

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 13549 OF 2017

1. Shakuntalabai w/o Gopichand Dhaktode,
Age : 53 yrs, Occ. Household and Agriculture,
R/o – S. No. 488/15 Old Jalna,
Dist. Jalna.
2. Anita w/o Sakharam Sathe,
Age: 34 yrs, Occ. Household and Agriculture,
R/o Dudhna Kalegaon,
Ta. & Dist. Jalna.
3. Kishor S/o Gopichand Dhaktode,
Since deceased through his L.Rs.
 - i) Vandana W/o Kishor Dhaktode,
Age : 46 yrs.
 - ii) Arjun S/o Kishor Dhaktode,
Age : 28 yrs.
 - iii) Ajay S/o Kishor Dhaktode,
Age : 26 yrs.
R/O S. No. 488/15, Jalna.
 - iv) Kavita Vikas Ghorpade,
Age : 23 yrs,
Rajendra Nagar, Borivali,
Mumbai.
4. Sunita w/o Ramesh Patole
Age: 29 yrs. Occ. Household and Agriculture,
R/o Devulgaonraja, Dist. Buldhana.
5. Kiran S/o Gopichand Dhaktode
Age: 31 yrs, Occ. : Agriculture,
R/o – S. No. 488/15 Old Jalna,
Dist. Jalna.

6. Savita w/o Raju Ghorpade
Age: 29 yrs, R/o Rajendranagar,
Borivali, Mumbai.
7. Sharda D/o Gopichand Dhaktode,
Age : 27 yrs. Occu. : Agriculture,
R/o – S. No. 488/15 Old Jalna,
Dist. Jalna.
8. Tanhabai W/o. Kachru Randhawe,
Age: 68 Years, Occu. : HH and Agril.,
R/o – S. No. 488/15 Old Jalna,
Dist. Jalna. .. Petitioners

Versus

1. The State of Maharashtra
Through the Secretary,
Revenue and Forest Department
Government of Maharashtra,
Mantralaya, Mumbai 400032.
2. The District Collector, Jalna.
3. The Sub Divisional Magistrate,
Jalna.
4. The Tahsildar, Jalna.
5. The District Superintendent of Police,
Jalna.
6. The Police Inspector,
Taluka Police Station, Jalna.
7. Matsyodari Education Society
through its Secretary, Gat No. 488
Near Railway Over Bridge, Jalna. .. Respondents

Mrs. Kalpalata Patil Bharaswadkar, Advocate for the
Petitioners.

Shri S. B. Yawalkar, Addl.G.P. for the Respondent Nos. 1 to 6.

Shri V. D. Sapkal, Senior Advocate i/by Shri S. S. Tope, Advocate
for the Respondent No. 7.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

CLOSED FOR JUDGMENT ON : 07.10.2022
JUDGMENT PRONOUNCED ON : 14.10.2022

JUDGMENT (*Per Sandeep V. Marne, J.*) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

THE CHALLENGE

2. The petitioners assail order dated 12.05.2015 passed by the Collector, Jalna thereby confirming the order passed by the then Assistant Collector, Jalna on 13.03.1991 for resumption of land allotted to them. They also challenge orders dated 17.11.2008 06.11.2009 allotting the land in favour of the respondent No. 7.

FACTUAL MATRIX

3. The case involves checkered history. One Vithoba Dhaktode was allotted land out of Sy. No. 488 for cultivation under “Grow More Food Scheme”, the objective of which was to bring barren land under cultivation by allotting the same to the landless persons. It is claimed that Vithoba brought the land which was otherwise rocky, dry and barren under cultivation through his onerous labour. Vithoba died on 28.04.1989 and names of his legal heirs were brought on record by mutation entry dated 19.08.1989.

