

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1934 OF 2022

(This order is corrected pursuant to the speaking to minutes order dated 11th August, 2022)

Namdev Eknath Kokate

...Petitioner

Versus

The Collector, Pune & Ors

...Respondents

- Mr. Sanjiv Sawant i/by Mr. Abhishek Deshmukh & Mr. Digvijay Palande, Advocate for the Petitioner.
- Mr. P. P. Kakade, Government Pleader a/w S. B. Kalel, AGP, for the Respondent – State.

**CORAM : PRASANNA B. VARALE &
KISHORE C. SANT, JJ.**

DATE : JULY 28, 2022.

P. C. :

1. Learned Counsel for the petitioner orally prayed for leave to amend the petition by adding prayer clause raising challenge to the order passed by the Collector, dated 26th July, 2022. In the meantime, oral prayer for amendment is allowed. Amendment by carried out forthwith.

2. We are constrained to say that this is a petition where we find how the officers of the State Government, particularly, in the District Administration take pride in riding the paper horses and proceed with such negative approach that no stone is left, unturned to create hurdle and riders for a citizen who is approaching the Government office with a particular

claim. In the present petition, the petitioner, who is the resident of village Bhatti, Taluka Velha, District Pune is before this Court with the following principal prayers :

“a. That this Hon’ble Court be pleased to pass an order thereby directing the Respondent Nos. 1 to 3 to forthwith allot land admeasuring 56 Aar out of the land bearing Gat No. 154/2 and land admeasuring 65 Aar out of the land bearing Gat No. 317 of Village Darumbare, Taluka Maval, District Pune and more specifically as per the order passed by the State of Maharashtra dated 11th September, 2019.

a1) That this Hon’ble Court after going into legality, validity, propriety of the impugned order dated 26th July, 2022 bearing No. GPA/Gunjavni/SR/05/2022 passed by the Respondent No. 2 and after examining the legality, validity and propriety of the said impugned order this Hon’ble Court be pleased to quash and set-aside the same.”

3. It may not be out of place to refer to certain factual aspects giving rise to the present petition. The petitioner, having an ancestral land and a farmer, was cultivating his land for sometime. The State Government initiated a project namely Gunjawani Project, as such, petitioner’s land was required for the project. The State Government, in its wisdom, initiated process of acquisition of land. The land of the petitioner was accordingly acquired. This particular land was the only source of livelihood for the petitioner. Now, as the land was acquired, the petitioner became landless and, in view of the Government Resolution and notifications, he was declared as Project Affected Person. Now the State Government also formulated a policy to provide an alternative land to such land holders,

whose land is acquired for certain project. It may not be necessary for us to refer to the details of the policy. Suffice to say that the petitioner, in view of this policy, approached the State Government for grant of an alternative land. Now it was not only the petitioner, but it seems that various such project affected persons submitted their claims for grant of an alternative land. The legal representative of the people was also requested to look into the matter. Accordingly, one of the legal representatives of people forwarded communication to the Hon'ble Minister, (Relief and Rehabilitation). In turn, the Desk Officer attached to the Revenue and Forest Department forwarded a communication to the Collector, Pune to submit his self-speaking report. It seems that such communication was forwarded to the Collector, Pune on 04th November, 2015 and as there was no response from the Collector, Pune, another communication dated 30th March, 2016 was forwarded to the Collector, Pune. Copy of the same is placed on record as Exhibit "D" page no. 51. Perusal of the document placed on record further shows that scrutiny of the proposal submitted to the Government was taken and an order dated 30th June, 2018 was passed by the Sub-Divisional Officer, Sub Division, Bhore. As per the said order, the petitioner and other family members were allotted land subject to certain conditions. The petitioner then immediately submitted an application to the Hon'ble Minister, Revenue and Rehabilitation Department on 28th July, 2016. It was submitted in the said application that the Collector vide order dated 30th June, 2016 allotted

an alternative land. However, the said land was not shown to the petitioner and when the petitioner visited the land allotted to him, he found that the land is in hilly area and is wholly uncultivable. On these grounds, the petitioner prayed for cancellation of the order dated 30th June, 2016. Then the matter was again considered and the proposal was submitted to the Additional Collector, Pune through Talathi. Copy of the same is placed on record at Exhibit “H” page no. 56. It is interesting to note that this proposal is self-speaking proposal giving all the necessary details. Various heads are referred to in the communication such as name of the project, village, affected or not by the project. In case, the original project affected person is survived through his legal heirs, the details of such legal heirs, the entitlement of the claimant, the total number of members in the family and entitlement of land *qua* the numbers of the family members etc.

