

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3261/2020

1. Lalman Ramlal Dhandekar,
Aged 51, Occ: Police Patil.
2. Ramlal Dadu Dhandekar,
Aged 75 years, farmer.
3. Sakharam Shamlal Dhandekar,
Aged 55 years, farmer.
4. Anil Lalman Dhandekar,
Aged 30 years, Occ: farmer.
5. Gaju Babya Dhandekar,
Aged 34, Occ: farmer.
6. Raju Babya Dhandekar,
Aged 35 years, farmer.

All residents of Village Pastalai, Po. Shahapur,
Taluka Chikhaldhara, Dist. Amravati.

PETITIONERS

-VERSUS-

1. State of Maharashtra, Through the Chief
Secretary, Government of Maharashtra,
Mantralaya, Mumbai 400 001.
2. Principal Secretary, Revenue and Forest
Department, having his office at
Mantralaya, Mumbai.
3. Divisional Commissioner,
Amravati, at Amravati.
4. Collector, District Amravati.
5. Range Forest Officer,
Forest Range, Chikhaldara, having his
Office at Chikhaldara.
6. Principal Chief Conservator of Forest
(Wildlife) Van Bhavan, Ramgiri Road,
Civil Lines Near Police Gymkhana, CBI
Colony, Nagpur, Maharashtra 440 001.

RESPONDENTS

Ms Gayatri Singh, Senior Advocate with Shri N.B. Rathod, M. Kukalia and Ms
Pournima Upadhyay, counsel for the petitioners.

Mrs. K.R. Deshpande, Assistant Government Pleader for the respondents.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : 26TH AUGUST, 2022.

DATE ON WHICH JUDGMENT IS PRONOUNCED : 10TH NOVEMBER, 2022.

JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioners claim to be tribals residing at village Pastalai, Taluka Chikhaldara, District Amravati. According to them, the respondents without following the procedure as prescribed have sought to forcibly relocate the petitioners in a manner contrary to law. The petitioners have sought a declaration that Compartment No.36 which includes village Pastalai is not a part of any sanctuary or national park nor has the prescribed procedure being followed to include said village within the boundaries of such sanctuary or park.

3. Ms Gayatri Singh, learned Senior Advocate for the petitioners in support of the prayers made in the writ petition raised the following contentions:-

(a) The portion of village Pastalai where the petitioners reside did not fall within any protected area as declared under the Wildlife (Protection) Act, 1972 (for short, 'the Act of 1972'). For said reason the petitioners were not liable to be evicted from their homes on the ground that they reside on lands that fall within such protected areas. In this regard it was submitted that on 27.11.1987 a notification under Section 35(1) and (2)

of the Act of 1972 came to be issued. By the said notification the State Government declared its intention to constitute the areas indicated in the Schedule to constitute areas of Gugamal National Park. At Serial Number 146 reference was made to Compartment No.36 indicating an area of 280 Hectares 7 R as falling within the said National Park. Though the total area of Compartment No.36 was 336 Hectares 3 R an area admeasuring 55 Hectares 6 R was under cultivation in Pastalai village and hence only 280 Hectares 7 R was shown in Compartment No.36. Thereafter on 08.08.2000 the Revenue and Forest Department issued another notification in exercise of powers under Section 35(4) of the Act of 1972 specifying the limits of the area that was to comprise the National Park to be known as Gugamal National Park. At Serial Number 1 in the statement showing the areas included in the said National Park reference was made to Compartment No.36 Part indicating area of 256 Hectares 42 R to be included in the said National Park. On the basis of these two notifications it was submitted that only a part of Compartment No.36 was reserved forest area to the extent of 256 Hectares 42 R.

