

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 6669 OF 2003

rrpillai

1. Indubai Namdeo Shivkari
Age : 45, Occ: Agriculture
And household, r/o. Chakan
Taluka Khed, District : Pune
2. Anusayabai Tukaram Raskar
Age : 622 Occ : Agriculture and
household, R/o. Chas,
Taluka Khed, District – Pune
(since deceased through Lrs)
- 2A. Bhikaji Tukaram Raskar
(since deceased through Legal heirs)
- 2A1. Radhabai Bhikaji Raskar
Age : 50 years, Occ : Agri
- 2A2. Deepak Bhikaji Raskar
Age : 37 years, Occ : Business
- 2B. Sundar Sakaram Jadhav
Age : 55 years, Occ : Agri
- 2C. Baby Sambhaji Agarkar
Age : 50 years, Occ : Agri

- 2D. Balasaheb Tukaram Raskar
(since deceased through Legal Heirs)
- 2D1. Swapnil Balasaheb Reskar
Age : 30 years, Occ : Service
- 2D2. Sujit Balasaheb Raskar
Age : 28 years, Occ : Service
- 2E. Subhash Tukaram Raskar
Age : 53 years, Occ : Service
- 2F. Maruthi Tukaram Raskar
Age : 48 years, Occ : Service
- 2G. Nanda Vilas Bhujbal
Age : 45 years, Occ : Agriculture
2A1 to 2G all residing at Post and
Village Chas, Taluka Khed
District Pune
- 3. Ganpat Sakharam Mali
(since deceased through legal heirs)
- 3A. Parvatibai Ganpat Mali
Age : 75 years, Occ : Agriculture
- 3B. Narayan Ganpat Mali
Age : 62 years, Occ : Agri

- 3C. Haribau Ganpat Mali
Age : 59 years, Occ : Agri
- 3D. Nanda Pandurang Raskar
Age : 55 years, Occ : Housewife
- 3E. Nanabhau Ganpat Mali
Age : 53 years, Occ : Agri
- 3F. Vilas Ganpat Mali
Age : 50 years, Occ : Agri
3A to 3F All R/at Bhima Koregaon,
New Wada Gaothan, Taluka Shirpur
4. Sudam Sakharam Mali
Age : 55, Occ : Agriculture
R/o. Bhima Koregaon
Tal. Shirur, District-Pune

..... Petitioners

Versus

1. State of Maharashtra
Through the Collector and
Deputy Director of Rehabilitation
(Land), Pune
2. Additional Commissioner
Pune Division, Pune

3. Damodar Devram Gawhane
Age : Adult, Occ : Agriculture
R/o. Dingrajwadi, Taluka Shirur
District : Pune
4. Smt. Gaubai Kashinath Raskar
(since deceased through legal heirs)
- 4A. Pandurang Kashinath Raskar
Age : years, Occ. Agri
- 4B. Shivaji Kashinath Raskar
Age : 55 years, Occ : Agri
- 4C. Dattatray Kashinath Raskar
Age : 48 years, Occ : Agri
- 4D. Suresh Dattatray Raskar
(since deceased through legal heirs)
- 4D1. Mandakani Suresh Raskar
Age : 46 years, Occ : Agri
- 4D2. Nitin Suresh Raskar
Age : 30 years, Occ : Business
- 4D3. Rajendra Suresh Raskar
Age : 25 years, Occ : Service
R/o. Bhima Koregaon,
Taluka Shirur, District Pune

- 5. Smt. Shiubai Sopan Waghule
(since deceased through Legal heirs)
- 5A. Shankar Sopan Waghule
Age : 63 years, Occ : Agri
- 5B. Sahebrao Sopan Waghule
Age : 52 years, Occ : Service
- 5C. Balu Sopan Waghule
Age : 55 years, Occ : Service
5A to 5C R/o. Bahirwadi, Chas,
Taluka Khed, District Pune
- 5D. Nanda Popat Pingle
Age : 53 years, Occ : Agriculture
R/o. Village Pabal, Taluka Khed
Dist. Pune
- 5E Hausabai Dnyaneshwar Jadhav
(since deceased through legal heirs)
- 5E1 Rajendra Dnyaneshwar Jadhav
Age : 45 years, Occ : Service
R/o. Village Khadus, Tal. Khed
Dist. Pune.

