

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4402 OF 1995

The Chairman,
Bhika D. Dalvi
Credit Co-Operative Society,
Lakhmapur, Taluka Baglan, District Nasik. .. Petitioner

Versus

Ratan Chindaha Hande and Ors. .. Respondents

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- Ms. Rukmini Khairnar i./by Shri P. N. Joshi for Petitioner
 - Mr. P. G. Sawant, AGP for Respondent Nos.12 and 14
 - Mr. Somnath Thengal i./by Mr. Sachin Dhakephalkar and Mr. Prasad Dhakephalkar for Respondent Nos.1, 10 and 11.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 19, 2023

P.C.:

1. Heard Mr. Khairnar, learned Advocate for Petitioner; Mr. Sawant, learned AGP for Respondent Nos.12 and 14 and Mr. Thengal, learned Advocate for Respondent Nos.1, 10 and 11.

2. At the outset, Mr. Thengal would submit that he has instructions from Mr. Sachin Dhakephalkar to appear for Respondent Nos.1, 10 and 11 and that Respondent Nos.1, 10 and 11 have expired. He is unable to inform the date of their demise to me.

3. This matter was heard earlier and considering the orders passed on 24.11.2022, 01.12.2022 and 12.01.2023, hearing of this Writ Petition can no longer be further protracted for any reason, save

and except a reason which is cogent enough for the Court to grant adjournment.

4. Mr. Thengal at the outset submitted that this Court should issue fresh notice to Respondents. The request is rejected.

5. The Writ Petition is taken up for hearing, considering that it is filed in 1995 in this Court.

6. By the present Writ Petition, the Petitioner has taken exception to the order dated 29.07.1995 passed by the Additional Commissioner Nasik Division, Nasik in Appeal No.69 of 1994, whereby the allotment of the subject land in favour of the Petitioner has been rejected and the original order dated 29.07.1994 passed by the Additional Collector, Nasik has been set aside and matter has been remanded back for a fresh enquiry. The Writ Petition was admitted on 12.04.1996 and interim stay in terms of prayer clause (c) was granted. Respondents are local villagers and some of them were members of the Gram Panchayat.

7. With the able assistance of Ms. Khairnar, learned Advocate for Petitioner and Mr. Sawant, learned AGP, I have perused the record and pleadings of the case. Hence it will be apposite to state the relevant facts necessary for adjudication of the present Writ Petition:-

i. The impugned order passed by the Additional

Commissioner recording a finding that while granting allotment of the subject land to the Petitioner – Society none of the Rules and Regulations have been followed and the power to allot the land lies only with the State and not with the Collector. That apart, another reason stated in the impugned order is that the recommendation of the Deputy Registrar Cooperative Societies has not been placed on record. On the basis of the aforesaid reasons the substantive order of allotment dated 29.07.1994 has been set aside by the impugned order.

- ii. Record indicates that on 14.08.1993 the village Panchayat passed an unanimous resolution in favour of recommending allotment of the subject plot which was lying vacant in their village in favour of the Petitioner.
- iii. On 24.08.1993 Petitioner made Application to the Collector, Nasik seeking allotment of the subject plot under the provisions of Rules 12, 14, 15, 31 and 32 of the Maharashtra Land Revenue (Disposal of Government Land) Rules 1971 (for short '**Rules**').
- iv. On 08.09.1993 the Assistant Registrar accorded permission to the Petitioner for use of the building fund

for construction of its office on the subject plot.

- v. On 14.09.1993 the Talathi, Lakhmapur issued a certificate to the effect that subject plot was free from encumbrances and there was no demand of any nature whatsoever from any person for the same. Perusal of the certificate indicates that it has been further stated therein that the subject land was not reserved for any public purpose.
- vi. On 12.07.1994, the Additional Registrar accorded his recommendation as well as his permission for use of building fund for construction of the building and office and accordingly forwarded his recommendation to the Collector for allotment of the subject plot to the Petitioner.
- vii. On the basis of the aforesaid recommendations and documents, the Additional Collector on 29.07.1994 passed the order of allotment in favour of the Petitioner.
- viii. On 23.11.1994, the Petitioner deposited the prescribed amount in the Government Treasury pursuant to which agreement came to be executed between the Petitioner and the Collector in respect of the subject plot.