Reference was also made to the notification dated 15.02.1994 issued by the Revenue and Forest Department declaring the area specified in the Schedule as a Wild Life Sanctuary to be known as Melghat Tiger Sanctuary. After referring to an earlier notification dated 05.09.1985 it was stated in the notification dated 15.02.1994 that the State Government had decided to alter the boundaries of Melghat Tiger

Sanctuary by reducing the existing area and adding new areas for the purposes of Section 18 and 26A of the Act of 1972 as amended. By the said notification additional area of the reserved forest was declared alongwith the intention of the State Government to constitute non-forest area as specified. At Serial Number 1 reference was made to Compartment No.36 indicating the reserved forest area to be 256 Hectares 42 R. At Annexure-III various survey numbers from Compartment No.36 were mentioned to indicate an area admeasuring 79 Hectares 8 R as falling in the non-forest area that was proposed to be included in the intended Melghat Tiger Sanctuary. Thereafter on 06.11.2000 another notification under Section 26 of the Act of 1972 came to be issued. The same was for the purpose of indicating the overlapping part of the reserved forest area at Melghat Tiger Sanctuary that had been declared as part of Gugamal National Park for being excluded from the limits of Melghat Sanctuary. Compartment No.36 however was not mentioned therein. It was thus submitted that the non-reserved forest area of Compartment No.36 did not fall within the limits of any protected area. It was therefore clear that the lands with which the petitioners were concerned did not fall within the limits of any protected area and therefore it could not become part of any core or critical tiger habitat. For said reason the petitioners could not have been sought to be relocated. Since no acquisition proceedings were initiated after the recognition of the rights of individuals and the community over the land in question as

required by Section 24 of the Act of 1972, it was clear that these lands stood excluded from the limits of the sanctuary. No alteration in the boundaries of the sanctuary could be effected in the absence of recommendation of the National Board. For these reasons it was submitted that as the lands in question did not fall within any protected area the respondents had no authority to displace the petitioners.

(b) It was urged that even if it was accepted that the lands of the petitioners fell within the limits of the protected area, the pre-conditions laid down under Section 38V of the Act of 1972 had not been followed. Notification dated 27.12.2007 had been issued to indicate areas of National Park and Sanctuaries as Critical Tiger Habitat. Under provisions of Section 36V(5) it was necessary to recognize and determine the rights and acquisition of lands or various rights of scheduled tribes. Without undertaking such exercise and without settling the claims under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short, 'the Act of 2006') the petitioners were being forcibly removed from their lands on the ground that the area had been declared as a Critical Tiger Habitat. Before evicting the petitioners it was necessary to have undertaken the aforesaid exercise and after complying with various pre-conditions as prescribed under Section 38V(5) of the Act of 1972. On this count, the forcible removal of the petitioners merely on the ground that the area had been declared as a Critical Tiger Habitat was thus illegal.

(c) The claims of the petitioners for determining community forest rights under the Act of 2006 were kept pending and without adjudicating those claims the petitioners were being evicted. Referring to various provisions of the Act of 2006 it was submitted that various existing rights of Forest Dwellers came to be formally recognized with the enactment of the Act of 2006. These rights were in the nature of Community Forest Rights as well as Individual Forest Rights. Section 3 thereof recognize such rights and under Section 4(5) of the Act of 2006 eviction of forest dwelling communities could not have been undertaken unless the process of recognition and verification of claims was completed. The notification dated 28.02.2018 issued under Section 11 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (for short, 'the Act of 1999') came to be issued before completion of the process of settlement of forest rights which was in breach of Section 4(5) of the Act of 2006. Without there being any final decision on the claims for community forest rights the aforesaid notification had been issued. Reference was also made to the order dated 04.06.2021 passed by the Divisional Level Forest Rights Committee to urge that settlement of the claims for determination of forest rights was necessary prior to relocation of the village. On this count also the impugned action was illegal.

(d) The notification under Section 11 of the Act of 1999 pursuant to which relocation of the villagers of Pastalai was sought to be carried out had been issued without following the procedure prescribed under the Act

of 1999. No public notice as contemplated by Section 13 of the Act of 1999 inviting objections and suggestions with regard to the lands proposed to be included in affected zones came to be issued. Merely by publishing a notification under Section 11 the petitioners were sought to be relocated without following the prescribed procedure. The petitioners as well as other villagers were being harassed and coerced by the forest officials to leave the village pursuant to the publication of the notification dated 28.02.2018. Reference was made to various annexures to the writ petition to indicate the manner in which the petitioners and especially the petitioner nos.5 and 6 were not being permitted to lead their life peacefully at the village. Despite directions being issued by the superior authorities harassment of the petitioner continued. It was further submitted that despite the fact that the petitioner nos.5 and 6 were residents of village Pastalai their claim was being denied by alleging that they were not the residents of the said village. They had been implicated in unnecessary offences despite the fact that they had not breached any law.

