

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

WRIT PETITION NO.1446 OF 2022

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| 1. Suhas Dattatray Dhamdhare |] |
| 2. Macchindra Babanrao Narke (Deleted) |] |
| 3. Aarti Mahesh Bhujbal |] |
| 4. Shivaji Dhondiba Bhujbal |] |
| 5. Chetna Jaikumar Dhamdhare |] |
| 6. Suresh Vitthalrao Bhujbal |] .. Petitioners |

Vs.

- | | |
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| 1. The State of Maharashtra, |] |
| Through Department of Registration and Stamps, |] |
| (Revenue Minister), Maharashtra, Mumbai. |] |
| 2. The Inspector General of Registration and |] |
| Controller of Stamp, Maharashtra State (IGR) |] |
| 3. The Deputy Inspector General of Registration |] |
| and Deputy Controller of Stamps, Pune |] |
| 4. The Sub-Registrar, Talegaon, Dhamdhare |] |
| 5. Joint District Registrar, Class-I and |] |
| Collector of Stamps, Pune Rural, Pune |] |
| 6. The Sub-Divisional Officer, Pune |] |
| 7. The Assistant Director, |] |
| Pune Metropolitan Regional Development |] |
| Authority, Pune |] |
| 8. Abhijit Arun Narke |] |
| 9. K.K. Buildcon |] .. Respondents |

ALONG WITH

INTERIM APPLICATION NO.1512 OF 2022

- | | |
|----------------------------------|-----------------------------|
| 1. Sudhir Sharadrao Dhamdhare |] |
| 2. Sanjay Ramrao Dhamdhare |] |
| 3. Dilip Ganpat Khaire |] |
| 4. Sachin Vinayak Dhamdhare |] |
| 5. Sudhir Bandopant Dhamdhare |] |
| 6. Mahendra Dattatraya Dhamdhare |] .. Applicants-Intervenors |

In the matter between

Suhas Dattatray Dhamdhere and Ors.

] .. Petitioners

Vs.

The State of Maharashtra,

Through Department of Registration and Stamps,

(Revenue Minister), Maharashtra, Mumbai and Ors.

] .. Respondents

Mr. Praful B. Shah, i/by Gunjan P. Shah and Mr. Kayval P. Shah, for the Petitioners.

Mr. A.A. Ku,mbhakoni, Advocate General, with Mr. P.P. Kakade, Government Pleader, Mr. A.I. Patel, AGP, Mr. R.S. Pawar, AGP, and Ms. Sneha Bhange, for Respondent Nos.1 to 5-State.

Mr. A.V. Anturkar, Sr. Advocate, with Mr. Yatin Malvankar, for Respondent Nos.8 and 9.

Mr. R.A. Thorat, Sr. Advocate, i/by Mr. Sandeep Salunkhe, for the Applicant-Intervenor in IA/1512/2022.

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

DATE : 20TH JULY, 2022.

ORAL JUDGMENT { Per Kishore Sant, J.} :

1. By way of this petition, the petitioners have challenged the order dated 6th September 2021 passed by respondent no.2-the Inspector General of Registration and Collector of Stamps, Maharashtra State, granting approval to the proposal submitted to it by respondent no.4-the Sub-Registrar, Talegaon Dhamdere, Tal. Shirur, Dist. Pune. By the impugned order, respondent no.2 has ordered to shift / relocate the office of the respondent no.4 from its current premises to a new premises. The objections have been raised mainly on the following grounds :-

- (i) The building in which the new premises is proposed to be shifted is constructed against the plans sanctioned by the Pune Metropolitan Regional Development Authority, Pune.
- (ii) The new premises where the office of the Sub-Registrar is proposed to be shifted is reserved for the purpose of “dispensary & clinic”, as recorded in the order dated 25th March 2015 passed by the Sub-Divisional Officer, Pune .
- (iii) The decision to shift/relocate the office of the Sub-Registrar is taken without inviting tenders and without considering the proposal of petitioner nos.1 and 2.
- (iv) The area of the new premises is less than 2,000 sq.ft., which is against the guidelines issued by the Revenue and Forests Department of the State of Maharashtra vide its communication dated 4th May 2012.
- (v) The new premises is located at a distant place from the present location.
- (vi) The new premises is situated on the first floor of the building, which would be inconvenient for the public at large.