Mr. N. V. Bandiwadekar a/w. Mr. Sacin Kadam for the Petitioners.

Ms.M. S. Bane, AGP for Respondent Nos. 1 and 2.

Mr. Manoj A. Patil a/w.Mr. Jotiram R. Jadhav for Respondent No.3.

CORAM : GAURI GODSE, J.

RESERVED ON : 1st FEBRUARY 2024

PRONOUNCED ON : 7th MAY 2024

JUDGMENT:

1. This petition challenges the Judgment and Order dated 16th August 2003 passed by the Divisional Commissioner, Pune Region, in Revision Application filed by petitioner nos. 1 and 2. The impugned order arises out of an allotment order issued under the provisions of The Maharashtra Project Affected Persons Rehabilitation Act, 1976 ("the Rehabilitation Act of 1976"). The Divisional Commissioner dismissed the revision application filed by petitioner nos. 1 and 2 and confirmed the order passed by the learned Collector on 15th March 2003, modifying the order of allotment of alternate lands in favour of the petitioners.

2. For considering the submissions made by the parties, it is necessary to note the facts of the case as under:-

(a) Petitioners and respondent nos. 4 and 5 are the heirs and legal representatives of deceased Sakharam. Petitioner nos. 1 and 2 and respondent nos. 4 and 5 are daughters of Sakharam. Petitioner nos. 3 and 5, i.e. Ganpat and Sudam, are sons of Sakharam. By a registered partition deed dated 22nd September 1976, the ancestral lands were divided between Sakharam and his sons.

(b) Pursuant to the registered deed of partition, Sudam made an application before the concerned Talathi on 23rd April 1977, intimating the registration of the partition deed and requesting that the necessary entries be made in the revenue records. The said application was kept pending, and it appears that no entry was made in the revenue records.

(c) By notification dated 20th September 1979, issued

under Section 11 of the Rehabilitation Act of 1976, lands belonging to Sakharam and his sons were notified as being in the affected zone for the Chaskaman project.

(d) Sakharam and his sons' lands were acquired under the Land Acquisition Act 1894 ('Acquisition Act') pursuant to the proposal submitted by the Executive Engineer of Chaskaman Project, who is the acquiring body, for the acquisition of lands that were being submerged in the Chaskaman project.

(e) On 20th February 1982, mutation entry no. 5544 was made for recording the execution of the registered deed of partition.

(f) On 15th June 1989, Award under Section 11 of the Acquisition Act was issued and separate areas from the lands belonging to Sakharam, Ganpat and Sudam were acquired. The statement 'A' of the award showed the amount of compensation separately paid to them.

(g) On 6th June 1989, Sakham expired, leaving behind his sons Ganpat and Sudam, i.e. petitioner nos. 3 and 4, and four daughters, i.e. petitioner nos. 1 and 2 and respondent nos. 4 and 5.

(h) By order dated 26th October 1991, Sudam was allotted alternate lands for a total area of 1.20 H-Are. By a separate order dated 18th May 1992, Sakham was allotted a total area of 2.00 H-Are. By a third order dated 8th August 1994, Ganpat was allotted a total area of 1.60 H-Are. The learned Collector and Deputy Director of Rehabilitation (Land) Pune ('Collector') passed all the aforesaid orders of allotment in lieu of the acquisition of lands belonging to the deceased Sakham, Ganpat and Sudam.

(i) On 28th June 2000, Respondent no. 3 filed an application before the learned Collector requesting to withdraw the orders of allotment on the ground that an excess area was allotted.

