

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

WRIT PETITION NO. 267 OF 2021

Krishnagopal s/o Baijnath Gupta,
aged about 60 years, Occ. Business,
R/o Bhiwapur, Tahsil Bhiwapur, District Nagpur.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
through Ex-Secretary, Rural Development Department,
Mantralaya, Mumbai.
2. The Sub-Divisional Officer,
Umred, Tahsil – Umred, District – Nagpur.
3. The Tahsildar,
Bhiwapur, Tahsil – Bhiwapur, District – Nagpur.
4. Rambhau s/o Pancham Taskar,
aged about Major, Occ. Service,
R/o Village – Bhiwapur, Tahsil – Bhiwapur,
District – Nagpur.

RESPONDENTS

Shri R.S. Akbani, Advocate for the petitioner.
Shri A.A. Madiwale, Assistant Government Pleader for respondent Nos. 1 to 3/
State.
Shri R.D. Hajare, Advocate for respondent No.4 (appointed).

CORAM : A.S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : JANUARY 7, 2023

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned
Counsel for the parties.

2. The petitioner is aggrieved by the order dated 23/7/2020

passed by the Sub-Divisional Officer in exercise of power conferred by Section 31 of the Maharashtra Land Revenue Code, 1966 (for short “the Code”). By that order, Gat No. 155 admeasuring 0.66 square meters has been allotted to respondent No.4. It is the grievance of the petitioner that despite his application dated 6/10/2015 seeking allotment of the very same plot, it has been allotted to respondent No.4.

3. On behalf of the respondents, an objection is raised to the maintainability of the Writ Petition on the ground that statutory remedy of filing an appeal against the impugned order is available. Reference is made to Section 247 of the Code.

4. We find that the impugned order has been passed by the Sub-Divisional Officer under Section 31 of the Code. Against that order, remedy of filing an appeal before the Collector is available. Since factual aspects would be required to be adjudicated, we are inclined to permit the petitioner to avail statutory remedy.

5. Accordingly, the following order is passed :

i. The petitioner is permitted to challenge the order dated 23/7/2020 by filing an appeal before the Collector, Nagpur under Section

247 of the Code. If such appeal is preferred within a period of three weeks from today, the same shall be entertained on merits without going into the question of delay. For a period of three weeks, the interim order dated 13/1/2021 protecting the possession of the petitioner shall continue to operate. Thereafter, the Collector is free to consider the prayer for grant of interim relief on its own merits and pass orders after hearing all the parties.

6. Keeping the points raised in the Writ Petition open, it is accordingly disposed of. Rule is made absolute in the aforesaid terms. No costs.

7. The learned Counsel for respondent No.4 be paid professional fees in accordance with the Rules being appointed by the legal aid Committee.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

SUMIT