4. On 13.03.1991, the then Assistant Collector, Jalna passed common order against 31 persons for resumption of various lands

without issuance of any notice and without following principles of natural justice. The order included name of Vithoba, who had already expired on 28.04.1989. The petitioners filed Writ Petition No. 2398 of 1993 before this Court challenging the order dated 13.03.1991. The petition was admitted and interim relief was granted by way of directions to the respondents not to disturb their possession over the land. Fifteen other affected allottees filed revision before the State Government challenging the order dated 13.03.1991. The revision was allowed by the Officer on Special Duty and Secretary (Appeals and Revision), Revenue and Forest Department by order dated 30.07.1993 quashing and setting aside the order dated 13.03.1991. Later, Writ Petition No. 2398 of 1993 came to be allowed by this Court on 22.03.2012, setting aside the order dated 13.03.1991. However, since the factum of petitioners filing Civil Suit No. 165 of 1991 for injunction was suppressed from this Court, costs of Rs. 5,000/- were imposed on the petitioners with direction to deposit the same with the Treasury within four weeks. The respondents therein were granted liberty to initiate such proceedings as were permissible under law against the petitioners. It is the case of the petitioners that cost was deposited with the Nazir of this Court.

5. After the Writ Petition No. 2398 of 1993 was allowed and the order dated 13.03.1991 was set aside, the petitioners requested for restoration of their names in the record of rights. Since the request was not accepted, the Contempt Petition No. 319 of 2012 was filed before this Court. During the pendency of the contempt petition, the petitioners received notice dated 07.05.2014 from the Sub Divisional Officer, Jalna proposing to

conduct hearing in the proposed proceedings for resumption of the lands. The petitioners appeared before the Sub-Divisional Officer on various dates, but it is claimed that the hearing could not take place.

6. The petitioners claim that on 13.09.2017 and 30.10.2017, Naib Tahsildar attempted to disturb the possession of the petitioners by bringing JCBs. At that time, the petitioners were orally informed that the land was already allotted to other persons. They first lodged F.I.R. for attempting to disturb their possession and thereafter filed the present petition challenging the allotment of land in favour of the unknown persons and sought to restrain respondent Nos. 1 to 5 from taking over possession of land without paying the compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

7. After affidavit in reply was filed, the petitioners noticed that the land was already allotted by the Collector in favour of the respondent No. 7 on 17.11.2008 and 06.11.2009 on lease for 15 years. They also noticed that the Collector had passed order dated 12.05.2015 confirming the earlier order of the Assistant Collector, Jalna dated 13.03.1991 and had thereby resumed the lands. They claim that such order was passed by the Collector on 12.05.2015 without any notice to them and that the Sub Divisional Officer, who was conducting hearing in the matter, was also unaware of the order passed by the Collector. After the Sub-Divisional Officer became aware of the order dated 12.05.2015 been passed by the Collector, Jalna, he was left with no option but to close the case by issuance of communication

dated 06.12.2017. The petitioners have therefore expressed shock and surprise as to how the Collector, Jalna surreptitiously passed order dated 12.05.2015, which was not in the knowledge even of the Sub Divisional Officer. They have accordingly amended the petition and have challenged the order dated 12.05.2015 passed by the Collector, Jalna as well as orders dated 17.11.2008 and 06.11.2009 allotting the lands in favour of the respondent No. 7.

SUBMISSIONS ON BEHALF OF PETITIONERS

8. Appearing for the petitioners, Mrs. Kalplata Patil Bharaswadkar, the learned counsel would submit that the order dated 12.05.2015 has been passed in gross violation of principles of natural justice. She submits that the petitioners did not receive any notice from the Collector and that they were not even aware of the fact that matter was taken up by the Collector for adjudication. She would submit that from the notices dated 07.05.2014 and 29.11.2017 issued by the Sub Divisional Officer, Jalna to the petitioners are indicative of the fact that proceedings for resumption of the land were being conducted by the Sub Divisional Officer, who himself was unaware of the fact that the order was already passed by the Collector on 12.05.2015. She would further submit that the lands could not have been allotted by the Collector in favour of the respondent No. 7, as this Court had granted interim relief protecting the possession of the petitioners during the pendency of the Writ Petition No. 2398 of 1993. She would further submit that after the resumption order dated 13.03.1991 was set aside by this Court in Writ Petition No. 2398 of 1993 by order dated 22.03.2012, the so-called allotment of land in favour of the respondent No. 7 made in the year

2008/2009 automatically became meaningless. She prays for setting aside of order dated 12.05.2013 passed by the Collector, Jalna as well as orders dated 17.11.2008 and 06.11.2009 allotting the lands in favour of the respondent No. 7.

