

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11798 OF 2019

Nivrutii Sahadu Ghorpade and Anr. ..Petitioners

V/s.

The State of Maharashtra thr.

State Revenue Minister and Ors. ..Respondents

Mr. Sanjay Shinde a/w Anjali Binjola for the Petitioners.

Mr. C.D. Mali, AGP for Respondent Nos. 1 to 3.

Mr. S.B. Deshmukh for Respondent Nos. 4 to 6, 7A, 8 and 9.

CORAM : C.V. BHADANG, J.

DATE : 13 OCTOBER 2022

:JUDGMENT:

1. Rule made returnable forthwith. Learned AGP waives service for Respondent Nos. 1 to 3. The learned counsel Mr. Deshmukh waives service for Respondent Nos. 4 to 9. Heard finally by consent of parties.

2. This petition can be disposed of on a short count.

3. The subject matter of dispute is land Gat No. 17 (old Survey No. 14/2) of mouje Pandane, Tahsil Dindori, District Nashik. The said land was granted to late Mahadu Barku Patil and Sahadu Barku Patil on equal share as a *vatan land* and a Mutation Entry No. 144 was recorded on 16.03.1951. The Grant

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was *inter alia* on the condition that the land shall be personally cultivated by the allottees and shall not be given to any other person for cultivation without prior permission. It appears that on 25.01.1951, the Grant was cancelled as the allottees were not belonging to the backward class and Mutation Entry No. 165 dated 17.05.1954 was taken.

4. The said land was then allotted to late Sahadu Punja Ghorpade, the father of the Petitioner No.1 as per order passed by the Tahsildar Dindori on 15.03.1953 at three times of the land revenue on the new tenure. It appears that from 1965-1966, the land was found to be in possession of Dhavalu Mukunda Gavit and others and even for the subsequent period of three years from 1966-1967 to 1968-1969, the land was found to be in cultivating possession of third parties. Considering this as a 'first violation' by virtue of ME No. 280 dated 09.10.1966. The allotment was cancelled as per order passed by the Revenue Authority dated 20.09.1966. However, the record discloses that from 1969-1970 to 2007-2008, the late father of the Petitioner No.1 Sahadu Ghorpade and after him his heirs continued to cultivate the land. In 2009-2010, again the name of Sahadu Punja Ghorpade and his wife were shown to be in cultivating possession of the said land.

5. The record discloses that by an order dated 14.07.2011 passed by the Collector, Nashik, the land was allotted to the Petitioner for a period of two years on a yearly basis on similar conditions, inasmuch as the Petitioners were belonging to the backward class and the violation was found to be the 'first violation'. This allotment by order dated 14.07.2011 was subject to the report from the Revenue Authority to verify personal cultivation by the Petitioners. The record further discloses that Tahsildar Dindori sent a report dated 20.01.2014 stating that the Petitioners have personally cultivated the land for two years period from 2011-2012 and 2012-2013. Thus, according to the Petitioners, the Petitioners had complied with the conditions of the allotment/Grant by order dated 14.07.2011. The Petitioners have also annexed the receipts of the land revenue which the Petitioners had paid.

6. The dispute starts when the private Respondents approached the learned Revenue Minister purportedly under Section 257 of the Maharashtra Land Revenue Code, 1966 for re-grant of the land. It may be mentioned that the private Respondents are the successors of Mahadu Barku Patil and Sahadu Barku Patil. The Collector, Nashik was the sole Respondent before the Revenue Minister. The Revenue Minister by the impugned order dated 09.09.2019 has regranted the land

to the heirs of original grantees Mahadu and Sahadu Patil. Feeling aggrieved, the Petitioners are before this Court.

7. I have heard learned counsel for the parties. Perused record.

8. The learned counsel for the Petitioners submitted that the subject land was granted to the Petitioners by the Collector on 14.07.2011 for a period of two years on a yearly basis *inter alia* on condition of personal cultivation which condition has been complied with by the Petitioners which is apparent from the report of the Tahsildar, Dindori dated 20.01.2014. He therefore, submitted that private Respondents (successors of the original allottees Mahadu Barku Patil and Sahadu Barku Patil) could not have directly approached the Hon'ble Minister for regrant of the land and that too under Section 257 of the Maharashtra Land Revenue Code, 1966. He submits that the impugned order shows that the Hon'ble Minister has treated the proceedings as being appeal without there being any order which was subject matter of challenge before the Revenue Minister. He submitted that the private Respondents have also filed civil suit seeking the relief of injunction etc. in respect of the subject land which is pending.

9. The learned counsel for the private Respondents has submitted that the application before the Hon'ble Minister was a composite application for re-grant as per Section 5 of the Vatan Abolition Act and under 1966 Code. He submitted that after the period of two years, the land has not been finally allotted in favour of the Petitioners. He pointed out that by the order dated 14.07.2011, the land was allotted to the Petitioner only for a period of two years. He, therefore, has supported the impugned order.

10. The learned AGP has also supported the impugned order.

11. I have considered the submissions made. The material facts are matters of record and thus, are not in dispute. It is undisputed that the land was initially allotted to Mahadu Patil and Sahadu Patil in the year 1951 and on account of breach of the condition of personal cultivation and also on account of fact that original allottees were not belonging to the backward class, that allotment has been cancelled and subsequently by the order dated 14.07.2011, the land has been granted to the Petitioner for a period of two years with a condition of personal cultivation. It is also apparent from the record that there is a report from Tahsildar Dindori dated 20.01.2014 stating that the Petitioners have personally cultivated the land for 2011-2012 and 2012-2013.

12. Although the learned counsel for the private Respondents has submitted that it was a composite application before the Hon'ble Minister, no order which could be subject matter of challenge before the Hon'ble Revenue Minister is pointed out. I have also perused the application made by the private Respondents to the Hon'ble Minister on the basis of which the impugned order is passed and it neither shows that it was an appeal or a revision.

13. Be that as it may. Once it is found that the land was allotted to the Petitioners in the year 2011 albeit for a limited period of two years on condition of personal cultivation which *prima facie* appears to have been complied with, the Hon'ble Minister could not have passed the impugned order behind the back of the Petitioners. In my considered view, there is a clear breach of principles of natural justice in passing the impugned order and it would be appropriate if the Hon'ble Minister decides the application afresh after hearing the Petitioners.

14. In that view of the matter, petition is partly allowed. The impugned order is hereby set aside.

15. The proceedings which are registered as Appeal No. 3015/6676/153/J-6 are restored to the file of the Hon'ble

Minister for deciding the same afresh in accordance with law after hearing the parties.

16. The Petitioners and Respondent Nos. 4 to 9 to appear before the Hon'ble Minister on 14.11.2022 personally or through their authorised representatives.

17. Rival contentions of the parties on merits are left open.

Rule is partly made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.