



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.118 OF 1999

1. Shakuntalabai w/o Shrinivas Dhoot,
Age 50 years, Occupation: Business,
R/o Nilanga, Taluka Nilanga, District Latur.
2. Vilas s/o Wamanrao Patil,
Age 30 years, Occupation: Business,
R/o As above.
3. Kalimoddin S/o Pashasaheb Hashmi,
Age 35 years, occupation: Business,
R/o As above.

... Appellants.

(Original Plaintiffs)

Versus

1. The State of Maharashtra,
Through the Collector, Latur,
District Latur.
2. The Tahsildar, Tahsil Office,
Nilanga, District Latur.

... Respondents.

(Original Defendants)

WITH

SECOND APPEAL NO.119 OF 1999

Baburao S/o Ramanappa Mahajan,
Age 45 years, Occupation: Business,
R/o Nilanga, Taluka Nilanga,
District Latur.

... Appellant.

(Original Plaintiff)

Versus

1. The State of Maharashtra,
Through the Collector, Latur,
District Latur.
2. The Tahsildar, Tahsil Office,
Nilanga, District Latur.

... Respondents.

(Original Defendants)

WITH

SECOND APPEAL NO.120 OF 1999

Sunil S/o Vithalrao Shinde,
Age 32 years, Occupation: Agriculture,
R/o Nilanga, Taluka Nilanga,
District Latur.

... Appellant.
(Original Plaintiff)

Versus

1. The State of Maharashtra,
Through the Collector, Latur,
District Latur.
2. The Tahsildar, Tahsil Office,
Nilanga, District Latur.

... Respondents.
(Original Defendants)

WITH

SECOND APPEAL NO.127 OF 1999

Gulam Ahmed S/o Gousoddin Shaikh,
Age 76 years, Occupation: Pensioner,
R/o Nilanga, Taluka Nilanga,
District Latur.

... Appellant.
(Original Plaintiff)

Versus

1. The State of Maharashtra,
Through the Collector, Latur,
District Latur.
2. The Tahsildar, Tahsil Office,
Nilanga, District Latur.

... Respondents.
(Original Defendants)

WITH

SECOND APPEAL NO.873 OF 2004
WITH CIVIL APPLICATION NO.7410 OF 2006
IN SECOND APPEAL NO.873 OF 2004

1. Mohammad Farhat S/o Abdul Raheman
Deshmukh, died through his L.Rs.

i) Mohammad Rafat S/o Mohammad
Farhat Deshmukh, Age- 35 years,
Occupation: Contractor,
Resident of Khorl Galli Latur.

ii) Mohammad Firsat S/o Mohd. Farhat
Deshmukh, Age-28 years, Occu: Contractor,
R/o as above.

iii) Mohd. Azmat S/o Mohd. Farhat
Deshmukh, Age 20 years, Occu: Student,
R/o as above.

iv) Shrimati Mohd. Meharunissa
W/o Mohd Farhat Deshmukh,
Age 55 years, Occu: Household,
R/o as above.

... **Appellants.**

Versus

1. The State of Maharashtra,
Through the Collector, Latur,
District Latur.

2. The Tahsildar, Tahsil Office,
Nilanga, District Latur.

... **Respondents.**
(Original Defendants)

...
Advocate for Appellants in all : Mr. Ashwin V. Sakolkar h/f Mr.
V. G. Sakolkar.
AGP for Respondents-State in all : Mr. B. A. Shinde.

...

CORAM : SHAILESH P. BRAHME, J.
DATE : 08.08.2025

JUDGMENT :-

1. Heard both sides finally.

2. Under same facts and circumstances, appellants have approached this Court challenging distinct judgments and decrees passed by Courts below. Appeals were admitted on substantial questions of law involved which are identical. The appeals are clubbed together by the administrative order. I proposed to decide them by common judgment referring to respective parties and paper book of Second Appeal No.118 of 1999.

3. Appellants are original plaintiffs, who are presently occupying eight plots from Survey No.290, situated at Nilanga. Land Survey No.290 was belonging to Government and it was *Gairan* land. The Collector had proposed to allot plots to homeless persons. By common order dated 09.05.1972, those eight plots were allotted to the predecessor in title of appellants. In the present appeal plot Nos.3, 6 and 8 were allotted to predecessor in title of the appellants. They were occupying the plots since 1972 on the basis of certificate of *kabala*. It was noticed that original allottee alienated their respective plots without permission of the competent authorities and thereafter there are multiple change of hands. Some of them, even constructed shops without permission.

4. The appellants were issued distinct notices dated 02.12.1995 by Tahsildar calling upon them to hand over possession for breach of conditions which was the cause for them to approach Civil Court. Accordingly Regular Civil Suit Nos.21, 22, 23, 24 and 25 of 1998 were filed for perpetual injunction.

5. Respondents contested the claim by filing written statement contending that original occupants, who were allotted plots committed breach of conditions by alienating the plots without permission and by changing the purpose. They were allotted plots for their use and occupation for residential purpose. The appellants had no right to remain in possession.

6. Both parties led oral evidence separately in each suit. Respondents examined Tahsildar. Following are the relevant documents produced on record :

- (a) Common order dated 09.05.1972 Exh.49.
- (b) A certificate in form XVII dated 26.06.1972 Exh.49/1.
- (c) A certificate in form XVIII Exh.93 in respect of plot No.7.
- (d) Various sale deeds showing alienation of the plots.
- (e) Notice Exh.57 and notice reply.

7. Courts below held that alienations made by the original allottee is in utter breach of conditions for want of permission and i.e. against allotment order. Allotments were made for the purpose of residential use. But shops were constructed. The original *kabala* of the suit plots or the bond executed by the allottees were not produced. By implication of Rule 28(2) of the Maharashtra Land Revenue (Disposal of Government Lands) Rules 1971 (hereinafter referred to as “Rules” for sake of brevity and convenience), the plots were inalienable. There is breach of Rule 41(1) of the Rules. The possession of the appellants is held to be illegal.