SUBMISSIONS ON BEHALF OF STATE GOVERNMENT

9. Mr. Siddhartha Yawalkar, the learned Additional Government Pleader appearing for the State Government opposes the petition. He raises a preliminary objection of availability of alternate remedy under the provisions of the Maharashtra Land Revenue Code, 1966 of filing revision. Referring to the order passed by the Collector on 12.05.2015, he would submit that a hearing was indeed conducted on 28.04.2015 and that therefore, the contention of the petitioners of violation of principles of natural justice is not tenable. He would submit that the petitioners violated the condition of allotment of land. He would submit that the land was allotted during the lifetime of Vithoba for cultivation and after his death, the land would automatically resumed in the State Government. Despite there being specific condition prohibiting transfer of the land, the petitioners illegally transferred the land. In this regard, he relies upon the copy of sale deed executed in October 2015 by the petitioner No. 1 in favour of Sawata Ashok Sable. He would also refer to the report of the Sub Divisional Officer, Jalna dated 04.03.1985 in respect of entire land Sy. No. 488 pointing out that out of the 300 Acres land allotted to landless persons during 1961-1962, 176 Acres of land was barren and the remaining land was under cultivation. The reports indicate that some of the lands have been illegally sold and transferred by four individuals. However, upon a query being put by the Court as to whether report

contains names of the petitioners, Mr. Yawalkar was not able to point out anything in the report which would suggest that the petitioners had sold or transferred the lands.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 7

10. Appearing for the respondent No. 7, Mr. Sapkal, the learned Senior Advocate would invite our attention to the allotment letter dated 22.06.1960 issued in favour of Vithoba to contend that the allotment was only during the lifetime of Vithoba and that upon his death on 28.04.1989, the land automatically reverted to the State Government. He invites our attention to the stipulation in the allotment order which prevented Vithoba from transferring the occupancy. He would submit that the allotment for cultivation under the scheme did not create any heritable right for the petitioners to stake any claim in the land. He invites our attention to the judgment and order dated 21.07.1993 passed in R.C.S. No. 165 of 1991 instituted by Gopichand Vithoba Dhaktode (husband of the petitioner No. 1) seeking perpetual injunction from obstructing and interfering in the possession over the land. The suit was dismissed by judgment and order dated 21.07.1993, which factum was suppressed while prosecuting the Writ Petition No. 2398 of 1993. On account of suppression of filing and decision of the suit, this Court imposed costs of Rs. 5,000/- on the petitioners and deposit of the cost was made a precondition for allowing the petition. He would submit that there was a specific directions by this Court to deposit the cost of Rs. 5,000/-, 'with the Treasury', which the petitioners admittedly did not deposit. He would submit that the deposit of amount of the costs with the Nazir of this Court was in violation of the order passed by this Court. He

would submit that since the cost was not deposited 'with the treasury', the order passed by this Court remained inoperational so far as petitioners are concerned.

11. Mr. Sapkal also invites our attention to the conduct of the petitioners in transferring the land and thereby committing breach of condition of allotment. He would further submit that so far as the other allottees who had filed revision before the State Government were concerned, by order dated 16.08.1993, passed by the Additional Collector, Jalna, earlier order of resumption dated 13.03.1991 was confirmed. He therefore submits that the petitioners cannot get different treatment merely because they approached this Court instead of filing revision before the State Government. Lastly, Mr. Sapkal would submit that the respondent No. 7 has acquired valuable rights in the land by paying the amounts directed by the State Government and merely on the basis of cultivable rights granted in favour of Vithoba during his lifetime, the petitioners cannot be permitted to defeat rights created in favour of the respondent No. 7.

SUBMISSIONS IN REJOINDER

12. In rejoinder Mrs. Bharaswadkar Patil relies upon the following decisions to counter the plea of alternate remedy :

- I. Durga Enterprises (P) Ltd and another Vs. Principal Secretary, Govt. of U.P. and others reported in (2004) 13 SCC 665.
- II. L. Hirday Narain Vs. Income Tax Officer, Bareilly reported in AIR 1971 SC 33.