2. This court had issued notices to the respondents. By order dated 16th February 2022, the court had directed the respondents to file affidavit-in-

reply. The status-quo was directed to be maintained in respect of shifting of records from the old office premises to the new premises, as, by that time, the registration activity in the new premises had already commenced. The parties were further directed not to create third party interests in respect of the old premises. The learned Advocate General was requested to look into the matter and render his assistance to the court.

3. By an order dated 21st February 2022, it is recorded that the learned Advocate General has conveyed the proposal to the court in the following terms :-

“(i) the petitioner nos.1 and 2 to submit copies of the documents of title, documents pertaining to legality of construction, building permissions, building plans and occupation certificate in respect of;

(a) the premises admeasuring about 2,200 sq.ft. on the ground floor from and out of a building constructed on CTS No.1018 admeasuring 835 sq.mtrs. of land situated within the limits of Grampanchayat, Talegaon Dhamdhere, Tal. Shirur, Dist. Pune;

(b) Premises admeasuring 4,327 sq.ft. on the ground floor and 2,040 sq.ft. on the first floor in the building situated on CTS No.3971/1 and 3971/2 within the limits of Grampanchayat, Talegaon Dhamdhere, Taluka Shirur, Dist. Pune.

(ii) Petitioner Nos.1 and 2 should provide true copies of the aforesaid documents to the Joint Inspector General of Registration within a period of one week from today.

(iii) *The Joint Inspector General registrations along with officers of the Town Planning Department (ADTP), police officers or such other officers as may be found requisite will visit the aforesaid two premises offered by the petitioner nos.1 and 2 and the new premises wherein the proposed relocation of the registration office has been done and shall prepare an inspection report with all details along with appropriate photographs. All concerned parties shall be allowed to remain present during the said visit. In the inspection report, the advantages and disadvantages of all the three premises from the point of view of establishing a registration office therein shall be highlighted. The said report shall be submitted in Court within a period of three weeks from the date of this order. If required, the Joint Inspector General of Registrations shall hear the concerned parties i.e. the petitioners and respondent no.7 and offer his observations in that regard in the aforesaid report to the Court. That the aforesaid exercise shall be completed within a period of three weeks from the date of this order."*

4. Thereafter, by order dated 4th May 2022, this court has recorded that, upon asking about the guidelines or circular, the counsel for the petitioners was not in a position to point out the same and sought time. On 8th June 2022, the petitioner no.2 personally remained present in the court and submitted that he is not desirous of prosecuting the petition on his behalf and his name may be deleted from the array of the petitioners. This court, in view of this statement, permitted deletion of name of the petitioner no.2 from the petition. Thus, now the petition is prosecuted by petitioner nos.1 and 3 to 6.

The petition is taken up for hearing and final disposal. Heard learned counsel for the parties at length.

5. At the outset, the learned Advocate General has raised a question of maintainability of the petition and locus of the petitioners to file the present petition. The learned Advocate General has submitted that there is no right vested in the petitioners to seek any order from this court. He has relied upon the decisions of the Supreme Court in *Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and Ors.*, (2013) 4 SCC 465 and in *Union of India and Ors. Vs. Kannadapara Sanghatanegala Okkuta & Kannadigara and Ors.*, (2002) 10 SCC 226. In the case of *Ayaaubkhan Noorkhan Pathan*, the learned Advocate General has canvassed the point of maintainability and locus standi of a person who files this petition. He further submitted that a person coming to the court under Articles 226, 32 and 136 of the Constitution of India must be a “person aggrieved”. The “person aggrieved” must be one whose right or interest has been adversely affected or jeopardized. It is necessary for a person to show as to how he had suffered a legal injury and that he has a legal right which is violated. The facts in *Kannadapara Sanghatanegala Okkuta*, upon which the learned Advocate General has placed reliance, are some what similar to the facts involved in the present case. In that case, the Union of India had taken a decision to locate zonal headquarters of the South Western Railway at Hubli. The High Court had directed to locate the zonal headquarter of the South Western Railway at Bangalore. The Hon’ble Apex Court in paragraph 6 had also held that such administrative decisions cannot lead to

the conclusion that there has been a legal malafides. The court need not go into question as to where the headquarter should be located. It is considered that there are various factors which have to be taken into consideration when a decision is taken. The decision may at times appear to be political one. Even a political decision, if taken, by a competent authority in accordance with law cannot per se be regarded as malafide. It was further observed that there was no material to arrive at a conclusion that the decision was motivated by political consideration. In para 6 of the judgment, it is observed that it is not the function of the court to decide the location or the situs of the headquarter; it is the function of the Government.