On the basis of aforesaid contentions it was submitted by the learned Senior Advocate for the petitioners that the petitioners were being unlawfully evicted from village Pastalai which did not fall within the limits of any protected area under the Act of 1972. In any event the petitioners could not be evicted without first determining their rights and acquiring the same in accordance with law. On these counts it was

submitted that the impugned action at the behest of the respondents was liable to be set aside and the petitioners were entitled for the reliefs as prayed for in the writ petition.

4. In reply, it was submitted by Mrs. K.R. Deshpande, learned Assistant Government Pleader for the respondents that the respondents did not violate any statutory provisions as alleged by the petitioners. Reference was made to the affidavit on record to urge that the relocation of the entire village had been undertaken in the prescribed manner and it was only the petitioner nos.1 to 4 who were opposing such relocation without any justification. The petitioner nos.5 and 6 had no legal right whatsoever to pursue the claim as made on their behalf. In that regard it was submitted as under:-

(a) Village Pastalai fell within the de-reserved (non-forest area) to the extent of 79 Hectares 88 R. Inviting attention to the notification dated 15.02.1994 it was submitted that village Pastalai was indicated in the non-forest area intended to be declared as Sanctuary. This area had not been excluded by issuing any subsequent notification as claimed by the petitioners. Inviting attention to the notification dated 27.12.2007 notifying Melghat Tiger Sanctuary, Gugamal National Park alongwith other Wild Life Sanctuaries as Critical Tiger Habitat of Melghat Tiger Reserve it was submitted that as per said notification the total area for Melghat Tiger Reserve was indicated to be 1150 Hectares 03 Square

Kilometers. This included the de-reserved (non-forest area) admeasuring 79 Hectares 88 R. Non-Forest area of village Pastalai was included therein and hence it fell within the critical tiger habitat as indicated by the map placed on record. It was thus clear that village Pastalai could not be said to have been excluded from the area of the sanctuary as urged by the petitioners. Based on the aforesaid, the respondents were justified in taking the stand that the said village fell within de-reserved (non-forest area) of the Melghat Wild Life Sanctuary.

(b) It was denied that the pre-conditions as required to be complied with under Section 38V(5) of the Act of 1972 had not been duly complied with. It was submitted that the Range Forest Officer had a statutory duty under the Act of 1972 to regulate and control ingress in the tiger reserve area. On 02.05.2017 the Gram Sabha of village Pastalai passed a resolution and accepted relocation of the village at Bhugaon, Taluka Achalpur, District Amravati. However since village Bhugaon was acquired by the Irrigation Department for construction of a reservoir, the Gram Sabha of village Pastalai passed another resolution on 04.05.2018 and agreed to be relocated at village Yeola, Taluka Achalpur, District Amravati. It was found that as per Government Resolution dated 03.11.2012 and as scrutinized by the District Rehabilitation Committee there were about 154 eligible families out of which 148 families had been rehabilitated and relocated at village Yeola. The petitioners however continued to reside at village Pastalai. It was asserted that the procedure for relocation had

been followed as per various Government Resolutions as well as the guidelines issued by the National Tiger Conservation Authority. The rights of the petitioner nos.5 and 6 were also considered by the District Rehabilitation Committee which rejected the same after scrutiny. It was thus submitted that after following the prescribed procedure the activity of relocation of the villagers has been undertaken. The claim made by the petitioners was not liable to be accepted.