Possession of the subject plot was handed over to the Petitioner on the same day. Possession receipt was also issued. Subsequently the name of the Petitioner – Society has been mutated in the Revenue record maintained by the revenue authorities.

- ix. On 27.09.1995, Respondent Nos.1 to 9 filed Appeal before the Additional Commissioner, Nasik Division, Nasik to challenge the allotment of the subject plot to the Petitioner. By the impugned order the Additional Collector has set aside the order of allotment and remanded the matter back for fresh enquiry.

8. I have heard the learned Advocates for respective parties. Submissions made by learned Advocates have received due consideration of the Court.

9. Record indicates that order of allotment dated 29.07.1994 when perused has been passed after taking into account and consideration the extant provisions of the Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971. The twin reasons mentioned in the order of the Additional Commissioner that recommendation of the Assistant Registrar Co-Operative Society is one of the reason is belied by the fact that the Assistant Registrar and Additional Registrar have by their letter and recommendation dated

08.09.1993 and 12.07.1994, respectively, have expressly conveyed their permission allowing the Petitioner to use the building fund for the purpose of construction of its office and for allotment of the same by the Collector. Hence, this objection does not survive.

10. In so far as the general finding given in the impugned order that while allotment of the subject land to the Petitioner, Rules and Regulations have not been adhered to is concerned, it is seen that the said finding is cryptic without considering the aforementioned factual position prior to its allotment. The impugned order has been passed with complete non application of mind without considering any of aforementioned factual facets in the present case. It is an order without any reasons and cannot be sustained. It merely states that the authority has after hearing the arguments has carefully perused the record of the case but the same is not reflected in any of the findings given in the impugned order. In fact there are no findings given in the impugned order save and except the aforementioned twin one line findings for which no reasons have been given. Such an order is wholly unsustainable and cannot be permitted to be passed especially when the facts of the case prove to the contrary. As alluded to herein above, this Court has taken notice of the entire events preceding the allotment order. The events in fact pertain to recommendation, passing of resolution and permitting the Petitioner to use the building

fund for the purpose for which the allotment has been sought by the Petitioner.

11. The objections of Respondent Nos.1 to 9 are that though there were members of the Gram Panchayat they had never consented in the Gram Panchayat meeting wherein the unanimous resolution was passed and in fact their consent was obtained by fraud. In this context, the unanimous resolution passed by the Gram Panchayat Lakhmapur, Taluka-Baglan, District-Nasik and more specifically Resolution No.34 dated 14.08.1993 is adduced at Page 14 of the Writ Petition and is seen by me. Perusal of the said resolution clearly indicates that after due deliberation on the Application made by the Petitioner which was listed against Subject no.7 in the said meeting the Gram Panchayat has taken into consideration all factors pertaining to allotment of the subject land to the Petitioners and only thereafter an unanimous resolution has been passed. It needs to be noted that though the subject land has been subsequently allotted to the Petitioner after following the due process of law, the Petitioner has to adhere to all such terms and conditions of allotment and more specifically under Rule 41 of the aforementioned Rules under which the said allotment has been done.

12. The Petitioner has also placed on record counter affidavit of several other Gram Panchayat members who have in fact attended the

meeting of the Gram Panchayat on 14.08.1993 and had given their consent which ultimately translated into the unanimous resolution. The objections of the Respondents therefore cannot be accepted as they stand. The same deserve to be rejected.

13. In view of the above observations and findings, the impugned order dated 29.07.1995 deserves to be interfered with. The same is not sustainable in law. Procedure for allotment of the subject plot to the Petitioner - Society has been duly followed by the statutory authorities concerned by following the due process of law. Petitioner is holding the subject land subject to the conditions stipulated in the aforementioned Rules.

14. The impugned order dated 29.07.1995 therefore stands quashed and set aside.

15. In view of the above, allotment order dated 29.07.1994 is sustained and upheld.

16. Writ Petition stands disposed. No order as to costs.

[MILIND N. JADHAV, J.]

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signed by
RAVINDRA
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