III. Firozali Abdulkarim Jivani and another Vs. The Union of India and others reported in AIR 1992 Bombay 179.

13. She would further rely upon the provisions of Rule 19 of the Andhra (Telangana Area) Land Revenue Act, 1317 F to contend that in the event of any breach of condition of allotment, the Collector was first required to serve a notice of three months to comply with condition and only upon failure of the allottee to take corrective action within three months, an order of ejectment could be passed. She also relies upon the provision of Section 58 of the Hyderabad Land Revenue Code to contend that occupancy right is also deemed to be heritable and transferable right.

14. Rival contentions of the parties now fall for our consideration.

REASONS AND ANALYSIS

15. We first deal with the objection raised by Mr. Yawalkar about availability of alternate remedy of filing revision under the Maharashtra Land Revenue Code, 1966. It is trite that non-exercise of writ jurisdiction in the light of availability of alternate remedy is a self imposed restriction by the High Courts. There is no hard and fast rule that in every case, where alternate remedy is available this Court shall refuse to exercise the writ jurisdiction. While ideally this Court would always relegate a petitioner to available alternate remedy, at the same time writ jurisdiction of this Court cannot be circumscribed by availability of alternate remedy. In this connection Mrs. Patil has rightly relied upon the decisions of the Apex Court in the case of **L. Hirday Narain** (*supra*) and **Durga Enterprises (P) Ltd.** (*supra*).

16. Also, we find that the facts and circumstances of the present case to be so peculiar that we would entertain the present petition rather than relegating the petitioners to the alternate remedy. There are multiple reasons for repelling the objection of Mr. Yawalkar. Firstly, in respect of earlier resumption order dated 13.03.1991 this Court did entertain Writ Petition No. 2398 of 1993 and set aside the order. Secondly, Mr. Yawalkar has not been able to produce any document on record to show that a notice of hearing was indeed given by the Collector before passing the impugned order dated 12.05.2015. This aspect is being discussed in greater details in the latter part of the judgment. Thirdly, in the light of the order that we propose to pass, it would not be prudent to relegate the petitioners to alternate remedy by not entertaining the petition. We, therefore, proceed to entertain the petition by rejecting the objection of alternate remedy raised by Mr. Yawalkar.

17. The land was allotted to Vithoba on 22.06.1960 for cultivation. We reproduce Form G, by which written permission to occupy the land was granted in favour of Vithoba.

FORM G

**Written permission to occupy land (to be given by the
Tahsildar under, the Laoni Rules)**

(See Rule 9(g))

Permission is hereby given to **Vithoba S/o Vaghuji** inhabitant of Jalna in the Tahsil of Jalna District Aurangabad to occupy Survey Number **488 of 16 (Sixteen Acres)** (if it is only a portion of Survey number) a portion of number in the village of Jalna in the Taluq of **Jalna** in **Aurangabad** District.

(Name of the Party) **Vithoba** is to pay land revenue amount

per yar from 1959-60 for the land granted for occupation under this permit as assessment Rs. 28=00 (Rule Twenty Eight only)

If, after the phodi work is completed, the area and assessment are both fixed by the Department of Land Records (Survey and Settlement) **Vithoba** is bound to pay the assessment so fixed, but this change will take effect only from the year following that in which such change has been made as a result of the completion of phodi work by the Department of Land Records.

(In the case of land granted as not transferable) he **Vithoba** the grantee is not empowered to transfer the occupancy without the saction previously obtained from the Collector.

This permission to occupy shall not confer the right to mine on the land or collect minerals therefrom.