(c) It was denied that the claim for community forest rights was kept pending and despite that the petitioners were being evicted. Inviting attention to the certificate dated 21.02.2018 issued by the Collector and Chairman of the District Level Forest Rights Committee it was submitted that no claims were pending either at the Sub-Divisional Level or the District Level. After all such claims were decided a notification under Section 11(1) of the Act of 1999 came to be issued on 28.02.2018. As per the said notification the activity of rehabilitation had been carried out. Reference was also made to the order dated 09.04.2021 that was issued by the Divisional Level Committee in the matter of determination of such community rights. On that basis it was urged that no claims whatsoever as alleged by the petitioners were pending. The petitioners were being rehabilitated only after determination of all such rights.

(d) It was denied that the notification dated 28.02.2018 that was issued under Section 11(1) of the Act of 1999 was without following the prescribed procedure. Based on the certificate dated 28.02.2018 issued

by the Collector further steps had been taken for issuance of such notification under Section 11(1) of the said Act. It was also denied that the petitioners were being harassed unnecessarily. On the contrary, despite resolution being passed by the Gram Sabha, the petitioner nos.1 to 4 were not willing to get themselves rehabilitated. As regards the petitioner nos.5 and 6, it was asserted that they were not residents of village Pastalai and this was clear from various documents placed on record. Their claims were considered and rejected by the District Level Committee. The contentions raised in that regard were not liable to be accepted.

On the basis of aforesaid submissions, it was urged that none of the challenges raised by the petitioners deserved acceptance. The writ petition was without any merit and it was liable to be rejected.

5. **AS TO POINT NO.(a):-** We have heard the learned counsel for the parties at length and with their assistance we have perused the documentary material placed on record. The principal challenge raised by the petitioners is that the lands occupied by them in village Pastalai did not fall within the limits of any protected area and therefore the respondents had no authority to displace the petitioners. For considering this ground of challenge, it would be necessary to first refer to the various notifications that have been issued concerning village Pastalai. Initially on 25.06.1970 a notification under Section 27(1) of the Act of 1927 was

issued by the Revenue and Forest Department of the State Government. By the said notification, areas referred to in the said notification which were declared to be reserved forest of Class-A were held to cease to be reserved forests from the date of said notification. In partial modification of the notification dated 25.06.1970, another notification was issued on 17.06.1987. By that notification area to be de-reserved in various villages in Amravati District was specified. Insofar as village Pastalai is concerned land admeasuring 79 Hectares 88 R was de-reserved. The notification stood amended from 25.06.1979. Thereafter on 27.11.1987 the Revenue and Forest Department issued another notification in exercise of powers conferred by Section 35(1) and (2) of the Act of 1972 thereby declaring its intention to constitute the areas specified as a National Park to be known as Gugamal National Park. Insofar as Compartment No.36 concerning village Pastalai is concerned, the same was shown in Annexure-IV as area that was proposed to be included in the proposed National Park. The extent of land was 280 Hectares 7 R. Though the total area of Compartment No.36 was 336 Hectares 3 R, land admeasuring 55 Hectares 6 R was under cultivation. By this notification dated 22.11.1987 the Revenue and Forest Department declared its intention that amongst other lands Compartment No.36 was proposed to be included in the proposed Gugamal National Park.

On 15.02.1994 yet another notification was issued by the Revenue and Forest Department by referring to an earlier notification dated

05.09.1985 declaring the area specified in the Schedule as a Wildlife Sanctuary to be known as Melghat Wildlife Sanctuary. By the notification dated 15.02.1994 additional area of reserved forest alongwith declaration of intention of the Government to constitute non-forest areas specified in Annexure-III as Melghat Wildlife Sanctuary was indicated. Insofar as Compartment No.36 is concerned it was referred to in Annexure-I as area falling within deemed sanctuary. Certain survey numbers from Compartment No.36 were also mentioned in Annexure-III being details of non-forest area that were proposed to be included in the intended Melghat Wildlife Sanctuary. The total area indicated was 79 Hectares 8 R. This notification therefore clearly indicates that while the area admeasuring 256 Hectares 42 R was part of deemed sanctuary, area admeasuring 79 Hectares 8 R which was non-forest area was proposed to be included in the intended Melghat Wildlife Sanctuary.

