

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

WRIT PETITION NO.1183 OF 2018

Ganpat Namdeo Kalgunde
Age: 72 years, Occu - Agriculture,
R/o: Kalgaon, Tal – Shrigonda,
Dist. Ahmednagar

... Petitioner

Versus

1. The State of Maharashtra through
Secretary, Ministry of Revenue and
Forest Department, Mantralaya
Annex, Mumbai MS. 400 032.

2. The Collector of Ahmednagar, At PO &
Dist. Ahmednagar MS.

3. The Deputy Conservator of Forest,
Ahmednagar Forest Range, Vana Bhavan,
Aurangabad Road, Ahmednagar 414 001

4. The Union of India, through Secretary,
Ministry of Defense, Department of
Ex-servicemen Welfare, 5-A South Block,
New Delhi.

... Respondents

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Mr. Vinod Y. Bhide, Advocate for Petitioner
Mr. A. R. Kale, AGP for Respondent Nos.1 to 3
Mr. B. M. Dhanure, Advocate for Respondent No.4

...

**CORAM : NITIN W. SAMBRE &
S. G. CHAPALGAONKAR, JJ.**

Closed On : 03.04.2023

Pronounced On : 12.04.2023

FINAL ORDER : [PER S. G. CHAPALGAONKAR, J.]

1. The petitioner approaches this Court under Article 226 of the Constitution of India, thereby seeking directions against respondent Nos.1

& 2 to confer permanent allotment with full ownership of 5 acres of land out of Survey No.42 (Gat No.83) situated at Ghotvi, Taluka Parner, District Ahmednagar in his name as nominee of late Sarubai to whom the same was permanently allotted by the State Government in the year 1966 – 1968 as she being next of kin of the Martyr Sepoy, Shripati Namdeo Kalgunde, who sacrificed his life for the Nation in the 1965 Indo-Pakistan war.

2. Learned Advocate Mr. Vinod Bhide appearing for the petitioner would submit that late Shripati Namdeo Kalgunde sacrificed his life in year 1965 during Indo-Pakistan war. The State of Maharashtra in the year 1966 pleased to allot 5 acres (2 Hectare) of agriculture land out of Survey No.42 (Gat No.83) situated at village Ghotvi, Taluka Parner, District Ahmednagar in favour of Smt. Sarubai Namdeo Kalgunde on '*Ek Sal Lavni*'/yearly cultivation basis. Subsequently, she was asked to deposit '*Nazrana*' for permanent allotment of the land, which has been deposited. Late Sarubai Namdeo Kalgunde continuously persuaded the respondents for confirmation of permanent allotment and effecting necessary revenue entries. However, till her death on 12th October, 1985, her request was not materialized. Thereafter, the petitioner being son of late Sarubai persuaded the respondents-authorities to enter his name in the revenue record and confirm the status of ownership on him. Pertinently, the petitioner had instituted Regular Civil Suit No.154/2006 against the Revenue and Forest Authorities for relief of declaration and injunction. The said suit has been partly decreed on 21st December, 2013 to the extent of relief of permanent injunction.

Learned Advocate Mr. Vinod Bhide appearing for the petitioner invited attention of this Court to the communication dated 23rd March, 2016 issued by respondent No.3/Deputy Conservator of Forest, Ahmednagar addressed to respondent No.2/District Collector,

Ahmednagar stating that the land to the extent of 5 acres which was in the possession of late Sarubai Namdeo Kalgunde was allotted out of land held by Revenue Department. However, it could not be confirmed whether the portion of the said land is out of delimited area. He would further submit that because of confusion between the Revenue and Forest Authorities, the request of late Sarubai Namdeo Kalgunde or thereafter petitioner for the permanent allotment of the land could not be given due consideration. He would submit that as advised by authorities, on 18th April, 2016, the petitioner had submitted an application for allotment of alternate land from Gat No.26. However, the said land is part and parcel of Gairan land. The respondent No.2 had recommended vide communication dated 20th February, 2017 to consider allotment of land in favour of the petitioner by relaxing the condition No.9(2) of the Government Resolution dated 12th July, 2011. However, the petitioner is intending to press his request only for retention of the land that has been allotted to late Sarubai in the year 1996 and claims that the ownership of the said land is confirmed on him.

3. Learned AGP Mr. A. R. Kale appearing for respondent Nos.1 to 3 would submit that revenue entries in respect of land Gat No.83 would show that it is the forest land, though, in cultivation column, entry is depicts it as government land. Therefore, the ownership cannot be conferred upon the petitioner in respect of forest land in light of the decision given by the Apex Court in Writ Petition No.171/1996 dated 12th December, 1996.

4. We have heard the learned Advocates appearing for the respective parties. Perused the record.

5. As can be appreciated, late Shripati Namdeo Kalgunde sacrificed his

life on 22nd September, 1965 during Indo-Pakistan war. His mother late Sarubai Kalgunde was allotted the government land from Survey No.42 (Gat No.83) situated at Village Ghotvi, Taluka Parner, District Ahmednagar on 'Ek Sal Lavni'/yearly cultivation basis from 1966 – 1968. According to the petitioner, subsequently, the land was permanently allotted on the basis of payment of price/nazrana equal to 24 times of the land revenue. The communication dated 23rd July, 1969 regarding deposit of Nazrana is placed on record of this Court.

6. Pertinently, initial record of the land shows that it is the government land under the department of revenue. Subsequently, Survey No.42 is allotted Gat No.83 during consolidation. The land to the extent of 12 Hectare 51 R. out of 28.52 Hectares from Survey No.83 is possessed by the Forest Department. The communication dated 23rd March, 2016 issued by Deputy Conservator of Forest, Ahmednagar addressed to District Collector also throws light on the fact that the land in question is part and parcel of the Revenue Department.

7. The possession of the petitioner on the basis of initial allotment of the land is still continued and even a decree of perpetual injunction is passed in his favour by the Civil Court at Shrigonda in RCS No.154/2006 dated 12th July, 2008. Though the petitioner is consistently requesting for confirmation of full ownership upon him in respect of 5 acres land from Gat No.83 that was allotted to his mother late Sarubai Kalgunde, it is not processed because of inconsistent revenue record.

8. In light of the aforesaid background, we direct respondent No.1 / Secretary Ministry of Revenue and Forest Department to call for necessary record from respondent Nos.1 & 2 in respect of land Gat No.83 and take the appropriate decision regarding claim of petitioner for confirmation of

the ownership of land out Survey No.83 already possessed by him. The decision shall be taken as per prevailing policy and guidelines as applicable to the case of the petitioner. We hope and trust that final decision shall be taken and communicated to the petitioner as expeditiously as possible and in any case within a period of six (06) months from the date of this order. The petitioner shall be given opportunity of hearing before passing the order.

9. The writ petition is disposed of accordingly.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

Sameer