

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9565 OF 2022

1. Laxman Baburao Mojar @ Patil
Age about 55 years, Occupation agriculture
2. Tanaji Baburao Mojar @ Patil
Age about ----- yrs, Occupation service'
Both are residing at Post Mend, Taluka Patan
District Satara

... Petitioners

Versus

1. The State of Maharashtra
2. The Deputy Collector (Rehabilitation)
Rehabilitation Bank Vijay Nagar Sangli-Miraj Road,
District Sangli
3. The Deputy Collector (Rehabilitation), Satara
District Satara
4. The Executive Engineer
Small Irrigation Department Satara,
District Satara
5. The Sub-Divisional Officer
Sub-Division Karad, District Satara
6. The Collector, Sangli
7. Shri Ramchandra Baburao Mojar @ Patil
Age about --- yrs, Occupation Nil
Residing at village Kalambi
Taluka Khanapur District Sangli.

...Respondents

Mr. Gautam T. Kanchanpurkar, for the Petitioner.
Ms. P. J. Gavhane , AGP for State.

**CORAM : G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.**
DATE : 17th JANUARY 2024

ASHVINI
BAPPASAHEB
KAKDE
Digitally
signed by
ASHVINI
BAPPASAHEB
KAKDE
Date:
2024.01.23
18:25:14
+0530

Oral Judgement (Per Firdosh P. Pooniwalla J.) :-

1. The present Petition has been filed under Article 226 of the Constitution of India seeking the following final reliefs:-

“a. To call for the record and proceeding on the file of Respondent No.2 to 6;

b. To issue Writ of Certiorari or any other appropriate Writ, Order or direction in like nature thereby quashing and setting aside Order dated 30/05/2022 passed by the Respondent No.2;

c. To issue writ of Mandamus or any other appropriate Writ, Order or direction in like nature directing the Respondent No.2 to 6 to cancel the allotment of plot No. 142 at village Kalambi Taluka Khanpurm, District Sangli and to allot Plot No. 17 in new gaathan at village Mend, Tanka Patan, District Satara.”

2. The case of the Petitioner in the present Petition is as follows:-

A. The father of the Petitioners, late Shri. Baburao Ganpati Mojar (Patil) was the resident of Village Mouje Mend, Taluka-Patan, District-Satara. He was the owner of agricultural lands and a residential house in the said Village. Between the years 1996 to 1999, the said lands and houses and lands and houses of other villagers at Mouje Mend, Taluka-Patan, District-Satara were acquired by Respondent No.1 since the same were to be submerged under the Wang-Marathwadi Medium Irrigation Project. In the year 2000, Respondent No.2 allotted two plots of land bearing Survey Nos. 141 and 142, admeasuring about 740 sq. mtrs., at Village Kalambi in Sangli District to the father of the Petitioners. The father

of the Petitioners started construction of a house on Plot No. 141 but could not complete the same due to lack of funds. In the year 2009, the father of the Petitioner passed away.

- B. In 2017, there were several agitations by Project Affected Persons from five villages of the Wang-Marathwadi Project opposing their rehabilitation in Sangli District instead of Satara District. Along with other villagers, the Petitioners also filed an Application, through Respondent No.7, who is their elder brother, and gave a declaration that they did not want their rehabilitation in Sangli District and, accordingly, requested for cancellation of the plots allotted in Village Kalambi, Sangli District and for allotment of plots in new Gaothan at their original Village Mend in Satara District. However, Respondent No.2 did not cancel the allotment of Plot Nos. 141 and 142 at Village Kalambi, by any written order.
- C. Taking undue advantage of the fact that there was no specific order of cancellation of Plot Nos. 141 and 142 by Respondent No.2, Respondent No.7, who is the brother of the Petitioners, submitted an Application dated 18th March 2019, by forging the signatures of the Petitioners, requesting not to cancel the allotment of Plot Nos. 141 and 142 at Village Kalambi. Further, Respondent No. 7 addressed a letter dated 17th July 2020 to Respondent No.6 for confirmation of allotments of Plot Nos. 141 and 142 at Village Kalambi. The said letter was not signed by the Petitioners and they were unaware about it.

- D. Thereafter, by an Order dated 17th May 2021, Respondent No.3 sanctioned Plot No. 17, admeasuring about 740 sq. mtrs, in new Gaothan at Village Mend, Taluka-Patan, District-Satara in the name of the father of the Petitioners.
- E. The Petitioners, by an Application dated 21st May 2021, requested the Additional Collector, Satara to allot the said plot of land in new Gaothan at Village Mend, Taluka-Patan, District-Satara. However, by a letter dated 25th October 2021, the Additional Collector, Satara informed the Petitioners that the father of the Petitioner had already been given cash compensation in lieu of alternate agricultural land and also the land and, hence, they could not be given any plot of land in Satara District.
- F. The Circle Officer thereafter inquired with Respondent No.7 only, took his statement and prepared a Panchanama of the house at Plot No. 141. The Petitioners were not given any notice in that regard, the statement of the Petitioners was not recorded and the Panchanama of the house was not signed by the Petitioners. The Circle Officer, in connivance with Respondent No.7, prepared a false and bogus Panchanama and submitted the same to the Tahsildar. The Circle Officer also submitted a Report dated 28th October 2021. On the basis of the report of the Circle Officer, the Tahsildar, Khanapur, addressed a letter dated 10th November 2021 to Respondent No.2 and requested him to confirm the allotment of

Plot Nos. 141 and 142 in village Kalambi in favour of the father of the Petitioners after verifying the fact as to whether the Petitioner had received a plot in the Gaothan at Village Mend, Taluka-Patan, District-Satara.