In this communication / report, specific reference is made to the petitioner, his family members, and the area affected under the project. In so far as, the entitlement of the petitioner is concerned, it is stated in the report that as per Chapter 5 Schedule 3 of the Maharashtra Project Affected Persons Rehabilitation Act 1986, if the number of family members of the project affected person is more than 5, every three extra members are entitled for 00 H 40 R excluding the maximum limit of 02 H 80 R subject to the maximum limit of 02 H 80 R and then the Talathi specifically stated that the number of the family members in the project affected person is 17 and

then he divided the numbers of the family as 5 + 3 + 3 + 3 +3 and then stated that the entitlement of the claimant / petitioner is 01 H 60 R. Then, there is reference to the valuation of the land affected and it is stated that the value of the land to which the petitioner and the other members are entitled to would be Rs. 55,59,600/-. Then, order is passed on 01st March, 2017 through the office of the Deputy Director (Rehabilitation) and the Collector, Pune.

4. A reference is made to the report submitted by the Talathi and reference is also made to filing of earlier Writ Petition i.e. Writ Petition No. 2230 of 2015, and then by considering all these aspects, order of allotment of land to the extent of 01 H 20 R from the area of village Varale, Taluka Maval, District Pune subject to certain conditions is passed.

5. Then the order is submitted to the Deputy Secretary, Revenue and Forest Department by communication dated 15th September, 2017. It is also stated in the communication that the petitioner claimed land from village Darumbe, Taluka Maval as an alternative land, however, the said area being out of development plan, the request for land situated at Mauje Darumbe, Taluka Maval cannot be considered. Then there is series of communication between the Collector and the State Government. Then there is also reference to some proceedings and an appeal preferred by the petitioner before the Additional Commissioner, Pune Division. The appeal

seems to be preferred against the order of effecting entries in the revenue record. A communication dated 13th October, 2016 is placed on record, this is addressed to the Collector, Pune through Desk Officer, Revenue and Forest Department. In this communication, a reference is made to an application submitted to the Government by the petitioner and it is further stated that the petitioner be granted an alternative land in village Varale, Taluka Maval, District Pune in Gat No. 27/A/1/2/B. The amount for possessory rights be quantified. It is interesting to note that the letter concludes with a direction to the Collector, Pune to submit action taken report.

6. Then, there is a letter dated 11th September, 2019 informing that the request for the alternative land in village Darumbe, Taluka Maval was also positively considered by the State Government and the direction for depositing the amount by the petitioner is reiterated.

7. Now, it was only running all the paper horses from one end to another end and no fruitful result was given to the petitioners, therefore, the petitioner again approached the Government. The State Government by communication dated 28th September, 2020 directed the Collector (Rehabilitation), Pune to take appropriate action and submit the action taken report to the Government immediately. Though the State Government directed the Collector, Pune to submit action taken report, there was no progress in the matter. As such, the petitioner submitted reminder dated 12th

October, 2020 to the District Resettlement Officer, Pune, and to the Additional Secretary to the Government on 14th May, 2021.

It seems that the Desk Officer again forwarded communication to the Collector (Rehabilitation), Pune on 02nd June, 2021 to take appropriate action as per the rules and submit action taken report. It seems that the office of the Collector informed the State Government by communication dated 05th July, 2021 that no alternative land can be allotted to the petitioner in the area of Kasarsai Project in the benefited zone of Kasarsai Project. The State Government vide its communication dated 08th December, 2021 in clear and unambiguous terms at 2.2, informed the Collector that the petitioner and other members namely, Shri. Parvati Kalu Devgirikar, Shri. Hanumant Gulabrao Kokate and Namdev Eknath Kokate are the project affected persons of Gunjawani Project and order of the State Government allotting land to these persons be immediately effected into and the Desk Officer also communicated that it would be appropriate if land is allotted in a particular project benefited zone to a project affected person. The communication again concludes with directions to submit action taken report within 15 days. As it was only the directions on paper and no actual steps were taken, the petitioner was left with no choice, but to approach this Court by filing the present petition.