3. By order dated 15th March 2003, the learned Collector partly allowed the application filed by respondent no.3, modified the allotment orders, and directed withdrawal of an area admeasuring 0.61 H-Are from Gat No. 73/2 allotted to Sudam and an area admeasuring 0.99 H-Are from Gat No. 118 allotted to Sakharam. Being aggrieved by the said order, petitioner nos. 1 and 2 filed a revision application before the Divisional Commissioner, Pune as heirs and legal representatives of deceased Sakharam and on behalf of petitioner nos. 3 and 4 and respondent nos. 4 and 5. Petitioner nos. 1 and 2 stated in the revision application that as petitioner nos. 3 and 4 respondent nos. 4 and 5 were not available at the relevant time revision application was also filed on their behalf.

4. By order dated 16th August 2003, the learned Divisional Commissioner rejected the revision application and confirmed the order dated 15th March 2003. The said order for modifying the allotment order was confirmed on the ground that Sakharam and his sons could not be considered separate

families as, on the relevant cut-off date of 20th September 1979, the acquired lands stood in the name of Sakharam. Hence, this petition.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

5. Learned senior counsel for the petitioners submitted that though the execution of the partition deed was recorded in the revenue records at a later date, pursuant to the registered deed of partition, the lands under acquisition stood in the name of deceased Sakharam and his sons as independent holders. He submitted that under Section 154 of The Maharashtra Land Revenue Code, 1966 ("MLRC") once the document is registered, intimation of the same is forwarded by the Sub-Registrar to the revenue authorities for giving effect of the same in the revenue record. Hence, on registration of the deed of partition, the lands under acquisition stood divided in the name of Sakharam and his sons as independent holders.

6. Learned senior counsel for the petitioners further submitted that in the award passed under Section 11 of the

Acquisition Act, Sakharam and his sons are shown as separate holders, and the compensation was separately awarded in lieu of the acquisition of independent land of Sakharam and his sons. He thus submitted that as Sakharam and his sons were independent holders of their exclusive lands, all three were accepted as displaced persons within the meaning of Section 2(7) of the Rehabilitation Act of 1976, and separate alternate lands were allotted to them.

7. Learned senior counsel submitted that though it was not mandatory on the part of the petitioners to make an application for making relevant entry in the revenue record, petitioner no. 4 had filed an application before the concerned Talathi on 23rd April 1977 requesting for giving effect to the deed of partition in the revenue records. Pursuant to the said application mutation entry no. 5544 was affected on 20th February 1982. Though the mutation entry was affected at a later date, Sakharam and his sons became independent holders of their individual lands in terms of the registered deed of partition. Hence, they were

rightly considered as separate units eligible for allotment of alternate lands independently. He, thus, submitted that after accepting the aforesaid persons as displaced persons and being allotted independent alternate lands, the learned Collector had no jurisdiction to modify the allotment orders on an application filed by respondent no.3.

8. Learned senior counsel submitted that respondent no. 3 had no locus to make an application for cancelling allotment in favour of Sakharam and his sons. The lands belonging to respondent no. 3 were acquired for declaring the area as the benefitted zone for alternate land to the displaced persons. He thus submitted that once respondent no. 3 had accepted the acquisition of his lands, he had no right, title or interest in the lands which were acquired and allotted in the name of Sakharam and his sons.

9. Learned senior counsel for the petitioners pointed out Section 12 of the Rehabilitation Act of 1976 and submitted that restriction imposed on transfer, sub-division, partition or

conversion of land would not apply to the petitioners' land as the partition was already effected and registered prior to the notification issued under Section 11 of the Rehabilitation Act of 1976. He submitted that inaction on the part of the revenue authorities of not recording the execution of the registered deed of partition in the revenue record would not change the status of independent holders pursuant to the deed of partition. The award, passed under Section 11 of the Acquisition Act, accepted Sakharam and his sons as independent holders, and each holder was given an independent amount of compensation. He thus submitted that each holder constituted a separate family and thus were independently displaced persons under the Rehabilitation Act of 1976 eligible for allotment of alternate land independently.

