

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12398 OF 2023

Shri. Dattatray Machhindra Koli

..Petitioner

Versus

State of Maharashtra & Ors.

..Respondents

Mr. Mahadeo Choudhari with Ms. Trisha Choudhari and Mr. Ranveer Choudhari for Petitioner.

Mr. S. H. Kankal, AGP for State.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : OCTOBER 11, 2023

P.C.:

1. We have heard Mr. Choudhari, learned counsel for the petitioner and Mr. Kankal, learned AGP for the State.

2. The petitioner in this petition challenges an order dated 31 October, 2022 passed by the Additional District Collector, Solapur, which is reflected in the Village Extract No.6 being mutation no. 5605 (page 66 of the paper-book). The decision as reflected in the said extract is *inter alia* to the following effect:-

“(Official Translation of a photocopy of an extract from Record of Right, typewritten in Marathi)

Village : Brahmapuri Taluka : Mangalvedha District : Solapur

Serial Number of entry	Nature of right acquired	Affected survey numbers and sub-division numbers	Name, initials and remark of the Officer
5605	Nature of Mutation Entry : Un-registered Basis of Entry : Order and Documents Date of Mutation Entry : 08.11.2022 Date of receiving intimation : 07.11.2022 By the order No. Rehabilitation-3 / Satara/ S.R./ 1256/ 2022 dated 31.10.2022, the Competent Authority and Additional Collector and Deputy Director, Rehabilitation L(Land), Solapur, has directed to cancel on administrative grounds, the allotment of the land bearing Gat No. 570 part, area adm. 0.80 hectare-Are situated at village Brahmapuri, Tal. Mangalvedha, allotted to Smt. Radhabai Haribhau Navghane, residing at Aasgaon, Tal. Vai, District Satara, the project affected person and to delete the name of the Government of Maharashtra / existing khata-holder standing entered in the Register of Record of rights in respect of the land bearing aforesaid Gat number and to enter the name of the "Collector (Revenue), Solapur, Government of Maharashtra against the entire area of the land" bearing said Gat number and therefore, an entry to that effect is made in the 7/12 extract in Village Records. The Order is filed in records. Date of service of notice to the Interested Parties and date of making Mutation Entry : 11.11.2022. (Balsab Sajjan Shaikh) Talathi, Brahmapuri, Sajha Brahmapuri, Tal. Mangalvedha, District Solapur.	570 (Certified) in all :- 1	Perused the copy of order bearing No. Rehabilitation-3/Satara/ S.R./ 1256/ 2022 dated 31.10.2022, passed by the Competent Authority and Additional Collector and Deputy Director, Rehabilitation L(Land), Solapur. Entry is certified. (Dhananjay Shivaji Ingole) Circle Officer :- Mangalvedha, Tal. Mangalvedha, District - Solapur Date : 11.11.2022

3. It is thus seen that for administrative reasons and in pursuance of the order dated 31 October, 2022 issued by the Additional District Collector, Solapur, the said entry came to be made in the revenue record.

It is such decision of the Additional Collector, which is assailed in the present petition.

4. The grievance of the petitioner is that the rights of the petitioner are adversely affected by the impugned decision of the Additional Collector for the reason that the land in question bearing Gat no. 570 admeasuring about 0H 80R situated at village Brahmapuri, Taluka Mangalwedha was allotted to one Smt. Radhabai Haribhau Navghane by an order dated 02 June, 2022. In pursuance of such order, it is stated that the revenue records came to be mutated by endorsing the name of Smt. Radhabai Haribhau Navghane, which took place on 19 September, 2022.

5. The petitioner has contended that thereafter by a registered Sale Deed dated 20 September, 2022, the land in question was sold to the petitioner. The petitioner contends that there is no dispute that the possession receipt dated 06 September, 2022 was endorsed in favour of Smt. Radhabai Haribhau Navghane, which is placed on record at page 54 of the paper-book. As also, a panchanama to that effect was carried out by Shri. B. G. Nagtilak, Circle Officer (Rehabilitation), Solapur, which is also part of the paper-book. The petitioner has contended that in pursuance of the sale deed, the possession of the said land was handed over by the said

allottee Smt. Radhabai Haribhau Navghane in favour of the petitioner. The name of the petitioner also came to be mutated in pursuance of the sale deed as executed by the original allottee Smt. Radhabai Haribhau Navghane on 10 October, 2022.

