

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1486 OF 2022

Keshav Govind Patil
(Since Decd.) Through Its Lrs. ..Petitioner
Vs.
State of Maharashtra & Anr. ..Respondents

WITH
WRIT PETITION NO. 1482 OF 2022

Shankar Govind Patil
Thr. LR Prakash Vishnue Patil ..Petitioner
Vs.
State of Maharashtra & Anr. ..Respondents

WITH
WRIT PETITION NO. 1483 OF 2022

Ganu Govind Patil
Thr. Lhr Prakash Vishnue Patil ..Petitioner
Vs.
State of Maharashtra & Anr. ..Respondents

Mr. Tanaji Mhatugade, for the Petitioner.
Mr. Rajan S. Pawar, AGP for State.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : JULY 19, 2023

P.C.:

1. This petition under Article 226 of the Constitution challenges the order dated 20 February 2017, passed by the Additional Collector,

Kolhapur, whereby the claim of the petitioner for allotment of an alternate land as a project affected person, namely, land bearing Gat No.160/1 area 1 H. 40R from the Gat No.160/1, situated at Village Uchgaon, Tal-Karveer, Dist-Kolhapur has been rejected for the following reasons as set out in the impugned order:-

(Official translation from vernacular)

“2. Under the Maharashtra Land Revenue Manual, Volume One; as per Rule 20(2) of the Maharashtra Land Revenue (Disposal of Government lands) Rules, 1971 under the said Code, it is necessary to allot alternative lands to the Project Affected persons whose lands have been acquired for public purposes, in the area within the radius of eight kilometers of the village where the said Project Affected persons are residing. Accordingly, you have been rehabilitated in the area of Gaothan at Kagal, Tal. Kagal. However, you have demanded the land situated at Uchgaon, Tal. Karveer. As you have demanded the land situated beyond the radius of eight kilometers of the village where you are residing, your demand cannot be taken into consideration.

Therefore, as regards the land adm. 1 hectare, 40 Are, admissible to you, you are requested to prefer the area of the land, standing entered in the name of Collector and Deputy Director, Project Rehabilitation, Kolhapur, situated within the command area of the Dudhganga Project in Kagal Taluka, from the 7/12 extract, Gat number of the said land and to submit new Land Requisition Application to this Office within one month. After you submit your application accordingly, the action to allot the land to you as admissible under the provisions of the Rehabilitation Act, shall be taken. Hence, the land bearing Gat No. 160/1, situated at village Uchgaon, Tal. Karveer, as mentioned by you in the Writ Petition filed by you before the Hon’ble High Court cannot be allotted to you as an alternative land and therefore, your said application dated 22.07.2016 is disposed of.”

2. In such context, the petitioner has prayed for the following reliefs:

“[A] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India, 1950 and be please to quash and set aside the impugned order dated

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20th February 2017 passed by Respondent No.2 and be please to allow the Application dated 22nd July 2016 filed by the Petitioner and direct the Respondent No.2 to allot the land admeasuring 1 Hectar and 40 R from the Gat No.160/1, situated at Village Uchgaon, Tal-Karveer, Dist-Kolhapur.

[B] That this Honourable Court be pleased to dispose off this writ petition at the stage of admission looking in to the controversy involved in this matter.

[C] That the cost of this writ petition be awarded in favour of the petitioner from respondent, by this Honourable court.

[D] That such other order as justice and convenience my demand from time to time be passed in favour of the petitioner by this Honourable Court.”

3. Mr. Mhatugade, learned counsel for the petitioner in assailing the impugned order would submit that the basic premise on which the Additional Collector, Kolhapur has passed the impugned order itself is erroneous and contrary to the record, inasmuch as the Additional Collector has considered that the petitioner was allotted land as a project affected person at Village Kagal, and as the petitioner is presently residing at Kagal, applying the norms as set out in the impugned order and as noted by us above, it was held that the land as demanded by the petitioner at village Uchgaon, Tq-Karveer, being beyond 8 kms from Kagal, cannot be allotted to the petitioner. To support such contention, Mr. Mhatugade, has drawn our attention to the allotment order dated 10 August 2016 to contend that in fact the petitioner has been allotted the land for residential

purposes at village Gadmudshingi, Tq. Karveer as per the said orders (Exhibit-C page 21). It is submitted that the land as demanded by the petitioner at Village Uchgaon, Tq. Karveer is within 8 kms. from Village Gadmudshingi. In this regard, our attention is also drawn to the averments as made in the petition in paragraph 12. Mr. Mhatugade submits that Additional Collector was under a erroneous impression that the land at Kagal was allotted to the petitioner, when infact the same was allotted to the petitioner's uncle Shri Ganu Govind Patil vide allotment order dated 10 March 2023 (Exhibit G page 38). Petitioners had nothing to do with such land at Kagal and it is under such wrong impression the Additional Collector considering the petitioner to be a resident of Kagal, has passed the impugned order. It is, therefore, Mr. Mhatugade's submission that the Additional Collector could not have taken such inapplicable documents in question to pass the impugned order and for such reason, the impugned order is required to be quashed and set aside.