6. Though a preliminary issue was raised, the court still gave opportunity to the petitioners to address the court on the other issues. The learned Advocate for the petitioners made various submissions, which need to be dealt with. This court, vide order dated 21st February 2022, in paragraph 2(iii), had also directed, on the basis of the statement of the Advocate General, the Joint Inspector General of Registration of Stamps along with the officers of the Town Planning Department, police officers or such other officers to visit the two premises referred to in paragraph 2(i)(a) and 2(i)(b) of the aforesaid order to ascertain as to where the old office was located and where the new office was to be shifted. Pursuant to the said order, such exercise was undertaken and report dated 11th March 2022 has been submitted to this court.

7. The learned counsel for the petitioners has submitted that the decision to shift the office of the Sub-Registrar to the new premises is taken to favour respondents 8 and 9. He submits that the old office premises was situated in the building owned by the Grampanchayat, Talegaon, Dhamdhere on a rental basis. The Grampanchayat used the rent amount for development of the bridge. The new location was required in view of the fact that the road on which the office was situated was to be widened and was to be made of the width of 26 mtrs. In view of the proposed road widening, some portion of the current premises was to be used and therefore a need to relocate the office premises had arisen. However, later-on, MMRDA changed the plan of road widening. The new premises is in the building constructed by respondent no.9-Developer. Respondent no.9 had sought permission to use the agricultural land for non-agricultural purposes, where the building is situated. In the order granting N.A. permission, the learned Sub-Divisional Officer, Pune Division, had granted permission vide order dated 25th March 2015, subject to condition that first floor of the said building shall be used for the purpose of a “dispensary & clinic” and second floor would be for a “gymnasium”. When the premises were reserved for a specific purpose, the decision to relocate the Sub-Registrar’s office in this premises could not have been taken. In other words, the decision is illegal and in violation of a condition. The learned counsel for the petitioners has further submitted that the new premises is admeasuring only 158.87 sq.mtrs i.e. 1,709.44 sq.ft. This, according to the petitioners, is against the guidelines issued by the Revenue &

Forests Department vide a communication dated 4th May 2012. It is necessary to mention here that the guidelines were not annexed to the petition. In the order dated 4th May 2022, this court has specifically recorded that when the petitioners were asked to produce the guidelines on record, the petitioners were unable to show the guidelines or circular. There is however a communication on record dated 4th May 2012 issued by the Desk Officer, Revenue & Forests Department, State of Maharashtra, wherein it is stated that the Government has accorded a sanction to make 2,000 sq.ft. area available for the office of the Sub-registrar. This aspect will be discussed in the later part of the judgment.

8. Thus, all other aspects that have been tried to be canvassed before the court are factual aspects. It is therefore proper to consider the reports those were submitted pursuant to the order of the court. The first report dated 9th March 2022 was prepared on the basis of the inspection made by the officers. It is seen from the said report that it is prepared by the Joint Inspector General of Registration and Stamp Controller (Head Quarter), Maharashtra State, Pune. What emerges from the said report is reproduced as below :-

“11(a). On property bearing City Survey No.1018 belonging to petitioner no.1 is open land having 6 mtrs. Wide road from South and North side.

(b). Petitioner no.1 suggested that if the respondent is willing to shift registration office, then the building construction to the extent of 2,000 sq.ft. would be carried out over the plot of area of 3,000 sq.ft. Petitioner no.1 also suggested in that

case two parking open plots adjacent to the main office plot would be made available.

(c). Petitioner no.1 further suggested that in respect of plot of area 3,000 sq.ft. if required, the other co-owners would submit consent letter.

12(a). The proposed premise offered by petitioner no.2 is a commercial building with 6 units in front side and 3 units on back side on first floor having stair case and lift from back side entrance of the plot.

(b). There is a M.S. Steel staircase for entrance in side margin on South.

(c). In this premise only super structure with brick work is complete but electricity wiring, flooring etc. is not completed.

(d). This proposed premise is 700 mtr. away from the current premise.

(e). Petitioner No.2 has suggested that they are willing to offer an area of 185 sq.mtr. (2,000 sq.ft.) only that too on the 1st floor."

9. The Joint Inspector General of Registration and Superintendent of Stamps (H.Q.), M.S., Pune has also submitted a chart for the purpose of comparison of the three premises; one of Shri Suhas Dattatray Dhamdhere i.e. petitioner no.1; (ii) Shri Machindra Narke and three others (petitioner no.2) (now deleted) and (iii) Shri Abhijit Narke, Shrikant Kadam and Kamlesh Firodia - respondent nos.8 and 9. Further report is prepared by the same authority dated 11th March 2022, wherein also a chart is given.

