

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2288 OF 2023

Bhairavnath Vidya Prasarak Sanstha
Through its Secretary
Sandip Sukhdeo Magar and another .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Yuvraj V. Kakate, Advocate for the Petitioner.
Shri A. R. Kale, A.G.P. for the Respondent Nos. 1 to 3 and 5.
Shri S. B. Parnere, Advocate for the Respondent No. 4.

**CORAM : NITIN W. SAMBRE AND
S. G. CHAPALGAONKAR, JJ.
DATE : 06TH MARCH, 2023.**

FINAL ORDER :

. On 26th September, 2019, the petitioner No. 1, a registered public trust who is running a secondary school submitted a proposal for allotment of the land out of gut No. 281 for the purpose of construction of school building and sports ground on lease basis for the petitioner No. 2/school. The said proposal of the petitioner No. 1 came to be turned down/rejected vide communication dated 28.06.2021 by the respondent/Collector and also by the State Government vide the impugned communications dated 11th May, 2022 and 13th April, 2022 respectively.

2. The contentions of the learned counsel for the petitioners are that the petitioner No. 1, a public trust and a non profit organization has come forward to cater educational need of the students in the village as in the surrounding area of 10 KM at relevant time no educational facility was available. According to him various social organizations and the companies, individuals have contributed for the construction of school building, wherein around more than 200 students are taking education. He would further urge that the allocation of the land wherein construction of the school building was carried out and for the purpose of open ground for sports activity was sought purely in the interest of students that too based on the provisions of the land disposal rules framed under the Maharashtra Land Revenue Code. The learned counsel for the petitioners while inviting attention to the impugned orders would urge that the Collector and the State Government have failed to consider the genuine need of the petitioners and have rejected the prayer of the petitioners for allotment without considering cause for which the allotment was sought.

3. The learned Assistant Government Pleader for the respondents would support the impugned orders as according to him not only the encroachment is on the Government (Gayran) land (cattle grazing), but it is noticed that such encroachment cannot be regularized in view of the directions of the Supreme Court in catena of judgments. As such it is prayed that the petition is liable to be dismissed.

4. We have appreciated the aforesaid submissions.

5. The fact remains that construction of the building even if from the contribution made by the public and social organizations is carried out, same is on the land reserved for cattle grazing/Gayran land. The allotment of Gayran land or the transfer or use of such land is not at all permissible in view of the judgment of the Apex Court. Appropriate reliance can also be placed on the judgment of the Apex Court in the case of **Jagpal Sing and others Vs. State of Punjab and others** reported in ***(2011) 11 SCC 396***.

6. It is further worth to note that the State Government has come out with a policy to the extent of regularization of certain encroachment as reflected in the Government Resolution dated 12th July, 2011. However, the encroachment by the petitioners appears to be subsequent to the said Government Resolution. As such claim of the petitioners was rightly rejected by the authorities.

7. All the three authorities have accordingly noticed that the petitioners have encroached on the Government land (Gayran land), which encroachment cannot be regularized.

8. Even if the petitioner No. 1 is in discharge of noble cause of imparting education, still the law laid down by the Apex Court

cannot be given go-bye so as to cater the need of students as has been claimed by the petitioners as petitioners can always go for the purchase of private land.

9. In view of the above, no case for interference is made out. Petition as such is dismissed.

[S. G. CHAPALGAONKAR, J.]

[NITIN W. SAMBRE , J.]

bsb/March 23