6. The grievance of the petitioner is that valuable rights in favour of the petitioner have been created which find recognition even in the revenue records. The Additional Collector, however, has passed the impugned order dated 31 October, 2022 whereby the allotment of the land in question as made in favour of the project affected person Smt. Radhabai Haribhau Navghane itself came to be cancelled and without an opportunity of a hearing either to the original allottee or to the petitioner. The contention is that it is the petitioner's right under the sale deed as also to remain in possession of the land under such sale deed are sought to be taken away, by the impugned order. It is on such premise, the petitioner is before the Court praying for the following reliefs:-

“a) Record and proceedings pertains to the impugned order dated 31.10.2022 passed by Ld. Additional Collector, Dist. Solapur kindly be called for.

b) After examining the validity and legality of the same by an appropriate order and/or direction from this Hon'ble Court the impugned order dated 31.10.2022 passed by Additional Collector, Solapur whereby cancelling the allotment to the project affected person kindly be quashed and set aside.

c) Pending the hearing and final disposal of this present petition

by an appropriate order and/or direction from this Hon'ble Court the respondent authority kindly be directed to effect the mutation entries in favour of the petitioner which are cancelled pursuant to the impugned order dated 31.10.2022 passed by Additional Collector, Dist. Solapur pertains to Gat No. 570 admeasuring about 0H 80R situated at village Brahmapuri, Taluka Mangalwedha, Dist. Solapur.

d) Pending the hearing and final disposal of this present petition by an appropriate order and/or direction from this Hon'ble Court the respondent the authority kindly be restrained from allocating the land in question bearing Gat No. 570 admeasuring about 0H 80R situated at village Brahmapuri, Taluka Mangalwedha, Dist. Solapur to third person.

e) Pending the hearing and final disposal of this present petition by an appropriate order and/or direction from this Hon'ble Court the respondent authority kindly be restrained from disturbing the possession of the petitioner of the land bearing Gat No. 570 admeasuring about 0H 80R situated at village Brahmapuri, Taluka Mangalwedha, Dist. Solapur.

f) Interim and ad-interim reliefs in terms of prayer clause (c), (d) and (e) above kindly be granted.

g) Any other and further reliefs which deem fit and proper in the interest of justice be granted in favour of the petitioner."

7. Considering the settled position in law that an order which would entail civil consequences can never be passed without an opportunity of a hearing being given to the persons who would be adversely affected, are attracted in the present situation. Any such defect in the impugned order would be an incurable defect and an opportunity was required to be given to the persons affected to file reply and be heard before any order was passed to cancel the allotment; more particularly as in the present case, the original allottee had already created third party rights in favour of the

petitioner in respect of the subject land.

8. In the aforesaid circumstances, the only course of action which the Court would be required to follow and as known to law, would be that the impugned order dated 31 October, 2022 passed by the Additional District Collector, Solapur would be required to be quashed and set aside, with a further direction that the Additional Collector, if has any intent to proceed further to pass any fresh orders, in that event, he shall issue a notice to the petitioner to show cause against cancellation of allotment. Such a notice would also be required to be issued to both the original allottee and the petitioner, and both, the petitioner as well as the original allottee are required to be heard on their respective contentions. We accordingly dispose of this petition by the following order:-

ORDER

i. The impugned order dated 31 October, 2022 passed by the Additional District Collector, Solapur is quashed and set aside as reflected in the mutation entry in the Village Extract No. 6 (page 66 of the paper-book) is quashed and set aside, with a further direction that in the event the Additional District Collector is of the opinion that the original allotment of the said land dated 02 June, 2022 as made in favour of Radhabai Haribhau Navghane is required to be cancelled, in that event, a

show cause notice be issued to the petitioner as also to Radhabai Haribhau Navghane calling upon them to show cause as to why such allotment ought not to be cancelled.

ii. After providing an opportunity of responding to the show cause notice and placing on record all the documents and after granting an opportunity of personal hearing, the Additional District Collector is free to pass an appropriate order in accordance with law. Ordered accordingly.

iii. All contentions of the parties are expressly kept open.

iv. The petition is disposed of in the above terms. No costs.

v. Needless to observe that as we have set aside the order dated 31 October, 2022, the Additional District Collector shall not take any coercive action against the petitioner on the basis of the said order.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]