10. Mere comparison of the chart shows that the authorities were satisfied

with the new premises. The difficulties about the premises proposed by the petitioners are clearly recorded. At the time of inspection, they found that the premises at the location offered by the petitioners is only a piece of land without any construction. There are multiple owners of the land. The petitioners only shown their willingness to make a construction on this space by obtaining consent of the co-owners. It is thus clear that even the other site proposed by the petitioners is not readily available. Thus, the authorities were not in favour of the proposal of going for another premises as offered by the petitioners.

11. Mr. Anturkar, learned Senior Counsel appeared on behalf of the respondent nos.8 and 9. Respondent nos.8 and 9 have filed an affidavit-in-reply dated 10th March 2022, which is annexed at page 212 to the petition. These respondents have opposed the petition by highlighting certain aspects in respect of the property that has been offered by petitioner nos.1 and 2. It is pointed out that the land offered by petitioner no.1 is without any construction. These respondents have also produced photographs of the land belonging to petitioner no.1, which are annexed as Exhibit-A to the affidavit-in-reply. As regards the property of petitioner no.2, it is submitted that the said property has already been mortgaged in favour of one Pune Cantonment Co-operative Bank, Mundhwa Branch. It is also pointed out that there is already a Development Agreement entered into between petitioner no.2 and one developer, namely, M/s. Akash Enterprises, wherein only 37% of the constructed area would be owned by the petitioner no.2. We need not

examine the offer given by petitioner no.2 any more in view of the fact that the name of petitioner no.2 has been deleted from the petition on his own request, which fact is recorded in the order dated 8th June 2022.

12. Mr. Anturkar, learned Senior Counsel for respondent nos.8 and 9 has pointed out that respondent nos.8 and 9 have also produced on record the photographs of the building and the office of the Sub-Registrar to show that the office of the Sub-Registrar has already started functioning and the area is sufficient. Ample parking space is also seen to have been made available, as appears from the photographs. Further, he has produced on record a letter addressed to the Additional District Registrar dated 25th January 2022 in response to an enquiry made by the authority. The authority has called for opinion of the Grampanchayat as regards the availability of more space, place of parking, toilets and whether the land can be offered by the Grampanchayat @ Rs.1/- per year for 99 years on a lease basis. Accordingly, the Grampanchayat, after considering all these aspects in its monthly meeting, informed the authority vide aforesaid letter dated 25th January 2022 that no additional space is available for parking, no funds are available for toilet etc. and that the offer of making the land available for 99 years on a lease @ Rs.1/- per year is not acceptable. Thus, it is the submission of learned Senior Counsel appearing for respondent nos.8 and 9 that even Grampanchayat is unable to provide new space available. It is then submitted that the premises where the office is newly shifted is sufficient and convenient for the use of the office of the Sub-Registrar.

13. Mr. Anturkar, learned Senior Counsel for respondent nos.8 and 9, in support of his submissions, has relied upon the judgment of this court in *Tanajirao Tatyasaheb Kokare and Ors. Vs. The State of Maharashtra and Ors.*, 2017 SCC OnLine Bom 8556, in particular paragraphs 18, 19 and 20 thereof, wherein it was held that the instructions are not in the nature of statutory rules having the force of law and in such cases, it is held that even a patent breach of such instructions do not justify the issuance of Writ of Certiorari. It is further recorded in paragraph 20 of the said judgment that even if there is some infraction of the circulars, the same does not create any enforceable right in favour of the petitioners for the writ jurisdiction of the High Court to be exercised.

14. By placing reliance on the judgment of the Hon'ble Supreme Court in *Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and Ors.*, (2013) 4 SCC 465, the learned Advocate General has invited attention of this court to paragraphs 9 and 10 thereof to show that to maintain a petition, the petitioner must be a "person aggrieved". Paragraphs 9 and 10 read as under :-

"9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right or when there is a complaint by the appellant

that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right is the foundation of the exercise of the said jurisdiction by the court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the court for relief as regards the same.

