IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.87 OF 2023

Uttam Daduji Kamble, ...**Petitioner**
through of Power of Attorney Holder-Rajesh Fulchand Bopche.

Versus

The State of Maharashtra, through Secretary, .. **Respondents**
Department of Revenue, Mantralaya, Mumbai and others.

Shri A. N. Vastani, Advocate for petitioner.
Shri Amit Madiwale, Assistant Government Pleader for respondent nos.1 to 3.
Shri C. J. Dhumane, Advocate for respondent no. 4.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.
ARGUMENTS WERE HEARD ON : 30th AUGUST, 2023
ORDER IS PRONOUNCED ON : 4th NOVEMBER, 2023

Heard.

2. The petitioner has raised a challenge to the order dated 14.12.2022 passed by the third respondent-Sub Divisional Officer and Land Acquisition Officer, Gondia whereby it has been directed that the 7/12 extracts with regard to Gat No.201/1/2 be corrected and in the other rights column the entry that land to the extent of 924 square meters relating to the road and 500 square meters which is open land be shown to have been handed over to 'Local Planning Authority'. On the premise that this order results in depriving the petitioner of the land owned by him without paying any compensation, the petitioner has invoked jurisdiction under Article 226 of the Constitution of India by urging that in the facts of the present case availability of alternate remedy would not act as bar for entertaining the writ petition.

3. Considering the aforesaid aspect, a brief reference to relevant facts may be made. The petitioner claims to have purchased land admeasuring 0.50 R from Gat No.201/1/2 situated at Mouza-Dhakni, Tahsil and District

Gondia pursuant to a sale deed dated 06.01.2010. The petitioner intended to start a petroleum outlet at the said land and thus sought permission to convert the same for non-agricultural use. On 22.04.2010 permission was granted by the Sub-Divisional Officer by which 3576 square meters of said land was to be utilized for the petroleum outlet, 924 square meters was to be utilized for service road and 500 square meters land was to be kept as open space. On the basis of said order, the revenue records were corrected. The petitioner on 18.10.2021 moved the Collector seeking correction of the 7/12 extracts so as to indicate the total land owned by him to be 0.50 R. The said application was forwarded to the Sub-Divisional Officer who on 09.02.2022 sought guidance in the said matter from the Collector. This was for the reason that though the petitioner's land was admeasuring 0.50 R in the revenue records, there was no reference to the land utilized for the road being 924 square meters and land kept as open space being 500 square meters. In the meanwhile, land to the extent of 0.34 R came to be acquired pursuant to award dated 22.06.2022 under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 at the behest of Railway Authorities. The petitioner was held entitled to receive compensation for the said land to the extent of Rs.1,56,04,796/-. The possession of the acquired land admeasuring 0.34 R was taken on 07.08.2022. The Collector on 18.11.2022 granted permission to review the initial order dated 22.04.2010 so as to correct the revenue records. The petitioner was thereafter noticed and heard. On 14.12.2022 the Sub-Divisional Officer directed correction of the revenue records in the manner stated hereinabove which is the subject matter of challenge in the present writ petition.

4. Having heard the learned counsel for the parties and having considered the ratio of the decisions in *Vrajlal Jinabhai Patel since deceased through his LRs Smt. Jagrati Vrajlal Patel and another vs. State of Maharashtra and others* ***[2003(3) Mh.L.J.215],*** the judgment dated 02.12.2014 in ***Writ Petition No. 2975 of 2000*** (*Justice Shriniwas Gaurishankar Mutalik vs. Aurangabad Municipal Corporation, Aurangabad*

and others), ***Writ Petition No.6357 of 2013*** *(Gurudatta Cooperative Housing Society Wadgaon Gupta and another vs. State of Maharashtra and others)* decided on 28.07.2016 at Aurangabad Bench, we do not find that there is any exceptional case made out to permit the petitioner to invoke extra ordinary jurisdiction under Article 226 of the Constitution of India since we find that the petitioner can seek redressal of his grievances by availing the remedy provided for under the Maharashtra Land Revenue Code, 1966 (for short, the Code of 1966).

It is seen that out of the 0.50 R land that was initially owned by the petitioner, 0.34 R land stands acquired at the behest of the fourth respondent-Ministry of Railways. The dispute pertains to remaining 0.16 R land. According to the revenue authorities, while granting permission under Section 44 of the Code of 1966 to utilize the said land for non-agricultural use, area admeasuring 3576 square meters was to be utilized for petroleum outlet while 924 square meters was to be utilized for road and 500 square meters was to be kept as open space. Despite aforesaid, the 7/12 extracts referred only to area admeasuring 3576 square meters and it was in that backdrop that steps were sought to be taken to correct the revenue records. The Sub-Divisional Officer by his communication dated 09.02.2022 while considering the petitioner's applications dated 20.08.2021 and 18.10.2021 seeking corrections of the revenue records had sought guidance from the Collector. It is in this backdrop that on 04.11.2022 the Sub-Divisional Officer sought permission of the Collector to correct the order dated 22.04.2010 that was passed under Section 44 of the Code of 1966. After such permission was granted by the Collector on 18.11.2022, the Sub-Divisional Officer exercised power for correcting the revenue records.

5. From the material on record we find that the petitioner can challenge the order dated 14.12.2022 by invoking the remedy provided under the Code of 1966. In the said proceedings, the relevant factual aspects pertaining to the land under the road and land required to be left as open space can also be urged. The order dated 14.12.2022 has been passed after noticing the petitioner and hearing his say. It is not the case that in breach

of principles of natural justice the said impugned order came to be passed. Since we find that the matter pertains to correction of the revenue records, relevant factual aspects would also require consideration.

6. For this reason, we find that the present is not a fit case for being entertained under Article 226 of the Constitution of India. Hence by keeping all issues raised in the present proceedings open, the petitioner is at liberty to challenge the order dated 14.12.2022 by invoking the remedy provided under the Code of 1966. Since the petitioner had approached this Court by filing the present writ petition on 02.01.2023, it is directed that if the petitioner invokes the remedy provided under the Code of 1966 within a period of three weeks from today, the proceedings shall be entertained on merits without going into the question of delay. It is clarified that this Court has not examined the correctness or otherwise of the rival contentions and all issues are kept expressly open.

The writ petition is disposed of in aforesaid terms leaving the parties to bear their own costs.

(MRS. VRUSHALI V. JOSHI, J.) **(A.S.CHANDURKAR, J.)**

Andurkar.