

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6826 OF 2018

- 1] Hiranman S/o. Laxman Kamble,
Age 63 years, Occu. Agriculture Labour,
R/o. Borgaon (Sudha), Tq. Bhokar,
District – Nanded
- 2] Champat S/o. Manika Kamble,
Age 75 years, Occ. Agriculture Labour,
R/o. Borgaon (Sudha), Tq. Bhokar,
District – Nanded
- 3] Ganga S/o. Mariba Narale (deceased),
Through his L.R.
- 3-A) Shri. Suresh S/o. Gangaram Narale,
Age 42 years, Occu. Agriculture Labour,
R/o. Borgaon (Khd.), Tq. Bhokar,
District Nanded
- 4] Pundlik S/o Kondiba Kamble,
Age 75 years, Occ. Agriculture Labour,
R/o. Borgaon (Khd.), Tq. Bhokar,
District Nanded
- 5] Govinda S/o. Rama Kamble,
Deceased through his L.R.
- A) Madhav S/o. Govind Kamble,
Age 45 years, Occ. Agriculture Labour,
R/o. Borgaon (Sudha), Tq. Bhokar,
District – Nanded
- B) Datta S/o. Govind Kamble,
Age 40 years, Occu. Agriculture Labour,
R/o. Borgaon (Sudha), Tq. Bhokar,
District Nanded
- C) Yeshwanta S/o. Govind Kamble,
Age 50 years, Occu. Agriculture Labour,
R/o. Borgaon (Sudha), Tq. Bhokar,
District Nanded
- 6] Sambha S/o. Jalba Kamble,
Age 75 years, Occu. Agriculture Labour,
R/o. Borgaon (Sudha), Tq. Bhokar,
District Nanded

7] Bhiva S/o. Ganpat Gaikwad,
Deceased through LRs.

A) Chandu S/o. Bhiva Gaikwad,
Age : 40 years, Occ. Agriculture Labour,
R/o. Borgaon (Sudha), Tq. Bhokar,
District Nanded

8] Kishan S/o. Jalba Kamble,
Deceased through his LRs.

A) Shankar S/o. Kisan Kamble,
Age 55 years, Occu. Agriculture Labour,
R/o. Borgaon (Sudha), Tq. Bhokar,
District Nanded

B) Dhammadeep S/o. Digambar Kamble,
Age 30 years, Occ. Agriculture Labour,
R/o. Borgaon (Sudha), Tq. Bhokar,
District Nanded

9] Ganpat S/o. Jalba Kamble,
Deceased through his L.R.

A) Bapurao S/o. Ganpat Kamble,
Age 55 years, Occu. Agriculture Labour,
R/o. Borgaon (Sudha), Tq. Bhokar,
Dist. Nanded

10] Narayan S/o. Jalba Kamble
Deceased through his L.R.

A) Shantabai W/o. Narayan Kamble,
Age 65 years, Occu. Agriculture Labour,
R/o. Borgaon (Sudha), Tq. Bhokar,
District Nanded

11] Nagorao S/o. Rama Kamble,
Age 65 years, Occu. Agriculture Labour,
R/o. Borgaon (Sudha), Tq. Bhokar,
District Nanded

.. PETITIONERS

Versus

1] The Secretary,
Revenue & Forest Department,
Government of Maharashtra,
Mantralaya, Mumbai – 400 032.

- 2] The Tahsildar,
Tahsil Office, Bhokar,
Tq. Bhokar, Dist. Nanded
- 3] The Collector,
Collector Office,
Nanded
- 4] The Range Forest Officer,
Range Forest Office, Bhokar,
Tq. Bhokar, Dist. Nanded
- 5] Assistant Conservator of Forest,
Office of Nanded Forest Division,
Nanded
- 1-A. The Secretary, Government of India
Ministry of Environment, Forest
and Wild Life,
Paryavaran Bhavan,
CGO Complex,
Lodi Road, NEW DELHI
- 1-B. Director General of Forest,
Govt. of India
Ministry of Environment,
Forest and Wild Life,
Paryavaran Bhavan, CGO Complex,
Lodi Road, New Delhi
- 1-C. The Principal Chief Conservator
of Forests, (FFC) Maharashtra State,
"Vanbhavan" Ramgiri Road,
Civil Lines, Nagpur – 440 001.
- 1-D. Chief Conservator,
Aurangabad (Regional)
"Vanbhavan", Osmanpura,
Railway Station Road,
Aurangabad – 431 005
- 5-A. Sarpanch,
The Village Panchayat,
At Dhavari (Khd), Post and Tq. Bhokar,
Dist. Nanded,
Through its Secretary

.. RESPONDENTS

(Respondents 1-A to 1-D and 5-A added as per
Court's Order dated 11-10-2019 in CA/6433/2019)

...
Advocate for petitioners : Mr. G.M. Jadhav
AGP for the respondent – State : Mr. A.S. Shinde
DSGI for respondents nos. 1-A and 1-B : Mr. A.G. Talhar
...

**CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.**

DATE : 10 JANUARY 2023

JUDGMENT (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith. Learned AGP waives service for the respondents nos. 1 to 5 and Mr. Talhar waives for the respondent nos.1-A and 1-B. At the joint request of the parties, the matter is being disposed of finally at the stage of admission.

3. The petitioners claim that they have encroached over the forest land and that they were in possession of the land between 1965 and 1975 and used the forest land for agricultural purposes to earn their livelihood. They claim that their encroachment was admissible for regularization under various government resolutions but without undertaking any enquiry they have been dis-possessed. Hence, they claim that the orders directing notice to be issued to them and subsequent order dated 11-09-2002 to dis-possess them, be quashed and set aside and their encroachment be regularized according to government resolutions dated 27-12-1978 and 12-09-1979.

4. The learned advocate for the petitioner would submit that the fact that the petitioners were served with the impugned notice clearly demonstrates that they were in possession of the encroached lands. There is a policy of the State Government as indicated in the afore-mentioned resolutions and even the subsequent resolutions to regularize the encroachments. Without giving any opportunity to them of being heard, the order for removal of encroachment was passed and they have been evicted. He would submit that since the petitioners were claiming to be in possession since long, it was imperative for the respondents to follow the policy of the government in the letter and spirit. Even the Union Government has formulated a policy under the Forest Conservation Act, 1980 with effect from 24-02-1980. The respondent - authorities ought to have considered the scheme of the Act and the entitlement of the petitioners for regularization. Giving a complete go-bye to such law, the petitioners have been illegally evicted and the possession be restored and it be regularized.

5. The learned AGP refers to the affidavit-in-reply filed by the respondent no. 4 and submits that there is a serious dispute on facts. There is nothing on the record to demonstrate that the petitioners were in possession of the alleged encroached portion of forest land on 31-03-1978. There is nothing on the record to substantiate their claim that they were in possession since 1965 to 1975. In the absence of which, there is no material to objectively scrutinize their entitlement to

regularization in terms of the Government resolution of 1978. He would submit that in view of the directions of the Supreme Court in the matter of ***Jagpal Singh and others V. State of Punjab and others; (2011) 11 SCC 396***, no regularization of any encroachment over government land is possible. The petitioners are approaching this Court after a long slumber on passing of the order in the year 2002 and their eviction pursuant thereto and have approached this Court in the year 2018. The forest land recovered from the petitioner has already been put under plantation. There is nothing on the record to demonstrate that the petitioners case is covered by the government resolution in respect of regularization of encroachment over a forest land. The resolution of 1978 was only in respect of the forest lands situated in Nasik and Thane district and the petition be dismissed.

6. We have carefully considered the rival submissions and perused the papers.

7. Needless to state that the petitioners first of all will have to demonstrate that their encroachment over the forest land can be regularized either under some law or the government policy. The petitioners are seeking to place reliance on the government resolution of 27-12-1978 which *ex facie* was only in respect of forest lands situated in Nasik and Thane districts. Admittedly, that is not the case in the matter in hand.

8. Admittedly, the petitioners were served with notices prior to their eviction and since they did not turn up apparently, the Deputy Conservator of Forest in exercise of the powers under section 351 of the Land Revenue Code delegated to him, has passed the impugned orders way back in 2002 and admittedly, the petitioners have been evicted from the respective encroached portions of the forest lands. As far as the legality of the order is concerned, the learned advocate could not demonstrate before us as to what is the error or illegality in the impugned orders of eviction. Besides, the challenge to the legality of such orders has been put up after a long slumber of about 16 years and consequentially on this ground alone, the petition to the extent it challenges the legality of the order of eviction is not sustainable.

9. Reverting back to the alleged claim of the petitioners for regularization, nothing could be demonstrated by the petitioners as to under which government resolution, they are entitled to such a relief. On the contrary, the Supreme Court in the matter of **Jagpal Singh** (supra) has taken a stern view for removal of the encroachment on the government lands.

10. As far as the government resolution dated 14-08-1972 regarding regularization of encroachment inter alia on forest land, only the encroachment existing as on 31-04-1973 were resolved to be regularized. It was therefore imperative for the petitioners to have

prima facie demonstrated that they were in possession of the respective encroached portions as on that day. Except a bald averment in the petition which has been controverted by the respondents in the affidavit-in-reply, there is absolutely no material to prove their possession on the relevant date.

11. In view of such state-of-affairs, there is no escape from the conclusion that the petitioners are not entitled to any reliefs.

12. The petition is dismissed.

13. Rule is discharged.

[S. G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/