Place : Jalna	Sd/-	Sd/-	(Seal) Sd/-
Date : 22-6-1960	Peshkar	Talathi	Tahsildar.22/6/60

18. Both Mr. Yawalkar and Mr. Sapkal have raised a contention that the allotment was only during the lifetime of Vithoba and that upon his death, his legal heirs were not entitled to any hereditary right in respect thereof. They have therefore contended that upon death of Vithoba, there ought to be automatic resumption of land in favour of the State Government. We are unable to agree with this contention. Firstly, there is no condition in the allotment order that the allotment was only during the lifetime of Vithoba and that upon his death the land was to resume with the Government. Secondly, the theory of automatic resumption of land is belied by the first order of resumption dated 13.03.1991 passed by the then Assistant Collector, Jalna. If there was automatic resumption of land, there was no necessity for the then Assistant Collector, Jalna to pass order of resumption on 13.03.1991. What is more important

is that the then Assistant Collector probably was not even aware about the death of Vithoba while passing order dated 13.03.1991, as the order is passed in the name of Vithoba. Furthermore, resumption order is not passed on the ground of death of allottee. On the contrary the resumption order is passed citing a reason that the land was not being utilized for the purpose for which same was allotted. Neither in the earlier order of resumption dated 13.03.1991 nor in the order dated 12.05.2015 now passed by the Collector, any finding is recorded to the effect that the land was allotted only during lifetime of Vithoba or that on his death the land would automatically revert to the Government. Therefore, we reject the contention of Mr. Yawalkar and Mr. Sapkal in this regard.

19. Now, we proceed to examine the manner in which the impugned order dated 15.05.2015 has been passed by the Collector, Jalna. This Court granted liberty to the respondent authorities to initiate such action as may be permissible under law against the petitioners, if, there was violation of any condition upon which the land was allotted or under any other exigency permissible under law. We do not find any specific communication under which either the Sub Divisional Officer or the Collector proceeded to initiate the proceedings as contemplated by this Court in its order dated 22.03.2012. What is placed on record by the petitioners is notice dated 07.05.2014 issued by the Sub Divisional Officer, Jalna, which refers to the earlier notice dated 03.03.2014 (which is not on record). However, a presumption can possibly be raised that the Sub Divisional Officer by issuing notices dated 03.03.2014 and 07.05.2014 did initiate proceedings for resumption of land in

view of liberty granted by this Court in its order dated 22.03.2012. It appears that the proceedings for resumption of land remained pending with the Sub Divisional Officer, Jalna, which is evident from the notices dated 27.03.2014, 07.05.2014, 16.06.2014, 19.11.2017 and 06.12.2017. Thus, it was the Sub Divisional Officer, Jalna who was seized of the case for proposed resumption of land against the petitioners. By the notice dated 29.11.2017, the Sub Divisional Officer, Jalna communicated that a hearing was scheduled in his office on 05.12.2017 at 2.00 p.m. which was required to be attended by the petitioners or their advocate. It appears that a hearing was indeed conducted by the Sub Divisional Officer, Jalna on 05.12.2017 and the matter was adjourned for further hearing to 11.12.2017. However, before further hearing could be conducted on 11.12.2017, the Sub Divisional Officer, Jalna issued letter dated 06.12.2017 to the petitioners stating therein that he received letter dated 04.12.2017 from the Collector, Jalna pointing out that a final decision in the matter was already taken by the Collector, Jalna on 12.05.2015 confirming the earlier order of resumption of the land. The Sub Divisional Officer, Jalna therefore, communicated to the petitioners and their advocate that since the Collector, Jalna had already passed an order on 12.05.2015, it would not be appropriate for him to conduct the hearing in the matter. He accordingly proceeded to close the case.

20. Thus the manner in which the entire case has been dealt with is appalling. There is absolutely no answer as to how Collector, Jalna proceeded to pass an order in a case which was pending with the Sub Divisional Officer, Jalna. It is quite shocking and surprising that the Sub Divisional Officer, Jalna

was not even made aware of passing of the order by the Collector, Jalna on 05.12.2015 and being oblivious of such order, Sub Divisional Officer proceeded to conduct hearing in the case pending before him. We find this conduct of the Collector, Jalna to be most intolerable. The Collector, Jalna clearly overstepped his authority and usurped the jurisdiction by passing order in a case which was pending with another officer, without even bothering to give an intimation to that officer that he was passing an order in that case. In our opinion, there is colourable exercise of power on the part of the Collector, Jalna in passing order dated 12.05.2015.

