

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9205 OF 2019

Shivaji University, Kolhapur .. Petitioner.
v/s.
The State of Maharashtra
& Others .. Respondents.

Adv. Vikram N. Walawalkar for Petitioner-University.
Mr. Ranjeet Yadav i/c. Deputy Registrar, Shivaji University,
Kolhapur.
Ms. Anushka Kadam, Law Officer, Shivaji University, Kolhapur.
Smt. K. N. Solunke, AGP for Respondent-State.

**CORAM: K. R. SHRIRAM &
FIRDOSH P. POONIWALLA, JJ.
DATED : 22nd JUNE 2023.**

P.C:-

1. Petitioner is impugning an order dated 23rd July 2014, passed by Respondent No.1 and order dated 23rd January 2015, passed by Respondent No.2, State of Maharashtra through Ministry of Revenue and the Collector, Kolhapur, respectively.

2. Respondent Nos.1 and 2 have not filed any affidavit in reply though they have been appearing before this Court since 27th August 2019. On 6th March 2020 a *status-quo* order was passed. We also note that in between matter used to get listed but could not be taken up for paucity of time. Still Respondent Nos.1 and 2 chose not to file any affidavit in reply, opposing the Petition or denying the

averments/allegations in the Petition. As for Respondent No.3, there is an office note saying Respondent No.3 has been served. There is bailiff's report as well as affidavit of service. Respondent No.3 also has neither entered appearance nor filed any affidavit opposing the Petition. We proceed, therefore, on the basis that none of the averments contained in the Petition are controverted.

3. Petitioner is a statutory university governed by the provisions of Maharashtra Public University Act, 2016. For the purpose of establishing the University, various lands were acquired by Respondent No.1 and some of the lands owned by Respondent No.1 were also allotted to the University. Petitioner states that there are various orders of allotments and awards passed in respect of lands for being used for educational purposes and for establishing the University. The land, Regional Survey ("R.S.") No.150 ("the said land") which is the subject matter of this Petition was also part of the various lands that were allotted to Petitioner. It is Petitioner's case that on the said land, Petitioner has constructed department of technology.

4. According to Petitioner, it is not aware whether Respondent No.3 is a collective body registered under any

provisions of law or a legal person but is represented thorough one Mahesh Ramsingh Machale. Respondent No.3 applied to Respondent No.2 on 20th December 2010, seeking allotment of the said land,to be used as a burial ground for community to which Respondent No.3 belonged to. Copy of the said Application was also issued to Petitioner and Petitioner rejected the proposal for allotment of the said land to Respondent No.3.

5. Petitioner states that Respondent No.1 issued an order dated 23rd July 2014, directing Respondent No.2 to withdraw the land from Petitioner and hand it over to Respondent No.3. It is stated in the Petition that this order came to be passed without issuing any show cause notice to Petitioner or even without giving a hearing to Petitioner. Mr. Walawalkar states that this averment in the Petition itself enough to have the impugned order dated 31st July 2014 quashed and set aside, more particularly because none of the Respondents have denied this averment.

6. Petitioner refused to comply with the order passed by Respondent No.1 since it was passed without following due process. In view thereof, Respondent No.2 issued an order dated 23rd January, 2015 in favour of Respondent No.3 giving effect to the

order dated 23rd July, 2014 passed by Respondent No.1. Petitioner challenged this order as well before the Divisional Commissioner, Pune. The Residential Deputy Collector vide a communication dated 1st December 2018 informed Petitioner that the Division Commissioner may not be able to deal with the challenge as the subject matter of challenge is pursuant to direction issued by the Government. Petitioner therefore, approached this Court.

7. We have also considered the impugned order dated 23rd July 2014. There is nothing to indicate that even a notice was issued to Petitioner calling upon Petitioner to show cause or explain why the land allotted to Petitioner could not be taken away and given to someone else. None of the averments have also been controverted.

8. In the circumstances, since Respondent No.1 has not followed the principles of natural justice by issuing a show cause notice or giving an opportunity to show cause or given a personal hearing, the order dated 23rd July, 2014 is hereby quashed and set aside. Since the order dated 23rd January 2015 is only consequential to order dated 23rd July 2014, the same is also quashed and set aside.

9. A copy of this order be placed before the Law Secretary, Government of Maharashtra to be taken up with the concerned departmental heads so that replies to Petitions are filed promptly if the Government is really serious in protecting its own interest or orders passed by it.

10. We clarify that we have not given any opinion on the merits of the matter.

(FIRDOSH P. POONIWALLA,J.)

(K. R. SHRIRAM,J.)