4. On the other hand, Mr. Pawar, learned counsel for the respondent has drawn our attention to the averments as made in the affidavit filed by the Deputy Collector (Resettlement) Mrs. Ashwini Harishchandra Sonawane (Jirange) to support the impugned order. Some additional reasons are set out in the affidavit inasmuch as the land Gat no.160/1 at

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Uchgaon, Tq. Karveer is stated to be subject matter of Writ Petition No. 5653 of 2014 pending before this Court where the acquisition itself is challenged. It is, thus, contended that the prayer ought not to be considered at this stage. Insofar as the petitioners main contention is concerned that the very basis for the Additional Collector to pass the impugned order is erroneous and the affidavit is totally silent.

5. We have heard learned counsel for the parties. We have also perused the impugned order at the records at their assistance. We find much substance in the contentions as urged by Mr. Mhatugade. It appears from the perusal of the order dated 10 August 2016 that the petitioner was in fact allotted a alternate plot of land at Village Gadnudshingi, Tq. Karveer and his claim for allotment of the balance alternate land was concerned, should have been taken into consideration on the basis of the said allotment order dated 10 August 2016. The allotment of the land as requested by the petitioner was within 8 kms of Gadnudshingi, where the petitioner was allotted land, as a Project Affected Person, which ought to have been considered for allotment to the petitioner. It appears from the record that the land at Village Uchgaon, Tq. Karveer, as demanded by the petitioner was within 8 kms radius from Village Gadnudshingi, and what has been considered by the Additional

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Collector to disallow the petitioners application was in fact the allotment of land at Kagal, which was allotted to the petitioner's uncle. This is seen from the allotment order dated 10 March 2003 which is in favour of Ganu Govind Patil.

6. On such limited grounds, we are of the opinion that the impugned order would be required to be quashed and set aside, as the same has been passed without application of mind. However, this shall be subject to appropriate orders which may be passed in the pending proceedings of Writ Petition No. 5653 of 2014.

7. In the above circumstances, we dispose of the petition by the following order:

- (i) Impugned order dated 20 February 2017 is quashed and set aside.
- (ii) The Additional Collector is directed to reconsider the petitioners application and decide the same afresh within a period of 4 weeks from today and pass appropriate order in accordance with law.
- (iii) All contentions of the parties in that regard are expressly kept open.

Writ Petition No. 1482 of 2022 and Writ Petition No. 1483 of 2022

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8. In both these petitions, the petitioners on basis of an order dated 21 March 2015 passed by Respondent No.2/District Rehabilitation Officer, Kolhapur, claim to be persons entitled for allotment of alternate land as project affected persons. Their contention is that the balance land is required to be allotted to them at Village Uchgaon, Tq. Karveer, District Kolhapur and for which they have already made an application to Respondent No.2. It is their contention that earlier they had approached this Court by filing Writ Petition No. 2834 of 2017 and Writ Petition No. 13907 of 2016 and that such petitions came to be disposed of with a direction to the respondent to decide the representation of the petitioners within a time bound period. Copies of the orders dated 5 September 2018 and 16 March 2018 on these petitions are annexed to the respective petitions at Exhibit-C. On such backdrop, the petitioner has approached this Court that the land at village Uchgaon needs to be allotted as the entitlement of the petitioner is not in dispute.

9. Learned Government Pleader has drawn our attention to the averments as made in the affidavit-in-reply as filed in the connected petition filed by the Keshav Govind Patil Vs. State of Maharashtra in Writ Petition No. 1486 of 2022. It is submitted that the acquisition in respect

of the land at Village Uchgaon, Tq. Karveer, District Kolhapur itself is subject matter of challenge before this Court in Writ Petition No. 5653 of 2014. It is submitted that therefore, the petitioner cannot maintain the prayer for allotment of any such land at Village Uchgaon, Tq. Karveer, District Kolhapur.

10. We have heard learned counsel for the parties. We have also perused the record of both these petitions. In our opinion, subject to the orders which may be passed by this Court in Writ Petition No. 5653 of 2014, the application as made by the petitioner for allotment of balance land be considered by the respondents strictly in accordance with law including deciding the eligibility of the petitioner in passing appropriate orders in accordance with law.

11. Both the petitions stands disposed of in the above terms. No costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]