10. Learned senior counsel for the petitioners further submitted that even otherwise, after an order of allotment of alternate lands was passed, the learned Collector was not empowered to modify or review the order. Thus, the order dated

15th March 2003 passed by the learned Collector is without jurisdiction and hence is a nullity.

11. Learned senior counsel for the petitioners further referred to the definition of the word 'Family' under Section 2(9) of the Rehabilitation Act of 1976. He submitted that Schedule B of the Rehabilitation Act of 1976 prescribed slabs for the allotment of alternate land. By accepting Sakharam and his sons as an independent family, the order was passed for the allotment of alternate lands in terms of the slabs for allotment as per Schedule B of the Rehabilitation Act of 1976. He submitted that in a similarly situated facts of a separate case, the same authorities had considered the holders of lands as independent families based on a deed of partition, though, the deed of partition was not given effect to in the revenue records. However, the same authorities have taken a different stand in the present case. He thus submitted that once independent areas of lands were allotted accepting Sakharam and his sons as an independent family, the said order could not have been

recalled and/or reviewed by the learned Collector on an application filed by respondent no. 3 who had no locus to challenge the allotment orders. He thus submitted that the orders impugned in the petition are contrary to the provisions of the Rehabilitation Act of 1976 and hence require to be quashed and set aside.

12. In support of the submissions made on behalf of the petitioners, learned senior counsel relied upon following decisions.

- (a) ***Harshad Chiman Lal Modi vs. DLF Universal Limited and Another.***¹
- (b) ***The United Commercial Bank Ltd vs. Their Workmen.***²
- (c) ***Kiran Singh and Others vs. Chaman Pasvan and Others.***³
- (d) ***M/s.Sheikh Hussain & Sons vs. State of Andhra Pradesh and Others.***⁴

¹ (2005) 7 SCC 791

² AIR 1951 SC 230

³ AIR 1954 SC 340

⁴ AIR 1964 AP 36 Full Bench

- (e) ***Devindar Singh and Another vs. The Deputy Secretary Cum Settlement Commissioner and Others.***⁵
- (f) ***Mrs. Shivaneesh Prasanna Deshpande vs. The State of Maharashtra.***⁶
- (g) ***Balwant Singh and Another vs. Daulat Singh (Dead) By Lrs and Others.***⁷

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

13. Learned counsel for respondent no. 3 supported the impugned orders on the ground that the sub-division of lands pursuant to the deed of partition was effected in the revenue record after the relevant cut-off date of 20th September 1979, i.e the date of notification issued under Section 11 of the Rehabilitation Act of 1976. Hence, on the date of issuance of notification, the acquired lands belonged to one single family and there could not have been any allotment by considering the

⁵ AIR 1964 Punjab 291

⁶ Writ Petition 10133 of 2016

⁷ (1997) 7 SCC 137

members of the same family as independent units. He thus, submitted that since the land belonging to respondent no. 3 was allotted to the petitioners by way of alternate land, considering the petitioners as independent holders and independent displaced persons; respondent no. 3 is entitled to challenge the illegality committed by the concerned authorities by allotting excess land in favour of Sakharam and his two sons.

14. Learned counsel for respondent no. 3 to support his submissions that Sakharam's family and his two sons could not be considered independent units for separate allotment of alternate lands relied upon the following decisions;

(a) *Bharat Singh and Others Vs State of Haryana and Others.*⁸

(b) *Rajasthan Pradesh Vaidya Samiti, Sardarshahar and Another Vs Union of India and Others.*⁹

(c) *Ashwini Ashish Dighe Vs Union of India and Others.*¹⁰

⁸ (1988) 4 SCC 534

⁹ (2010) 12 SCC 609

¹⁰ 2022 SCC OnLine Bom 139

(d)Shivgonda Balgonda Patil and Others Vs The Director of Resettlement and Others.¹¹

