

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

WRIT PETITION NO.4561 OF 2023

Shri Jagdishlal Jivanram Agrawal
(Since deceased through Legal Heir
Shri Santosh Jagdish Agrawal)
Age-50 years, Occu-Business,
R/o. Sarafa Bazar, Shirpur,
Tq. Shirpur, Dist. Dhule

...PETITIONER

VERSUS

1. The State of Maharashtra
Through the Hon'ble Revenue Minister,
Government of Maharashtra
Mantralaya, Mumbai
 2. The Collector, Dhule
Dist. Dhule
 3. The District Superintendent of Land Records
Dhule, Dist. Dhule
 4. The Deputy Superintendent of Land Records
Sirpur, Dist. Dhule
 5. The Administrator,
Subhash Co-operative Housing Society,
Through Assistant Registrar, Co-operative Societies,
Market Yard, Shirpur, Dist. Dhule
 6. Shri Dili Magan Prajapati,
Age-55 years, Occu-Business,
R/o. Shop No.B-60, Anmol Park,
Laxmipura, Waruwa Marg,
Baroda (Gujrat)
- ...RESPONDENTS**

7. Anil Vasantrao Lungse,
Age-50 years, Occu-Service,
R/o. 92, Shubhash Colony, Shirpur,
Tq. Shirpur, Dist. Dhule

Mr. Vijay P. Latange, Advocate for the petitioner
Mr. Sanket N. Suryawanshi, Advocate for respondent No.7
Mr. K. B. Jadhvar, AGP for the respondent/State

CORAM : KISHORE C. SANT, J.

RESERVED ON : 08th AUGUST, 2023

PRONOUNCED ON : 07th OCTOBER, 2023

P. C.

1. By assailing the judgment and order dated 17-02-2023 passed by the Hon'ble Minister (Revenue) in RTS No.3318/Pra.Kra.215/J-6-A, the present petitioner has approached this court. By way of impugned order, review application NO.RTS/3116/44/Pra.Kra.457/J-6 of the petitioner came to be rejected and earlier order is confirmed and also an order dated 28-06-2016 passed in RTS/Revision/03/2013 by the the learned Additional Commissioner, Nashik. It is directed to the Deputy Superintendent of Land Records to delete the name of petitioner and to enter the name of respondent No.7.

2. The facts in short are that:

a] The father of the petitioner was a person affected by flood. The learned Collector, Dhule therefore had allotted plots to the affected persons at Shirpur. One of the plots was given to the father of the petitioner. Total 253 plots were allotted to the beneficiaries. Occupancy was granted for a period of 30 years from 01-08-1961 to 31-07-1991. Said rights were not transferrable except with permission from the learned Collector in certain conditions. However, later on by order dated 07-08-1972 the learned Collector, Dhule forfeited total 201 plots allotted to the beneficiaries for violation of condition No.V and as the plots were not used for construction. Plots were in possession of the petitioner till the year 2013. However, thereafter respondent No.5 was unlawfully allotted the said plot. It is thus respondent No.7 came in possession and his name now came to be entered in the revenue record and therefore, this entry was challenged by the petitioner before the revenue authorities and since the action of taking entry in the name of

respondent No.7 is confirmed, the petitioner is before this court.

3. Mr. Latange, learned advocate for the petitioner submits that in 1981 respondent No.5- Shubhash Co-operative Housing Society applied to the learned Collector for allotment of forfeited plots. The learned Collector, passed an order allotting the plots to the society. Said order was stayed by the Government and the proposal remained in abeyance till 1999 till stay vacated by the Hon'ble Minister. It is thereafter the plots were allotted. He submits that plots could not have been allotted to Subhash Cooperative Housing Society. The allotment of plots in turn by the society in favour of respondent No.7 is thus illegal. Respondent Nos. 5 to 7 i.e. society and the allottees have no right over the suit property/plot.