10. *A "legal right" means an entitlement arising out of legal rules. Thus, it may be defined as an advantage or a benefit conferred upon a person by the rule of law. The expression "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore necessarily be one whose right or interest has been adversely affected or jeopardised."*

15. The learned Advocate General has further relied upon a judgment of the Hon'ble Supreme Court in *Union of India and Ors. Vs. Kannadapara Sanghatanegala Okkuta and Kannadigara and Ors., (2002) 10 SCC 226*, in particular paragraphs 5 and 6 thereof, to canvass his submission that courts need not interfere in the policy matters. Paragraphs 5 and 6 are reproduced below :-

- “5. We do not find any basis for the High Court coming to the conclusion that the decision of the Union Cabinet was vitiated on account of legal malafides. Merely because an administrative decision has been taken to locate the headquarters at Bangalore, which decision is subsequently altered by the same authority, namely, the Union Cabinet, cannot lead one to the conclusion that there has been legal malafides. Why the headquarters should be at Hubli and not at Bangalore is not for the court to decide. There are various factors which have to be taken into consideration when a decision like this has to be arrived at. Assuming that the decision so taken is a political one, it cannot possibly give rise to a challenge on the ground of legal malafides. A political decision, if taken by a competent authority in accordance with law, cannot per se be regarded as malafide. In any case, there is nothing on the record to show that the present decision was motivated by political consideration. The observation of the High Court that there has been a change in the decision because there was a change of the Government and a different political party had come into power is not supported by any basis. That the court will not interfere in questions of policy decision is clearly brought out from the decision of the Supreme Court in *Delhi Science Forum Vs. Union of India*, (1996) 2 SCC 405.
6. We further find that the High Court has issued a direction to the appellants herein to locate the zonal office of the Railways at Bangalore. Apart from the fact that in matters of policy, the court will not interfere, such a direction could under no circumstances have been issued. If a case had been made out, and in this case no such case had been made out, that a decision to locate at Hubli was not in accordance with

law, then the only direction which could have been issued by the court was to consider as to where the headquarters should be located. It is not the function of the court to decide the location or the situs of the headquarters, it is the function of the Government. On this ground also, the decision of the High Court is incorrect."

16. As already discussed in the opening paragraphs of the judgment, the learned Advocate General has raised an objection to the maintainability of the petition as well as locus of the petitioners to file the petition. This court is clearly of the opinion that the petition is not maintainable and that the petitioners have no locus to file a Writ Petition. We also find that the prayers made in the petition cannot be granted. The petitioners' endeavour is only to see that their premises are being acquired for the use of the office of the Sub-Registrar. This court had certain reservations about the exercise of the jurisdiction for such purpose.

17. An interim application is also filed by one Sudhir S. Dhamdhere, being Interim Application No.1512 of 2022, to intervene in the petition. The applicant has prayed for a direction to the respondent no.2-authority to visit the land bearing Gat No.2431 situate at Village Talegaon, Dhamdhere, Taluka Shirur, Dist. Pune. It is submitted by Mr. Thorat, learned Senior Counsel for the applicant that the land bearing Gat No.2431 belongs to Grampanchayat and some portion of the said land can be used for the office of the Sub-Registrar. It is his further submission that the said land belongs to the

Government where other government offices are located. If such land is made available, it would be more convenient to the public at large. However, in view of the aforesaid discussion, we do not find it necessary to go into that aspect. In any case, in view of the final dismissal of the petition, nothing survives in this interim application.

18. After considering the submissions of all the parties and judgments referred by the parties, we record our conclusion. It must be kept in mind that it is always for the authorities to take decisions by taking into consideration various aspects. It is subjective satisfaction of the authorities concerned and not for the courts to go into all the details minutely. What is required to be shown in such cases is that the decision making authority has not followed proper procedure or that the decision suffers from legal malafide. The petitioners could not show, firstly, that there is violation of any of the rights vested in them. Secondly, they could not point out, assuming that they have any right or in the public interest, that there is any legal malafides in the decision making process.

19. The petitioners have submitted before this court that they are offering their lands free of costs. Merely offering their lands free of costs cannot be a factor to be considered by the authorities. Here the petitioners on one hand have contended that the decision to relocate the office at the new premises is taken without inviting tenders; on the other hand they want their proposal to be accepted by the authorities in the same manner. Thus, the offer of the

petitioners cannot be accepted. The authorities cannot be asked to go for land offered by the petitioners only for the reason that the petitioners are ready to provide the same free of costs. Further submissions that there is violation of guidelines does not hold any water as the guidelines are merely to guide the authorities in the process of decision making. Unless consequential provisions are made for violation of guidelines, the guidelines cannot be taken to be having a binding force.

20. As a result of the aforesaid discussion, the Petition stands dismissed. In view of the dismissal of the Petition, Interim Application No.1512 of 2022 also stands disposed off.

[KISHORE C. SANT, J.]

[PRASANNA B. VARALE, J.]