6. Thereafter on 08.08.2000 the Revenue and Forest Department issued another notification in exercise of powers conferred by Section 35(4) of the Act of 1972 specifying the limits of the area that was to comprise a National Park to be known as Gugamal National Park. Part of Compartment No.36 admeasuring 256 Hectares 42 R was included therein. On 06.11.2000 yet another notification was issued by the said Department wherein it was noted that overlapping part of the reserved forest of Melghat Wildlife Sanctuary which had been declared as part of

Gugamal National Park was required to be excluded from the limits of Melghat Wildlife Sanctuary. There is however no reference to Compartment No.36 herein.

From the aforesaid notifications it becomes clear that the non-forest area intended to be declared as a sanctuary pursuant to the notification dated 15.02.1994 has not been excluded by issuing any further notification. The position as indicated by the notification dated 27.11.1987 insofar as Compartment No.36 is concerned continues to operate wherein the intention to constitute the area specified as Gugamal National Park has been declared. It is also seen from the material on record that village Pastalai falls within the de-reserved (non-forest area) admeasuring 79 Hectares 88 R as per the notification dated 15.02.1994. Critical Tiger Habitat of Melghat Tiger Reserve is stated to be an area covering 1150.03 Square Kilometers of Gugamal National Park and Melghat Wildlife Sanctuary. The total area as indicated being 1150.03 Square Kilometers the map placed on record clearly indicates that village Pastalai falls within that area. It is therefore found that the said village cannot be said to be excluded from the protected area as urged by the petitioners in view of the fact that the non-forest area proposed to be included in the intended Melghat Wildlife Sanctuary as shown by Annexure-III of the notification dated 15.02.1994 has not undergone any change whatsoever. For these reasons, we do not find that the stand of the petitioners that village Pastalai and especially the lands occupied by

the petitioners do not fall within any protected area can be accepted. It is held that the lands in question fall within the de-reserved (non-forest area) to the extent of 79 Hectares 88 R.

7. **AS TO POINT NOS.(b) TO (d) :-** Since the petitioners urged that they are not liable to be displaced from village Pastalai without complying with the statutory requirements as prescribed under the Act of 1972 and their rehabilitation pursuant to the notification dated 28.02.2018 issued under Section 11 of the Act of 1999 is without following the prescribed procedure, these aspects are being considered together. It is seen that the Revenue and Forest Department has issued Government Resolution dated 03.11.2012 thereby prescribing the modality of re-settlement of families that are affected by virtue of formation of sanctuaries and national parks. Under the said Government Resolution, two modes of rehabilitation have been prescribed. As per Option (1), villages affected are entitled to be rehabilitated in the manner prescribed by the Act of 1999. On a resolution being passed by the Gram Sabha each family is entitled to monetary compensation of Rupees Ten Lakhs. When Option (1) is exercised, the process contemplated by Sections 13 to 19 of the Act of 1999 is not required to be followed. As per Option (2), rehabilitation in accordance with the provisions of the Act of 1999 is prescribed by allotting alternate land in that regard. In that case, the provisions of Sections 13 to 19 of the Act of 1999 are required to be followed. It is

seen that initially on 02.05.2017 the Gram Sabha of village Pastalai passed a resolution indicating its willingness to be rehabilitated at Mouza Bhugaon, Taluka Achalpur, District Amravati. However on finding that said area was to be part of submergence of an irrigation project, the Gram Sabha on 04.05.2018 passed another resolution for being rehabilitated at Mouza Yeola, Taluka Achalpur, District Amravati. Pursuant thereto such rehabilitation at village Yeola has been undertaken. In paragraph xxviii of the submissions filed on behalf of the respondent nos.1, 2, 5 and 6 it has been stated that of the 148 families entitled for relocation and rehabilitation, 125 families had chosen Option (1) while 23 families had opted for Option (2). These figures have not been disputed by the petitioners. It is to be noted that on 12.10.2015 another Government Resolution came to be issued in the matter of rehabilitation of families affected by declaration of areas to form part of sanctuaries and national parks. As per this notification, additional benefit admissible under the The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013') was also recognized.

