

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3604 OF 2021

Usmain Sileman Mujawar Petitioner

Vs.

Ramesh Kedari Nikam & Ors. Respondents

Mr. Ashutosh Kulkarni I/b. Vaibhav R. Gaikwad for the
Petitioner

Mr. Manoj Patil for Respondent No.1

Mr. S. B. Kalel, AGP for the State - Respondent Nos.2 to 6

**CORAM: S.V. GANGAPURWALA &
VINAY JOSHI, JJ.**

DATED : APRIL 6, 2022

P.C.

1 The Petitioner assails the order dated 13th April 2020 passed by Respondent No.2 thereby cancelling the earlier order dated 12th July 2012 regarding exchange of lands.

2 The land of the Petitioner admeasuring 79R from Gut No.276 was acquired to rehabilitate Project Affected Persons, whose lands were acquired for Tarli Project. Award came to be passed on 1st July 1999. The said land admeasuring 79R from Gut No.276 was allotted to

Respondent No.1. The learned Counsel for the Petitioner submits that there is Muslim graveyard in Gut No.276 and therefore, it was agreed between the Petitioner and Respondent No.1 that in lieu of Gut No.276, Respondent No.1 may take possession of area admeasuring 79R from Gut No.214 situated at Shigraon, Tq. Karad. The learned Counsel submits that in view of the settlement arrived at, an Affidavit was executed before the Executive Magistrate, Karad on 27th October 2003. Accordingly, Respondent No.1 was placed in possession of Gut No.214. After due and proper inquiry, Respondent No.2 accepted the proposal and passed an order on 12th July 2012. Under the said order, Respondent No.2 had accepted that in lieu of Gut No.276 admeasuring 79R, the land from Gut No.214 admeasuring 79R was to be acquired and given to Respondent No.2. Subsequently, Respondent No.1 had filed Application before Respondent No.2 to cancel the order dated 12th July 2012. The same was cancelled without giving opportunity to the Petitioner. The Petitioner filed a Civil Suit wherein, initially an order of *status-quo* was passed. However, the plaint was rejected on the ground that the Civil Court had no jurisdiction. The First Appeal also was dismissed. The

Petitioner thereafter filed Writ Petition bearing No.8880 of 2015 challenging the order dated 20th January 2014. This Court had set aside the order dated 20th January 2014 and remitted the matter back directing Respondent No.2 to decide the Application dated 23rd October 2012, afresh.

3 The learned Counsel for the Petitioner submits that the impugned order is erroneous. The Respondent Authority does not have jurisdiction to review his earlier order. The Statute nowhere provides for the power of review. In absence thereof, the Authority could not have reviewed the earlier order dated 12th July 2012 accepting the exchange of lands. The learned Counsel further submits that the Respondent No.1, on his own volition had accepted land from Gut No.214 instead of land Gut No.276. The same was acted upon. The Respondent No.1 was placed in possession of the land Gut No.214. Same was accepted by the Respondent Authority and the order was passed. Thereafter the same could not have been reviewed. Respondent No.1 cannot resile from his statement made on affidavit before the Executive Magistrate. The learned Counsel submits that when the physical verification and

panchnama of the site was done by the Sub Divisional Magistrate, he specifically found that the graves exist in Gut No.276. There is no separate graveyard for Muslim Community and the persons from Muslim Community upon death are buried in Gut No.276. Four graves were also found by him. The subsequent inspection made also shows that there is grave in Gut No.276 below mango tree and there are three more graves. The learned Counsel submits that same ought to have been considered.

4 The learned Counsel for the Respondent No.1 submits that by playing fraud and misrepresentation, the Affidavit was got executed from the Petitioner. Land Gut No.214 is not cultivable land. The same has been considered by the Authority. There are no graves in land Gut No.79R allotted to the Petitioner from Gut No.276. All these aspects have been rightly considered by the Authority while passing the order. The original order of allotment stands in favour of the present Respondent No.1.

5 We have considered the submissions. No doubt, the exchange of land is permissible under the Act. In the

present case, the land admeasuring 79R from Gut No.276 was acquired and allotted to Respondent No.1. The land, after acquisition, vests with the Government. The Petitioner and Respondent No.1 *interse* had arrived at some understanding for which an Affidavit appears to have been filed before the Executive Magistrate. According to Respondent No.1, the said Affidavit was executed by playing fraud and misrepresentation. Initially, the exchange of land amongst the parties *interse* was accepted by the Authority and an order to that effect was also passed on 12th July 2012. It appears that the said order was set aside on 20th January 2014 without hearing the Petitioner. Under the order of this Court, the order dated 20th January 2014 was set aside and rehearing was directed. This Court had directed the matter to be decided afresh. The question would be of feasibility. No doubt, Respondent No.1 is not bound to accept the land from Gut No.214, as statutorily, the Respondent No.1 was allotted land from Gut No.276. However, in the year 2003, some understanding seems to have taken place and affidavit was executed on 27th October 2003 by Respondent No.1. It is also not clear from the record as to whether Respondent No.1 was placed in

possession of Gut NO.214 or that he continues to be in possession of 79R land from Gut No.276. If, really, there are graves in Gut No.276, then it would also not be viable for Respondent No.1 to cultivate the land. There is possibility of future disputes. The Authorities are required to confirm for themselves the existence of graves in Gut No.276 i.e. in the area of the land that was allotted to Respondent No.1, as a Project Affected Person. The Respondents - Authorities are required to consider whether the land Gut No.214 is an uncultivable land or a land of inferior quality. This aspect, it appears, is not considered.

6 More than from the legal point of view, we have considered the issue of equity. If there are graves in land Gut No.276 of the persons from the Muslim Community and if that land is used to bury the persons, then it would also not be practicable for Respondent No.1 to cultivate the land and there may be possibility of future skirmishes. However, if in the land admeasuring 79R allotted to Respondent no. 1 from Gut No.276 the graves do not exist or the said land is not used for the said graveyard, then there would be no problem for Respondent No. 1 to cultivate the land. These

aspects as narrated above, are not considered by the Authorities. In the light of the above, we quash and set aside the impugned order and once again remit the matter back to the Authorities to consider all the facts as suggested above and take decision afresh.

7 The parties may appear before the Authorities concerned on 25th April 2022. The Authority shall, upon considering the contentions of either parties and actual physical position on the site of Gut No.214 and Gut No.276 take decision afresh, preferably within 6 months from the date of appearance of the parties before it.

8 With the aforesaid observations and directions the Writ Petition stands disposed of. No costs.

(VINAY JOSHI, J.)

(S.V. GANGAPURWALA, J.)