(e)Noor SK Bhikan Vs State of Maharashtra and Others.¹²

15. Learned AGP submitted that in view of Section 21 of The Maharashtra General Clauses Act, the authority empowered to pass the order of allotment is also empowered to review/ recall his own order if any illegality is found in the original order of allotment. She further submitted that in view of Schedule B of the Rehabilitation Act of 1976, Sakharam and his sons were required to be considered as one unit as there was no sub-division of the lands acquired. Learned AGP thus submitted that once the family of Sakharam and his two sons were illegally considered as separate units, the allotment of alternate land by passing separate orders in their favour was contrary to Schedule B of the Rehabilitation Act of 1976. She further submitted that once such illegality was pointed out to the concerned authority it was obligatory to rectify the illegality.

¹¹ AIR 1992 Bombay 72

¹² (2011) 7 SCC 589

Hence, by the orders impugned, the learned Collector has rightly reviewed his own order and reduced the area of allotment of alternate land in favour of Sakharam and his sons by accepting them as one unit. Learned AGP thus submitted that there is no bar or any illegality in the order passed by the Collector and confirmed by the Divisional Commissioner. Learned AGP thus submitted there is no substance in the argument made on behalf of the petitioners for considering Sakharam and his sons as independent holders of land.

16. Learned AGP also relied upon a circular dated 9th May 1973 to support the order passed by the learned Collector for recalling the original order of allotment. She submitted that the said circular directed that the formula for allotment of alternate agricultural land to the project affected persons from the affected areas are required to be allotted as per the formula prescribed under the said circular. She thus submitted that in view of the said circular learned Collector was justified in rectifying the original order of allotment by reducing the area in

conformity with Schedule B of the Rehabilitation Act of 1976.

17. In response to the learned AGP's submissions, the learned senior counsel for the petitioners submitted that Section 21 of The Maharashtra General Clauses Act will apply to general orders applicable throughout the State and not to review or recall orders passed concerning private individuals. With reference to the reliance placed on the circular dated 9th May 1973 learned senior counsel for the petitioners submitted that the learned Collector has not passed the order by relying upon the said circular. He submitted that even otherwise, the circular was before the said Rehabilitation Act of 1976 under which the order of allotment was passed. Hence, the circular would not apply to decide the allotment of alternate lands to the displaced persons, and the allotment is to be made only pursuant to the provisions of the said Rehabilitation Act of 1976.

CONSIDERATION OF SUBMISSIONS AND FINDINGS :

18. I have considered the submissions. Perused the papers. The basic facts regarding the acquisition of petitioners' land for

the Chaskaman Project and their entitlement to receive alternate land being displaced persons under the Rehabilitation Act of 1976 are not disputed. The controversy is with regard to the eligible area for allotment. By notification dated 20th September 1979, issued under Section 11 of the Rehabilitation Act of 1976, lands belonging to Sakharam and his sons were notified as being in the affected zone for the Chaskaman project. Hence, in view of Section 12 of the Rehabilitation Act of 1976, there was a restriction on transfer, sub-division or partition, without permission of the State Government. However, prior to the said cut-off date, the lands were already partitioned by way of a registered deed of partition executed between Sakharam and his sons. Thus, mutation entry effected after the cut-off date would not amount to a breach under Section 12 of the Rehabilitation Act of 1976. The learned senior counsel for the petitioners is, therefore right in submitting that effecting the mutation entry is merely an act of making an entry in the register of mutations for recording execution of the registered deed of partition under Sections 150 read with 154

of MLRC.

19. After the lands were partitioned by a registered partition deed, Sakharam and his two sons were absolute holders of their independent lands. Accordingly, the compensation amount under the Land Acquisition Act was also separately paid to Sakharam and his two sons. Hence, no fault can be found in the original allotment orders separately issued in the names of Sakharam and his two sons, Ganpat and Sudam. The learned Commissioner has erroneously referred to Section 85 of MLRC, which provides for making an application by a co-holder for the partition of shares in the holding. In the present case, the parties had already partitioned the lands by executing a registered deed of partition much before the cut-off date.

