



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5099 OF 2024

Nandkishor s/o Dhonduji Salwe ... Petitioner

VERSUS

The State of Maharashtra & Others ... Respondents

.....
Mr. A.L. Kanade, Advocate for Petitioner
Mr. A.B.Girase, Govt. Pleader for respondents No.1 to 4
.....

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
KISHORE C. SANT, J.**

DATE: 25th JULY, 2024.

P.C. :

1. Heard Mr. Kanade, learned counsel for the petitioner. Mr. Girase, learned Government Pleader puts in appearance on behalf of the respondents No.1 to 4 and waives notice. Issuance of notice to respondent No.5 is dispensed with for the decision of this Writ Petition.

2. The claim put forth by the petitioner by this petition is in respect of encroachment made by him over portion of land Gut No.30, situated at village Pankanergaon, Taluka Sengaon, District Hingoli with the prayer that

encroachment be regularised in view of the provisions contained in two Government Resolutions dated 28/11/1991 and 12/7/2011. He has drawn our attention to the panchanama prepared by the revenue officials on 30/9/2014, which has been enclosed as Exhibit A to the Writ Petition, wherein it has been stated that, the petitioner has been found in encroachment over some portion of Gut No.330. Drawing our attention to the provisions contained in the aforesaid two Government Resolutions, it has been stated by learned counsel for the petitioner that, in terms of the provisions contained, if a person belonging to Scheduled Caste is found in encroachment over some of the gairan land between the period commencing from 1/4/1978 and ending on 14/4/1990, the same is entitled to be regularised.

3. Learned Government Pleader, however, has opposed the petition and has drawn our attention to Section 22-A of the Maharashtra Land Revenue Code, 1966, according to which, gairan land or pasture land can be diverted, granted or leased only for public purpose or public project of Central Government or State Government and not to any individual. He has thus argued that, in view of the said provision, the prayer made by the petitioner for

regularisation of the land in question is not tenable.

4. We have considered the rival submissions made by the learned counsel for the parties and have also perused the records available before us in this Writ Petition. Hon'ble Supreme Court, in the case of *Jagpal Singh & ors. Vs. State of Punjab & ors.* reported in (2011) 11 SC 396, has taken note of certain encroachments on Government land and has opined that there cannot be any justification for regularising such illegal occupation. However, while directing the State Government and other authorities to prepare a scheme for eviction of illegal/ unauthorised occupants of the Government land, and the land earmarked for common villagers, has also provided that, regularisation should only be permitted in exceptional cases or where lease has been granted under Government Notification to landless labourers or members of the Scheduled Castes/ Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.

5. Considering the grant of land to the members of Scheduled Castes for giving effect to the mandate as contained in the judgment of the Hon'ble Supreme Court in *Jagpal Singh* (supra), the State Government has issued

Government Resolution dated 12/7/2011, wherein directions have been issued to give effect to the mandate in the case of Jagpal Singh (supra). Having regard to the provisions contained in Government Resolution dated 12/7/2011 and the provisions contained in Section 22-A of the Maharashtra Land Revenue Code, 1966, which was inserted w.e.f. 26/4/2017, no illegal encroachment is permissible to be regularised on gairan land.

6. However, having observed as above, what we notice in this case is that, prior to issuance of the Government Resolution dated 12/7/2011, an application was made on behalf of the petitioner on 3/6/2006, seeking regularisation, whereupon the Divisional Commissioner, by letter dated 9/6/2006 directed the Collector to consider the application of the petitioner. It further appears to us that, in pursuance of the said communication issued by the Divisional Commissioner, the claim of the petitioner for regularisation has till date not been considered finally. The panchanama enclosed with the Writ Petition at Exhibit A discloses that the revenue authorities themselves have found the petitioner in occupation of the subject land.

7. In view of the aforesaid, we dispose of this Writ

Petition with the direction to the Collector, Hingoli to consider the claim of the petitioner for regularisation of his occupation over the subject land by passing a reasoned and speaking order strictly in accordance with law.

8. For taking an appropriate decision, the Collector will call upon the requisite documents and record from his subordinates and shall also provide an opportunity of hearing to the petitioner.

9. The entire exercise shall be completed by the Collector within three months from the date the certified copy of this order is produced before him.

10. With the aforesaid observations and directions, the Writ Petition is finally disposed of.

(KISHORE C. SANT, J.)

(CHIEF JUSTICE)

fmp/-