- G. Thereafter, Respondent No.2, by a letter dated 17th December 2021, informed the Petitioners that plot Nos. 141 and 142 could not be cancelled.
- H. Further, by a letter dated 21st December 2021 addressed by Respondent No.5 to Respondent No.2, Respondent No.5 sought the view of Respondent No.2 in respect of the declaration submitted by the Petitioners in 2017, in respect of plot Nos. 141 and 142. In view of the said letter, Respondent No.2 directed the Talathi of Kalambi to file his report in respect of the house constructed by the father of the Petitioners. The Talathi of Kalambi prepared a Report dated 14th January 2022 stating that the father of the Petitioners had constructed a house on plot Nos. 141/142, and that Respondent No.7 was residing in the said house on rent.
- I. The said Report is false and bogus as the house constructed by the father of the Petitioner was not in any condition for anybody to stay therein. On the basis of the said Report dated 14th January 2022 of the Talathi of Kalambi, Respondent No.2 addressed a letter dated 1st February 2022 to Respondent No.5 informing him that, in view of the allotment of a Plot in the New Gaothan of Village

Mend, Taluka-Patan, District-Satara, the decision of Respondent No.3 for cancellation of allotment of Plot Nos. 141 and 142 was necessary and therefore the opinion of Respondent No.3 should be sought on the same.

- J. Thereafter, Petitioner No. 2 filed an Application dated 15th February 2022, requesting the cancellation of allotment of Plot Nos. 141 and 142 in Village Kalambi. In view of the said Application filed by Petitioner No.2, and also the Application filed by Respondent No.7 for not canceling the allotment, Respondent No.2 issued a notice dated 23rd March 2022 to the Petitioners and Respondent No. 7 calling upon them to appear before him for a hearing of the matter. Accordingly, the Petitioners and Respondent No. 7 appeared before Respondent No.2 on 8th April 2022 and filed their written submissions. Respondent No. 7, in his written submission, stated that he had applied for plot of land in the new Gaothan at Village Mend, Taluka-Patan, District-Satara, however, since the new plot was not available in the new Gaothan the allotment of Plot Nos. 141 and 142 at Village Kalambi ought to be confirmed. On the other hand, the Petitioners, submitted that, in 2017 itself, they had submitted an Application, along with a declaration, stating that they did not wish to be rehabilitated in Sangli District, that they would not claim any rehabilitation in Sangli District again and that, considering the same, the Deputy Commissioner, Rehabilitation, Pune informed Respondent No.4 about the cancellation of

Rehabilitation of the Petitioners at Plot No. 141 and 142 in Village Kalambi. The Petitioners therefore requested Respondent No.2 that they may be allotted the plot of land at Village Mend, Taluka-Patan, District-Satara which has already been sanctioned by Respondent No.4.

K. By an Order dated 30th May 2022, Respondent No.2 held that Plot Nos. 141 and 142 at Village Kalambi, which were allotted in the name of the father of the Petitioners, could not be cancelled as there was no consent of all the heirs of the deceased for the said cancellation. In the light of the said Order, the Petitioners apprehended that the plot of land allotted at Village Mend, Taluka-Patan, District-Satara would be allotted to other persons, and, therefore, by an Application dated 9th June 2022, requested Respondent Nos. 2 to 4 not to allow the same to any other person.

L. Being aggrieved by the said Order dated 30th May 2022 passed by Respondent No.2, the Petitioners have filed the present Petition seeking quashing and setting aside of the said Order dated 30th May 2022 and seeking a Writ of Mandamus to cancel the allotment of Plot No. 142 at Village Kalambi and further to direct Respondent Nos. 2 to 6 not to allot Plot No. 17 in the new Gaothan at Village Mend, Taluka-Patan, District-Satara to any other person.

3. The Petitioners seek quashing of the said Order dated 30th May 2022 passed by Respondent No. 2 and cancellation of allotment of Plot No. 142 at

Village Kalambi on the ground that Respondent No. 2 failed to consider that the Petitioners had given a declaration in 2017 that they did not want their rehabilitation in Sangli District. They further submit that Respondent No. 2 failed to consider the fact that Petitioners opted for cash compensation in lieu of alternate land and also for plot of land for constructing a house in new Gaothan at Village Mend, Taluka-Patan, District-Satara. The Petitioners have further submitted that all the heirs of their deceased father were willing to stay at Village Mend, except Respondent No. 7. In such circumstances, it was in the interest of justice to allot a plot in the new Gaothan at Village Mend, Taluka-Patan, District-Satara and cancel the earlier allotment of the Plot at Village Kalambi. It is also the submission of the Petitioners that the said Order dated 30th May 2022 has been passed by Respondent No.2 on the basis of forged Applications submitted by Respondent No.7.

4. We have heard the learned Counsel for the parties and perused the documents on record.

5. The case of the Petitioner clearly shows that there is a dispute between the Petitioners, on the one hand, and Respondent No.7, on the other hand. By way of the present Petition, the Petitioner is calling upon this Court, in its jurisdiction under Article 226 of the Constitution of India, to decide an *inter-se* dispute between private parties, namely, the Petitioners and Respondent No.7.

6. Further, it is also absolutely clear that the present Petition raises disputed

questions of facts, makes allegations of forgery, fraud etc. and calls upon this Court to decide these disputed questions of facts, including allegations of forgery and fraud. It is well settled in law that a Writ Court, in its discretion under Article 226 of the Constitution of India, may decline to decide disputed questions of facts.

7. Since the present Petition is in respect of a dispute between private parties, raises disputed questions of facts and also contains allegations of forgery, fraud etc., we are not inclined to entertain this Writ Petition in our jurisdiction under Article 226 of the Constitution of India.

8. For all the aforesaid reasons, the present Writ Petition is dismissed. The Petitioners are at liberty to adopt such appropriate remedies as are available to them in law.

9. In the facts and circumstances of the case there will be no order as to costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)