20. By issuing separate orders in the years 1991, 1992 and 1994, the learned Collector allotted alternate lands to Sakharam, Ganpat and Sudam. Thus, they were accepted as displaced persons under the Rehabilitation Act of 1976. Sakharam expired on 6th June 1989 leaving behind his sons,

i.e. Ganpat and Sudam, and his four daughters, i.e. petitioner nos. 1 and 2 and respondent nos. 3 and 5 as his heirs and legal representatives. Thus, it is the case of the petitioners that they were put in possession of the allotted land, and they started cultivating the land.

21. Respondent No. 3 filed a complaint after more than nine years of the orders of allotment, stating that excess land was allotted to Sakharam and his sons. He filed the complaint on the ground that the allotted land, Gat No. 73/2, was acquired from him and should not have been allotted as excess area was allotted to the petitioners by wrongly considering Sakharam and his two sons as separate families. Thereafter, on his complaint, the learned Collector called for a report from the Rehabilitation Officer. Based on the report the learned Collector modified the original orders of allotment after more than nine years and reduced the area to 2.80 hectares from the originally allotted area of 4.80 to Sakharam and his sons independently. The learned Collector relied upon the mutation entry effected after

the cut-off date and held that Sakharam and his sons were joint holders and thus had to be considered as one family. Hence, the learned Collector modified the original orders of allotment and reduced the area of alternate lands by considering the entitlement by holding Sakharam and his sons as one family. The learned Commissioner dismissed the petitioners' revision application and confirmed the modification of the allotment orders by referring to the provisions of the Rehabilitation Act of 1976 for holding that Sakharam and his sons were required to be treated as one unit.

22. Section 17 of the Rehabilitation Act of 1976 provides for the extent of land to be granted to the displaced persons depending upon the number of members in a family as far as practicable according to the provisions of Part I of Schedule B. The said Schedule provides the calculations for allotment of alternate land to the displaced persons for a project depending upon the area of the land lost by the displaced persons. Section 2(7) and 2(9) of the Rehabilitaiton Act of 1976 defines

‘displaced person’ and ‘family’ respectively as under:

2(7) “displaced person” means any occupant who, on account of the acquisition of his land in the affected zone [including land in the gaothan (hereinafter referred to as “the old gaothan)] for the purpose of a Project has been displaced from such land, or any agricultural labourer;

2(9) “family”, in relation to a displaced person, means the family of the displaced person consisting of such person and his or her spouse, minor sons, unmarried daughters, minor brothers or sisters, father and mother and other members residing with him and dependent on him for their livelihood;

23. In the present case, the ancestral lands were divided by way of a registered deed of partition before the cut-off date. Thus, restrictions under Section 12 of the Rehabilitation Act of 1976 would not apply. Thus, once there was a partition between Sakharam and his sons, they could not be treated as one family as defined under the said Act. In view of the registered deed of

partition, Sakharam and his sons were holding their independent lands. Their lands were acquired under the Land Acquisition Act, and were also paid the compensation amount independently, which is evident from the Award under Section 11 of the Land Acquisition Act. Thus, Sakharam and his sons were displaced persons as defined under the Rehabilitation Act of 1976 and were entitled to alternate land as provided under Section 17 of the Rehabilitation Act of 1976. Thus, the reasons recorded by the learned Collector for modifying the original allotment orders and the reasons recorded by the learned Commissioner confirming the same, are not in accordance with the relevant provisions of the Rehabilitation Act of 1976.

24. Apart from the learned Collector's Order being erroneous, the order modifying the original orders of allotment is without jurisdiction. Learned AGP was unable to point out any provision which permits the learned Collector to review the original order of allotment of alternate lands. The impugned order passed by the learned Collector is in the nature of review, substantially

modifying the quasi-judicial order of allotment. In the absence of any provision in the Rehabilitation Act of 1976 granting an express power of review, the impugned order passed by the learned Collector is ultra vires, illegal and without jurisdiction. At the highest, the orders of allotment could have been tested by a higher authority if challenged. The impugned order passed by the learned Collector has the drastic consequence of taking away the allotted lands, which could not have been done under the garb of modification/correction.