21. Perusal of the order dated 12.05.2015 shows that a meeting was convened in his office on 28.04.2015. The order records that to initiate action as per the liberty granted by this Court in its order dated 22.03.2012 passed in Writ Petition No. 2398 of 1993, a hearing of legal heirs of Gopichand Vithoba Dhaktode was conducted on 28.04.2015. While the recital no. 4 to the order describes the alleged proceedings of 28.04.2015 as 'meeting', in the body of the order, those proceedings are described as 'hearing'. The State Government has not placed on record any notice of alleged hearing being conducted by the Collector on 28.04.2015. The petitioners have come up with a specific case that the order dated 12.05.2015 was passed behind their back and that they were completely oblivious of such order being passed. When a case of this nature was set up by the petitioners, it was incumbent for the State Government to demonstrate before this Court that a notice of alleged hearing of 28.04.2015 was given to the petitioners. In absence of any documentary evidence being placed before us, we are left with no choice but to

hold that no notice of hearing was given to the petitioners before conducting alleged meeting/hearing dated 28.04.2015. This leads us to believe the case of the petitioners that they were not present for any such hearing allegedly conducted on 28.04.2015. The order is thus passed behind the back of the petitioners by throwing the principles of natural justice to the wind.

22. The reasons recorded in the order dated 22.05.2015 renders the same even worse. Only two reasons are cited in the order (i) cost of Rs. 5,000/- was directed to be deposited in the Treasury, which was deposited with Nazir of this Court and (ii) there is violation of condition of allotment. So far as first reason is concerned, we find the same to be too hyper technical. Whether treasury or Nazir of this Court, the amount ultimately reaches to the State Government. Deposit of costs in this Court instead of deposit of the same in the Treasury would not render the order dated 22.03.2012 ineffective. In fact, the Sub Divisional Officer took cognizance of order dated 22.03.2012 and conducted hearing in the matter during 2014 to 2017 without raising any demur about non-deposit of cost in the Treasury. Therefore this reason of non-deposit of cost in treasury is required to be outrightly rejected. Therefore, the contention of Mr. Sapkal that the order passed in Writ Petition No. 2398 of 1993 would not take effect on account of non deposit of cost with the treasury also deserves rejection. So far as the second reason of violation of terms of allotment are concerned, we find that the same is totally vague. The Collector has not specified in his order as to which condition of allotment was violated by the petitioners. Considering the order that we propose to pass, we do not feel it necessary to dwell any further about correctness of this reason recorded by the

Collector and leave all contentions in this regard open.

23. We have therefore no hesitation in holding that the order passed by the Collector, Jalna on 12.05.2015 is indefensible. Same deserves to be set aside.

24. So far as the orders dated 17.11.2008 and 06.11.2009 allotting various lands in favour of the respondent No. 7 are concerned, we find that the question of legality of the same would depend upon the ultimate order that may be passed in the resumption proceedings by the respondent authorities. Therefore, we do not, at this stage, propose to deal with the issue of validity of the orders dated 17.11.2008 and 06.11.2009 allotting lands in favour of the respondent No. 7.

25. Consequently, we proceed to pass the following order.

ORDER

- A. The order dated 12.05.2015 passed by the Collector, Jalna is set aside.
- B. Since the Sub Divisional Officer, Jalna is already seized of the proceedings for resumption of lands, we permit the Sub- Divisional Officer, Jalna to continue the said proceedings and pass final order therein after granting full and complete opportunity to the petitioners of being heard.
- C. While taking decision the Sub-Divisional Officer, Jalna shall not take into account the reasons of non-deposit of costs by the petitioners in the Treasury and decide the

proceedings strictly on merits.

- D. Depending on the final outcome of the proceedings pending before the Sub Divisional Officer, Jalna, further decision be taken by the Collector, Jalna with regard to the orders dated 17.11.2008 and 06.11.2009 allotting lands in favour of the respondent No. 7.
- E. With these directions, the writ petition is allowed.
- F. Rule is made absolute in above terms. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/Oct. 22