1, then it would be permissible for Respondent No.1 to initiate action under Section 53(2) of M.V.P. Act without the permission of the Collector. Petition is accordingly allowed. Rule is made absolute in above terms. No costs.

JUDGE

Rvjalit