8. Certain orders were passed by this Court. No reply was filed by

the State Government for sometime and then vide order dated 24th March, 2022, a request was made for adjournment on behalf of the State through AGP. The matter was adjourned as a last chance at the request of learned AGP and interim order in the nature of direction to the parties to maintain status-quo with regard to the acquisition of the land was granted. The matter was listed before this Court on 13th April, 2022, when following order was passed by this Court, which reads thus :

- “1. The Respondent shall direct issuance of chalan to the petitioner for deposit of 65% of the amount. The same shall be subject to the further decision in the present petition.*
- 2. The learned AGP shall take instructions as to why the communication dated 26th August, 2019 and 11th September, 2019 (page Nos. 92 and 94) are not acted upon.*
- 3. Place the matter on 04th May, 2022.*
- 4. The Petitioner may approach the authority on 25th April, 2022.*
- 5. Interim order passed earlier to continue till then.”*

The matter was listed before this Court yesterday i.e. on 27th July, 2022, when learned Counsel for the petitioner was heard at length. Learned AGP filed an affidavit-in-reply on behalf of the Respondent No. 2. We were surprised to see the approach of the authority. Admittedly, in spite of the matter pending before this Court and specific orders of this Court to the State Government as to why action pursuant to the communication of the State Government is not taken, the affidavit-in-reply indicates about non

eligibility of the petitioner. Above that the Respondent No. 2, the Additional Collector, Pune passed an order on 26th July, 2022 rejecting the application of the petitioner and further directed the petitioner to handover the allotted land to the government. It is further stated in the order that now there is no need to deduct 65% of the amount from the petitioner. We were under impression that probably the Collector is not aware of all the necessary facts and the order is passed due to short of instructions / information, as such, the petition was adjourned to today. Learned AGP was also informed to seek response from the State Government.

Today, learned AGP supports the order passed by the Collector and further submitted about the response of the State Government that the State Government directed the authority to take a decision as per the eligibility of the petitioner and now the Collector has arrived at decision that the petitioner is not entitled for allotment of the land. The stand of the Collector, Pune as well as the State Government least to say is as callous and adamant and having no regard to the orders of this Court and taking the orders of this Court for a ride. When we adjourned the petition yesterday, we thought that a better-sense would prevail over the Respondent – State and its authority, however, probably we were wrong in carrying that impression.

9. Learned Counsel for the petitioner today submitted a

compilation and submitted that this is not solitary instance reflecting the approach of the authority of State Government. Learned Counsel for the petitioner invited our attention to an order passed by the Division Bench dated 28th August, 2021 in Writ Petition No. 2452 of 2021 and Writ Petition No. 3632 of 2021. Before referring to the observation of the Division Bench, we may refer to certain other material placed before this Court by way of compilation. The compilation is taken on record and marked as “X” for identification. Certain documents placed in the compilation are already part of the petition. There is a communication in the compilation dated 26th August, 2019 wherein the Deputy Collector (Rehabilitation), Pune informs the Desk Officer of the State Government by referring to certain area available in various villages and recommends that there is no objection to allot land to the extent of 01 H 20 R as an alternative land to the petitioner in village Darumbe, Taluka Maval, District Pune. In order dated 01st March, 2017, a reference was made to the family members of the petitioner, number of family members – 17, the allotted area to the petitioner in Survey No. 27/A/1/2/B to the extent of 01 H 20 R in village Varale, Taluka Maval, District Pune and the amount to be recovered from the petitioner i.e. Rs. 55,59,600/-. The deducted amount is to the tune of Rs. 19,233/- corresponding to 65% of deduction. In the note placed on record in the compilation at page no. 21 dated 18th January, 2018, there is a specific statement which reads as “the petitioner i.e. project affected person had

deposited the entire amount of Rs. 55,43,367/-” and there is an order passed by this Court on 13th April, 2022 wherein the respondent was directed to issue challan to the petitioner for deposit of 65% of amount and it was further observed that same shall be subject to further decision in the present petition.

10. In pursuant to the above order of this Court, the petitioner approached the authority and had shown his willingness to deposit the amount and requested to issue challan. It seems that the authority at the District Level was not happy with the act of petitioner approaching this Court. As such, no challan was issued to the petitioner in spite of the petitioner requesting the authority along with his advocate. The Advocate for the petitioner then submitted letter to the Additional Collector, Pune and District Resettlement Officer, Pune on 25th April, 2022, a copy of the same is placed on record in the compilation at page no. 41.