4. Learned advocate for respondent Nos. 6 and 7 vehemently opposed the petition stating that since the father of the petitioner did not comply with the conditions of the allotment, the allotment was rightly cancelled. The society was rightly given the plots by following procedure. Respondent No.7

happens to be members of the society. Therefore, the plot is validly allotted to him. The possession is with respondent No.7. There is no illegality committed by any of the authorities. He submits that the Hon'ble Minister has rightly passed the order and no interference is called for.

5. Learned AGP also supports the order passed by the Hon'ble Minister. It is seen that the plots were allotted in the year 1961 to the persons affected by flood with certain conditions. One of the conditions was to construct the plots within two years. Since the plots were not constructed by many of such persons their allotment came to be cancelled. The land thus became available to the government and was taken in possession of the government. In 1981 respondent No.5-Housing Society applied for plot for its members. Though the order was passed by the learned Collector allotting the land to the members, said order was stayed by the Hon'ble Minister which continued till 1997. After stay came to be vacated, the process of allotment again started and finally plots were allotted in the

year 1999 by the learned Collector to the Society. The society thereafter, allotted the plots to its members by passing resolution. Disputed plots came to be allotted to respondent No.6-Dilip Prajapati. Mutation entry was taken bearing No.1617. On the basis of that present respondent No.7 thereafter purchased the said plot on 21-12-2009. The learned Collector thereafter passed the order permitting of non-agriculture use. Said order thereafter stayed by the learned Deputy Commissioner. In the meantime by following procedure entry in the name of respondents was taken in the revenue record. The question now is as to whether the petitioner has any right over the suit plot and whether the entry is illegally deleted. It is admitted fact that in 1961 the plots were allotted to flood affected persons on certain conditions. For non-fulfillment of conditions of making construction within two years, plots were forfeited by the learned Collector. There is nothing to show that this action of cancellation of allotment was ever challenged by the petitioner. His only claim is that he is still holding the possession of the plot till the actual dispossession in the year

2013.

6. The petitioner had also filed a suit bearing RCS No.17/2013 in the court of CJJD, Shirpur alongwith application for temporary injunction. The civil court however, rejected the application below Exh.5 by order dated 07-02-2013. The Civil Misc. Appeal No.9/2013 also came to be dismissed by order dated 01-03-2013 by the District Judge-II, Dhule. The petitioner also lost in writ petition bearing No.8623/2013 that was filed against the judgment passed by the learned District Judge-II also came to be dismissed by this court by order dated 16-11-2015. It is thus seen that the petitioner could not prove his case at least prima facie even before the civil court. This court finds that once the petitioner failed to show any right over the suit property he is not concerned with the further allotment in favour of society and its members.

7. It is also observed that the petitioner has never challenged the order of forfeiture/ cancellation of allotment of

plots by the learned Collector. The authorities under revenue dealt with the entries and thus rightly came to a conclusion that the petitioner has failed to prove his right over the suit land. The Hon'ble Minister in revision RTS No.3318/Pra.Kra.215/J-6-A has wrongly held that name of the respondents need to be entered in the revenue record as owner of disputed plot. In the revision application, challenging the order passed by the learned Additional Divisional Commissioner, the learned Authorities have rightly considered that the revision was preferred after 41 years and there is no explanation for such delay. There was no any application filed for condonation of delay. The Hon'ble Minister in revision also rightly held in favour of the respondents.

8. Against the said order passed by the Hon'ble Minister dated 15-07-2019 the respondent No.7 had filed a writ petition. Said order came to be quashed by order dated 25-01-2022 in writ petition No.14561/2019. This court observed that the order dated 15-07-2019 was passed without making respondent Nos.

6 and 7 parties to the proceedings. Though in the original proceeding they were very much parties and the order passed in review was quashed and set aside and remanded to respondent No.1 for its determination.

9. After remand of the matter the Hon'ble Minister rightly considered that the petitioner could not show his right over the suit plot and passed fresh order dated 17-02-2023 rejecting revision filed by the petitioner.

10. This court finds that the Hon'ble Minister has rightly observed that no illegalities are pointed out. The petitioner has failed to show his right to the suit property/plot. This court does not find that there is any ground calling interference.

11. Hence, the following order:

a] The writ petition stands dismissed. No order as to costs.

[KISHORE C. SANT, J.]