8. It is to be noted that on 28.02.2018 the Divisional Commissioner, Amravati Division, Amravati issued a notification under Section 11(1) of the Act of 1999 making the provisions of the Act of 1999 applicable to village Pastalai, Taluka Chikhaldara, District Amravati. The District

Rehabilitation Committee, Amravati thereafter identified 154 families out of 192 individuals in the preliminary survey of village Pastalai to be entitled to such benefit. Of the 154 families, 148 eligible families were relocated at Mouza Yeola and Wadgaon Taluka Fattepur, Achalpur, District Amravati except the petitioners. Insofar as the petitioner nos.1 to 4 are concerned, they have been found entitled to such benefits and they fall within the 154 eligible families. Insofar as the petitioner nos.5 and 6 are concerned, they have not been found so eligible. Their claims were scrutinized by the District Rehabilitation Committee which however rejected the same on 04.06.2019. The petitioner nos.5 and 6 re-submitted their claims and on re-examination, they were not found eligible. This rejection of claim is dated 08.02.2021. We find from the documents on record that there is a serious dispute as regards entitlement of the petitioner nos.5 and 6 to the benefits of relocation which benefits have been granted to 154 families of village Pastalai. The said claims of the petitioner nos.5 and 6 would require adjudication in the manner prescribed by the Act of 1999. We also find that in paragraph 81 of the submissions filed on behalf of the respondent nos.1, 2, 5 and 6, a categorical statement has been made that even today the said respondents are willing to give the requisite option to the petitioner nos.1 to 4 as given to other 148 families who have been rehabilitated. The said petitioners however have not indicated their interest accordingly. The said statement made is accepted as a statement made to the Court.

9. It is to be noted that initially the Sub-Divisional Level Committee considered the Community Forest Rights of village Pastalai and did not find any merit in such claims. Thereafter the Collector on 21.02.2018 issued a certificate stating therein that no individual claims seeking forest rights from villages Pastalai and Dolar were pending either with the Sub-Divisional Level Committee or the District Forest Rights Committee, Amravati. At this stage, it is also necessary to refer to the order dated 09.04.2021 passed by the Divisional Forest Rights Committee, Amravati in the appeal preferred by the Gram Sabha of village Pastalai. By that order it has been noted that the Community Forest Rights as determined were required to be granted in terms of Section 42(3) of the Act of 2013 and necessary steps in that regard including framing of rules was being undertaken at the Government level. On such amount of compensation towards Community Forest Rights being determined the claims of said villagers were liable to be accepted. It was further observed that on account of grant of such compensation, no rights on the land could be enjoyed by the said villagers. This order dated 09.04.2021 that has been passed during pendency of the present proceedings continues to operate and hence the parties are bound by the same unless the said order is modified in appropriate proceedings. Insofar as the submission based on the provisions of Section 38V(5) of the Act of 1972 is concerned, there are no specific pleadings raised in the writ petition in that regard to enable examination of the same.

From the aforesaid material therefore we find that the claims of the petitioners have been considered in accordance with law. While the petitioner nos.1 to 4 have been found entitled to the benefit of rehabilitation which benefit has been extended to about 148 families from the eligible 154 families, the claim of the petitioner nos.5 and 6 cannot be adjudicated in the present proceedings and it would be necessary for them to have their rights determined in the manner prescribed by the Act of 1972 and the Act of 1999.

10. In the light of aforesaid discussion, it is held that the lands concerning the petitioners at village Pastalai, Taluka Chikhaldara, District Amravati fall within the non-forest area as proposed to be included in the intended Melghat Sanctuary and hence the declaration sought by the petitioners cannot be granted. It would be open for the petitioner nos.1 to 4 to avail the benefits of rehabilitation in terms of Government Resolutions dated 03.11.2012 and 12.10.2015 as extended to 148 families of the said village in terms of the statement made in paragraph 81 of the submissions filed by the respondent nos.1, 2, 5 and 6. The petitioner nos.5 and 6 are free to have their rights of entitlement to such benefits determined in accordance with law. The respondents shall comply with the order dated 09.04.2021 passed by the Divisional Level Forest Rights Committee in accordance with law.

11. The writ petition is disposed of in aforesaid terms. Rule accordingly. No costs.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

APTE