25. The Hon'ble Supreme Court in ***Kalabharati Advertising v. Hemant Vimalnath Narichania***¹³, has held in paragraphs 12 to 14 as under;

“Legal Issues

Review in absence of statutory provisions

12. *It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In the absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra vires,*

¹³ (2010) 9 SCC 437

illegal and without jurisdiction. (Vide Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar [AIR 1965 SC 1457] and Harbhajan Singh v. Karam Singh [AIR 1966 SC 641] .)

13. *In Patel Narshi Thakershi v. Pradyuman Singhji Arjunsinghji [(1971) 3 SCC 844 : AIR 1970 SC 1273] , Major Chandra Bhan Singh v. Latafat Ullah Khan [(1979) 1 SCC 321] ,Kuntesh Gupta (Dr.) v. Hindu Kanya Mahavidyalaya[(1987) 4 SCC 525 : 1987 SCC (L&S) 491 : AIR 1987 SC 2186] ,State of Orissa v. Commr. of Land Records and Settlement [(1998) 7 SCC 162] and Sunita Jain v. Pawan Kumar Jain [(2008) 2 SCC 705 : (2008) 1 SCC (Cri) 537] this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in the absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in the absence of any statutory provision for the same is a nullity, being without jurisdiction.*

14. *Therefore, in view of the above, the law on the point can be summarised to the effect that in the absence of any statutory provision providing for review, entertaining an application for review or under*

the garb of clarification /modification/correction is not permissible."

emphasis applied

26. In the facts of the present case, the principle of law laid down by the Hon'ble Supreme Court in the said decision is squarely applicable to the present case. Hence, except for the decision of this Court in the case of ***Shivaneesh Deshpande***, I do not find it necessary to discuss the case laws relied upon by the learned senior counsel for the petitioners, as the same concerns territorial and pecuniary jurisdiction and defects in the constitution of a tribunal. Thus, the legal principles laid down in the said decisions are not relevant to the controversy involved in the present case. This Court, in the case of ***Shivaneesh Deshpande***, held that unless the power of review is specifically or by necessary implication provided, the authority cannot review its own order. In view of the aforesaid legal principle, there is no substance in the arguments made by the learned AGP based on the Maharashtra General Clauses Act.

27. In view of the facts of the present case, and the

controversy regarding the jurisdiction of the learned Collector, none of the decisions relied upon by learned counsel for respondent no. 3 are relevant. The learned counsel for respondent no. 3 was unable to point out what was the prejudice caused to respondent no. 3 for raising objections to the orders of allotment. Thus, there is substance in the argument of the learned senior counsel for the petitioners that respondent no. 3 has no locus standi to raise an objection to the orders of allotment in favour of the petitioners.

28. Thus, in view of the above, the impugned orders are not sustainable. For the reasons recorded above, the petition deserves to be allowed.

29. Hence, the petition is allowed by passing the following order;

(i) The order dated 16th August 2003 passed by the Divisional Commissioner in Revision Application No. 5 of 2003 (Exhibit 'E') and the order dated 15th March 2003 passed by the Collector and Deputy Director

Rehabilitation (Land), Pune and Report dated 29th July 2002 of the Rehabilitation Officer of Chaskaman Project are quashed and set aside.

(ii) Allotment Orders dated 26th October 1991 in favour of Sudam Sakharam Mali, 18th May 1992 in favour of Sakharam Mali and 8th August 1994 in favour of Ganpat Sakharam Mali passed by the Collector and Deputy Director Rehabilitation (Land), Pune are confirmed.

30. The Writ Petition is allowed in the above terms with no order as to costs.

[GAURI GODSE, J.]

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RAMESH
PILLAI
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signed by
RAJESHWARI
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