11. There is an ample material placed on record to show that the authorities undertook the exercise of scrutiny of the petitioner’s claim, verification of his entitlement and submitted the proposal to the Government and in turn, the Government directed the authority to allot the land. Not only this, but, there are repeated communications from the State Government to the Collector that as the orders passed by the State Government are not implemented, the petitioner is approaching the State

Government again and again, as such, the District Collector was informed to implement the order immediately and submit action taken report. One of the said communication is dated 15th June, 2022 addressed to the Collector through Deputy Secretary of the State of Maharashtra. It is informed to the Collector that in spite of the repeated communication, the land is not allotted to the petitioner and **“this is certainly a serious issue”** (emphasis supplied) and then in the communication dated 19th July, 2022 again submitted that in spite of the communication from the State Government dated 08th December, 2021, 15th June, 2022, there is no implementation of the order till date. This is a serious issue. It is further stated that the order of the State Government be immediately implemented and no unnecessary delay be caused in implementation unless there is a new ground.

12. In the backdrop of all above referred facts, the approach of the authorities namely, Additional District Collector in its order dated 26th July, 2022 and the State Government submitting before this Court that the State Government only directed the Collector to take appropriate decision as per the rules and the Collector was at liberty to pass order considering the entitlement of the petitioner, is as stated above shows the callous and adamant approach of the authorities. One more ground was raised by the State Government before this Court submitting that the lower authority committed mistake by not considering the provisions of the act and arrived

at erroneous conclusion that the petitioner is entitled for allotment of land and the Collector to consider all the facts afresh. In the backdrop of the provisions of law and the Government Resolution, now even this submission suffers from fallacy on the face of it. Report was submitted to Additional Collector by Talathi, copy of the same is placed on record at Exhibit “H” page no. 57 under caption “office note”. In this office note, we have already observed that there is detailed reference to each and every aspect including the relevant provisions of the act *qua* the entitlement of the petitioner *qua* the number of the family members of the petitioner. In spite of the office note, which is approved by the Additional Collector and on the basis of this material, the State Government passing an order and directing the Collector to take immediate action, the authorities are fair-enough to take the stand before this Court that probably the lower officer committed mistake and now the higher officer is rectifying the mistake and passing fresh order. Learned Counsel for the petitioner was justified in submitting before this Court that this is not a solitary instance to show the approach of the authority. In the order of the Division Bench of this Court dated 20th August, 2021, the Division Bench was pleased to observe that certain incorrect facts were presented before this court and the officers of the State in the petition were DRO, District Pune and the Collector, Pune. The Division Bench was pleased to observe thus :

“8. When we turned to the Collector, Pune, and sought an explanation as to why incorrect facts were presented in his Report and consequently the Court being misled into passing the said Order dated 05th August, 2021, the Collector, Pune, states that he had no intention to mislead the Court, but he was himself misled by the DRO. Responsible Officers like the Collector and DRO cannot act in such a blatantly irresponsible manner and thereafter indulge in a blame game to wriggle out of their own irresponsible action.”

13. The Division Bench further in its order directed that the copy of the order be forwarded to learned Advocate General and in turn, the learned Advocate General was requested to appear before this Court.

14. It is observed by us that the present petition was listed before this Court on 27th July, 2022 and by way of an affidavit in an electrifying speed the Additional Collector, Pune has passed an order within a day i.e. 26th July, 2022 as such, the order passed by the Collector dated 26th July, 2022 is also required to be quashed and set aside.

15. Considering all these aspects, we are of the opinion that the petitioner has made out a case for allowing the petition. Accordingly the petition deserves to be allowed, and, therefore, we pass the following order :

ORDER

1. The Writ Petition is allowed.
2. The order passed by the Additional Collector dated 26th July, 2022 is quashed and set aside.

3. The Respondent Nos. 1 to 3 are directed to allot the land to the petitioner to the extent of 01 H 20 R from Gat Nos. 154/2 and 317 of village Darumbare, Taluka Maval, District Pune and handover the possession by complying all necessary formalities as expeditiously as possible and not later than ten (10) weeks from the date of receipt of the order.

16. While we were considering of imposition of cost to the Respondent Authorities, learned Government Pleader Mr. Kakade appeared before this Court and assured that he will personally apprise Respondent Authorities and particularly Respondent No. 2 – the Additional Collector and Respondent No. 3 – District Resettlement Officer, Pune about the displeasure expressed by this Court and assured that henceforth the authorities would be more careful and sensitive in their approach. The statement of learned Government Pleader is accepted as an undertaking to this Court.

17. Copy of order passed by this Court be forwarded to the Additional Collector, Deputy Director (Rehabilitation), Pune and also forwarded to the Chief Secretary and Secretary of Revenue and Forest Department of the State of Maharashtra.

18. All concerned shall act upon a copy of this order which is duly authenticated by the Registry of this Court.

(KISHORE C. SANT, J.)

(PRASANNA B. VARALE, J.)