

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

WRIT PETITION NO. 4339 OF 2019

Gautam s/o Shankar Raut and anr. Vs. State of Maharashtra and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. N.N. Thengre, Advocate for petitioners.
Mr. K.L. Dharmadhikari, AGP for respondents/State.
Mr. Vilas M. Kulsange, Advocate for respondent No.4.

CORAM : MANISH PITALE J.

DATE : 24.03.2022.

By this writ petition, the petitioners have challenged orders passed by the respondent Nos.2 & 3 concerning allotment of land to the respondent No.4 under the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971.

2. The respondent No.4 applied as an Ex-serviceman for allotment of land. His case was forwarded by the Sub-Divisional Officer, Bramhapuri, to the respondent No.2 – Collector, Chandrapur for consideration. The said respondent took into consideration the documents filed along with the application and found the same to be in order. It was specifically recorded that the respondent No.4 was having annual income for the year 2011-12 of

₹86,645/-. Thereupon, the respondent – Collector, being satisfied that the respondent No.4 could be allotted land in terms of the aforesaid Rules, passed an order dated 19.05.2014, granting such land on specific terms and conditions.

3. The petitioners claimed to be in possession of the said land. It is an admitted position that the petitioners have no right in the said property, except that they had happened to be in possession thereof and on that basis they claimed to be aggrieved by allotment of land to respondent No.4. On this basis, the petitioners challenged the order passed by the Collector, before the respondent No.3 - Commissioner by filing an appeal. The Commissioner considered the contentions raised on behalf of the petitioners and found that there was no substance in the same, and accordingly, dismissed the appeal filed by the petitioners.

4. The matter was carried further by the petitioners by filing a revision application, which stood dismissed by the Minister for Revenue by order dated 29.05.2019. The said orders have been challenged in the present writ petition.

5. Mr. Thengre, learned counsel appearing for the petitioners contended that the allotment of

land to the respondent No.4 was in the teeth of the aforesaid Rules, particularly Rule 11 (5) thereof. It is submitted that in terms Rule 11 (5) of the said Rules, no land could have been allotted to the respondent No.4 as an Ex-serviceman because his gross annual income exceeded ₹ 35,000/-.

6. Attention of this Court was invited to the order passed by the respondent No.2 – Collector, which recorded that the annual income of respondent No.4 for the year 2011- 2012 was ₹86,645/- which far exceeded the limit specified in Rule 11(5) of the aforesaid Rule and on this basis, it was clear that the impugned orders deserved to be set aside.

7. The learned counsel for the petitioners also placed reliance on the judgment of this Court in the case of *Dadaji Shankar Patil & Others Vs. Secretary, Revenue and Forest Department & Others, 2021 (1) Mh.L.J. 330.*

8. On the other hand, Mr. Kulsange, learned counsel appearing for the contesting respondent No.4 submitted that the aforesaid contention raised on behalf of the petitioners was unsustainable, because the application for allotment of land in the present case was filed in the year 2010 and the order of

allotment was passed by respondent – Collector on 19.05.2014.

9. By placing reliance on Government Resolution dated 12.07.2007, the learned counsel appearing for respondent No.4 submitted that the amount of gross annual income as stated in Rule 11(5) of the said Rules was revised to ₹ 1,00,000/- (₹ One Lakh Only) and therefore, on facts the contention raised on behalf of the petitioners was not sustainable.

10. It was submitted that the judgment in the case of *Dadaji Shankar Patil (Supra)* can also be no assistance to the petitioners, for the reason that the said case pertained to the years 1991/1996 when the gross annual income specified in the relevant Rule was only ₹ 12,000/-.

11. Mr. Dharmadhikari, learned Additional Government Pleader appeared on behalf of the respondent Nos.1 to 3 and he supported the impugned orders passed by the authorities.

12. A perusal of Rule 11 (5) of the aforesaid Rules shows that land cannot be granted to an Ex-serviceman under the aforesaid Rules if the gross annual income of such an Ex-serviceman exceeds

₹1,00,000/- (₹ One Lakh Only), in terms of the amendment brought about by Government Resolution dated 12.07.2007. Admittedly, in the present case, the respondent No.4 had moved the application for allotment of land in the year 2010 and the respondent – Collector passed the impugned order in the year 2014. The respondent – Collector, appears to have been aware about the increase in the limit of gross annual income as per the Government Resolution dated 12.07.2007 and it is for this reason that in the order dated 19.05.2014, it is specifically recorded that the annual income of respondent No.4 for the year 2011-2012 was ₹ 86,645/-. The fact that the annual income of the respondent No.4 was ₹86,645/- is not disputed by the petitioners. Infact, they have relied upon the same to further their contention in the context of Rule 11(5) of the aforesaid Rules.

13. It appears that the principal contention raised on behalf of the petitioners is based on the position of the Rule prior to issuance of Government Resolution dated 12.07.2007, whereby the limit of gross annual income was increased from ₹ 35,000/- to ₹1,00,000/-. Therefore, there is no substance in the contention raised on behalf of the petitioners.

14. As regards other contentions sought to be raised in the context of the aforesaid Rules, this Court is not inclined to entertain the same, primarily because the petitioners are admittedly encrochers. In fact, the learned counsel appearing for respondent No.4 has brought to the notice of this Court that when the petitioners filed a Civil Suit before the competent Court on the basis that they were in possession of the said land and they sought an order of temporary injunction, the same was rejected by the Competent Court.

15. This Court is not commenting upon the order passed by the competent Civil Court. Yet, it is a factor indicating that the petitioners themselves have no semblance of right in the land, which is found to be correctly allotted to the respondent No.4 in terms of the aforesaid Rules.

16. Hence, it is found that there is no merit in the present writ petition. Accordingly, the writ petition is dismissed.

JUDGE

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