

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
902 WRIT PETITION NO.3973 OF 2016
WITH CA/3449/2022 IN WP/3973/2016 WITH CA/7007/2017
IN WP/3973/2016 WITH CA/10437/2019 IN WP/3973/2016

YADAVRAO SADASHIV GANGAWANE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. R. U. Awasarmol, Advocate for the petitioners
Mr. S. B. Yawalkar, AGP for the respondents/State
Mr. D. R. Jaybhar, Advocate for the intervenor

CORAM : RAVINDRA V. GHUGE &
ANIL L. PANSARE, JJ.

DATE : 13th July, 2022

P. C.

1. By this petition, the petitioners have putforth prayer clause-B, as under:-

B] By issuing a writ, order or directions to the respondents, to consider the request of the petitioners for allotment of Government Gairan land of village Viramgaon Tq. Phulambri, Dist. Aurangabad bearing Gut No. 131 to the extent of 1 Hectore 85 R to petitioner Yadavrao, 60-R to Rekhabai 50-R to Vijaya and 65-R to Ravindra as

per Sec 51 of the Maharashtra Land Revenue Code and as per G. R. dated 28-11-1991.

2. We have considered the strenuous submission of the learned advocate for the respective sides and have gone through the record available. These petitioners had preferred RCS No. 915/2003, anticipating their eviction from the suit property. After considering the oral and documentary evidence available, the trial court decreed the suit and perpetually injuncted the respondents from disturbing the possession of the petitioners/plaintiffs over Gut No. 131, admeasuring 5-Acres of land. The Grampanchayat had consistently taken a stand that land Gut No. 131 consisted of 25-Acres 2-Gunths which was gairan land and the panchanama dated 30-09-1989 indicated the petitioners as being encroachers.

3. Being aggrieved by the judgment of the trial court, the Grampanchayat approached the appellate court by preferring RCA No. 307 of 2012. By judgment dated 07-11-2016, the appeal was allowed. The impugned judgment and decree was quashed and set side and the suit was dismissed. While delivering such judgment, the appellate court recorded that the suit property undisputedly belongs to the government and the same was managed and supervised by the Grampanchayat. The 7/12 extract indicated that none of these petitioners were owners. Their encroachment and the cultivation of the land was admitted.

4. The appellate court, therefore, came to a conclusion that the possession of the

plaintiffs cannot be legalized. The court cannot direct the government to regularize their encroachment. The plaintiffs' possession over the suit property is unlawful and therefore, granting perpetual injunction would practically amount to creating a right in favour of the petitioners and a hurdle in the path of the State authorities from removing the encroachment.

5. The learned advocate for the petitioners submits that the petitioners have preferred a second appeal and the same is pending before this court.

6. The learned AGP has placed reliance upon the judgment delivered by the Hon'ble Supreme Court in Jagpal Singh and others Vs State of Panjab, (2011) 11 SCC 396, wherein it has been

held in paragraph No.23 as under:-

23. 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 thus obvious that the Hon'ble Supreme Court has directed the Chief Secretaries of all the States Government to remove the encroachment / illegal occupants and unauthorized occupants of the Gramsabha/ Grampanchayat and poramboke / shamlat land etc. It was also held that long duration of such illegal occupation or huge expenditure in making constructions thereon due to political connection, must not be treated as a justification for condoning this illegal act and for regularizing illegal possession.

8. It was further held that regularization should only be permitted in exceptional cases where the lease has been granted under some government notification to the landless labourers or members of the Scheduled Caste/ Scheduled

Tribe or where there is already school, a dispensary or any other public utilities. The Chief Secretaries in India were directed to submit their reports, vide the directions set out in paragraph Nos. 24 and 25 which read as under:-

24. Let a copy of this order be sent to all Chief Secretaries of all States and Union Territories in India who will ensure strict and prompt compliance with this order and submit compliance reports to this Court from time to time.

25. Although we have dismissed this appeal, it shall be listed before this Court from time to time (on dates fixed by us), so that we can monitor implementation of our directions herein. List again before us on 3.5.2011 on which date all Chief Secretaries in India will submit their reports.

9. In view of the above, we are of the view that a Writ of Mandamus cannot be issued to the Government to regularize the illegal occupation of gairan land by these petitioners. In the event

the State Government has any specific scheme in the light of the judgment delivered by the Hon'ble Supreme Court in *Jagpal Singh and others* (supra), the Government would consider such cases depending upon the facts and circumstances and in the light of the strict directions of the Hon'ble Supreme Court.

10. In view of the above, this petition is dismissed. The pending civil applications would not survive and stand disposed off.

[ANIL L. PANSARE, J.]

[RAVINDRA V. GHUGE, J.]