

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1558 OF 2021

Sukhdeo s/o Rajaram Shejul,
 Aged about 50 years,
 Occ : Agriculturist,
 R/o. Ekata Nagar, Risod,
 Tq. Risod, Dist. Washim.

.. Petitioner

.. Versus ..

1. The State of Maharashtra,
 through its Secretary,
 Department of Revenue and Forest,
 Mantralaya, Mumbai-32.
2. The Collector,
 Washim, Dist. Washim.
3. The Sub-Divisional Officer,
 Washim, Dist. Washim.
4. The Tahsildar, Risod,
 Tq. Risod, Dist. Washim.
5. The Municipal Council, Risod
 Through its Chief Officer, Risod,
 Tq. Risod, Dist. Washim.

.. Respondents

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Shri Rahul N. Ghuge, Advocate for the petitioner,
 Mrs. M.H. Deshmukh, Assistant Government Pleader for respondent
 nos.1 to 4,
 Mrs. A.A. Joshi, Advocate for respondent no.5.

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CORAM : A.S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.
DATED : 09.03.2022.

ORAL JUDGMENT (Per : A.S. Chandurkar, J.)

Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. The challenge herein in this writ petition is to the order dated 11.02.2021 passed by the Collector, Washim thereby allotting the land ad-measuring 0.13 R from field Survey No.3 to Municipal Council, Risod for its commercial use. It is the case of the petitioner that his father was granted Bhumiswami Rights with regard to three lands ad-measuring 0.60 R, 80 x 80 sq. ft. and 100 x 100 sq. ft. This was by issuing From-G Certificate pursuant to such adjudication in revenue proceedings. The petitioner, after the death of his father, sought mutation entries to be taken in that regard. According to the petitioner, as per the reports submitted by the Tahsildar and thereafter Sub-Divisional Officer, it has been recommended that the mutation entries be taken in favour of the petitioner on the basis of allotment of the lands to his father.

3. On 13.1.2021, the Naib Tahsildar, after verifying the entire record, submitted his report in which it is stated that from land bearing

Survey No.3, after excluding 80 x 80 sq. ft. land to which the petitioner was claiming right, the other land could be allotted to the Municipal Council for commercial use. However, 21.1.2021, the Tahsildar submitted another report to the Collector stating therein that the objection raised by the petitioner was without any justification. On that basis, the Collector has been pleased to allot 0.13 R land to the Municipal Council which includes the portion ad-measuring 80 x 80 sq. ft. which concerns the petitioner.

4. The learned counsel for the petitioner submits that in view of allotment of aforesaid three lands to the petitioner's father and specially the land ad-measuring 80 x 80 sq. ft. it was not permissible for the Collector to have allotted that plot to the Municipal Council. The petitioner was not heard before such order of allotment was passed which affected his rights. The right of hearing was necessary in view of the fact that the earlier recommendations made by the revenue authorities were in favour of taking mutation entries in the name of the petitioner. He referred to the affidavit-in-reply filed by the respondent nos.2 to 4 in which it was admitted that the plot ad-measuring 80 x 80 sq. ft. was also the subject matter of allotment to the Municipal Council. It is thus submitted that since the father of the petitioner was allotted the aforesaid land by granting Bhumiswami Rights, it was not open for the Collector to have allotted that land to the Municipal Council.

5. The learned counsel for the respondent no.5-Municipal Council has submitted that pursuant to the order of allotment, the requisite amount has been deposited and the Municipal Council is entitled to utilise the plot ad-measuring 0.13 R of land for commercial purposes. It would be open for the petitioner to seek an alternate land if he had any right in that regard.

6. The learned Assistant Government Pleader for the respondent nos.1 to 4 has referred to the affidavit-in-reply filed by said respondents and the stand taken therein that the land ad-measuring 80 x 80 sq. ft. was allotted to the petitioner's father by issuing Form – G in the year 1980.

7. We have heard the learned counsel for the parties and perused the documents on the record.

8. The reports prepared by the Tahsildar and thereafter Sub-Divisional Officer recognise the fact that the father of the petitioner has been allotted the plot ad-measuring 80 x 80 sq. ft. along with Bhumiswami Rights. Even the affidavit-in-reply filed by the Naib Tahsildar dated 12.5.2021 endorses that fact. The Municipal Council having need of the land for commercial use sought allotment of the same. The Collector has thus been pleased to allot 0.13 R of land for

commercial use. The petitioner does not challenge the decision to allot the land to the respondent no.5. However, since the plot ad-measuring 80 x 80 sq. ft. is included in 0.13 R i.e. allotted to the Municipal Council, he submits that the order dated 2.2.2021 has been passed without hearing the petitioner to that extent. The rights of the petitioner are prejudiced to that extent.

9. We find that the matter requires re-consideration by the Collector to the extent of allotment of 80 x 80 sq. ft. land from 0.13 R of land to the Municipal Council. It would be necessary to consider the allotment of that land to the petitioner's father and his rights therein before making such allotment. In that view of the matter, the following order is passed :

ORDER

(i) The petitioner is permitted to make a representation to the Collector seeking exclusion of the land ad-measuring 80 x 80 sq. ft. with regard to which G – Form has been issued to the petitioner's father from 0.13 R land that has been allotted to the Municipal Council.

(ii) The Collector shall consider the earlier reports of the Tahsildar and the Sub-Divisional Officer and after granting opportunity of hearing to the petitioner as well as the Chief Officer of the Municipal Council, shall take a decision with

regard to the claim made by the petitioner with regard to the land in question. It would be open for the Collector to consider, whether any alternate land can be offered to the petitioner in view of allotment of 0.13 R land to the Municipal Council.

iii) The entire exercise be completed within a period of three months from the date the petitioner submits the representation. The representation be submitted within a period of fifteen days. The order of status-quo passed on 06.08.2021 shall continue to operate till any decision is taken by the Collector.

(iv) Insofar as the prayer for taking mutation entries in accordance with Form – G are concerned, the Naib Tahsildar in his affidavit in para 32 has indicated that such direction could be issued to take mutation entries in the Revenue Record in the name of petitioner's father. We accordingly direct so.

(v) With these directions, the writ petition is disposed of. Rule accordingly. No costs.

[SMT. M.S. JAWALKAR, J.]

[A.S. CHANDURKAR, J.]

Gulande