8. In pursuance of the substantial questions of law framed in the appeals, learned counsel for the appellants Mr. Sakolkar submits the notice Exh Nos.57 to 59 calling upon the appellants to vacate the plots are bad in law. Those are against Section 53 of the Maharashtra Land Revenue Code (hereinafter referred to as “Code” for sake of brevity and convenience). The action of the respondents is against principles of natural justice and without adherence to Section 53 of the Code. It is further submitted that the common allotment order Exh.49, certificates issued in Form XVII and XVIII do not disclose a condition that plots were allotted for residential purpose only

as well as those were inalienable. It is impermissible to adopt condition which are not expressly mentioned in the documents allotting the plots.

9. Per contra, learned AGP vehemently supports impugned judgments and orders. It is submitted that Government land was allotted to the persons who were homeless and those were not transferable. It is submitted that appellants have no title in the plots and the sale deeds are bad in law for want of transferable rights. Appellants have committed further breach by constructing shops in few plots. There is flagrant violation of Rule 41 and Rule 28 of the Rules. It is strongly contended that appellants are liable to be evicted from plots. The suits filed by the appellants are not maintainable because there was no prayer for declaration.

10. Admitted facts are as follows :

- (a) By common order, eight plots were allotted to different persons vide order dated 09.05.1972 which was under Rule 28 read with Section 53 of the Code.
- (b) It's allotment of plots. Hence, it is regulated by Section 53 of the Code.

- (c) The notice to the appellants Exh.Nos.47 to 49 in Second Appeals were issued by Tahsildar directing the appellants to hand over possession.
- (d) Common order dated 09.05.1972, certificates under Rule 48, form XVII and XVIII do not disclose conditions except certificate at Exh.93 refers to 'residential purpose'. Original allottee of the plots sold alienated plots without seeking permission of the Collector.

11. Though the notices were issued to the appellants for eviction and both Courts below non-suited appellants, the possession has not been taken from the appellants because of the interim orders passed in second appeals.

12. I have gone through notices issued by Tahsildar evicting the original occupants. It is rightly submitted by learned counsel Mr. Sakolkar that those are not the show cause notices but directly occupants were held to be encroacher and in unauthorized use of the land directing them to hand over possession within three days. Those notices were not issued by the Collector but by the Tahsildar.

13. My attention is adverted to Section 53 of the Code, which is as follows :

“53. Summary eviction of person unauthorisedly occupying land vesting in Government.—(1) If in the opinion of the Collector any person is unauthorisedly occupying or wrongfully in possession of any land or foreshore vesting in the State Government or is not entitled or has ceased to be entitled to continue to use, occupation or possession of any such land or foreshore by reason of the expiry of the period of lease or tenancy or termination of the lease or tenancy or breach of any of the conditions annexed to the tenure, it shall be lawful for the Collector to evict such person.

(1-A) Before evicting such person, the Collector shall give him a reasonable opportunity of being heard and the Collector may make a summary enquiry, if necessary. The Collector shall record his reasons in brief, for arriving at the opinion required by sub-section(1).

(2) The Collector shall, on his finding as aforesaid, serve] a notice on such person requiring him within such time as may appear reasonable after receipt of the said notice to vacate the land of foreshore, as the case may be, and if such notice is not obeyed, the Collector may remove him from such land or foreshore.”

14. It is not the defence of the respondents that any show cause notice was ever issued to original occupants or the purchasers or to the present appellants, calling upon them to explain as to why they should not be evicted. No inquiry was conducted by the Collector which is mandatory as per Section (1A) by extending reasonable opportunity. In the absence of any opportunity of hearing, any inquiry or reasoned order

passed by Collector, it is impermissible to call upon the appellants to hand over possession within three days. Without following due procedure of law, a drastic action has been taken against the appellant which is in utter disregard to Sections 53(1)(a) and 53(2) of the Code. The notices issued to the appellants are bad-in-law and unexecutable.

15. The common order dated 09.05.1972 at Exh.49, certificate in form XVII Exh.49/1 and XVIII Exh.93 do not reflect the conditions for allotting the plots. There is no separate agreement or bond executed by the parties disclosing the conditions imposed while allotting the plots. The certificate form XVIII, Exh.93, was in respect of plot No.7 in Regular Civil Suit No.21 of 1998, only refers to purpose as residential purpose. It is also silent regarding the conditions.

16. My attention is adverted to Rule 28 and 41(1) by learned AGP to buttress that grant of land would be always on a condition of non transferable and for non agricultural purpose. The Lower Appellate Court referred to the above rules. The alienation of the plots by the original allottees is apparent because those alienations are not disputed. It has been recorded by Courts below that agreement or the bonds executed between the parties were not produced on record.

17. A detailed objective scrutiny needs to be conducted by the Collector into the conditions imposed on the original allottees. An inquiry would reveal as to what were the conditions and whether those were appraised to the allottees and the subsequent purchasers. This Court is examining the matter in the context of relief of perpetual injunction which is solitary relief claimed in the suit. I have already recorded that notices issued to the appellants are bad in law. Therefore, it would be open to the respondents to conduct inquiry in accordance with law for further objective scrutiny.

18. Learned counsel Mr. Sakolkar refer to the judgment of *Vinod Harikishan Gupta Vs. Minister for Revenue in Writ Petition No.2476 of 2003* to buttress the submission that unless the conditions are incorporated in the transfer order, those cannot be made applicable. As no inquiry is conducted in the present matters and there is no order passed by the Collector, I need not comment on this submission. On similar lines, further reliance is placed on *Geecy Developers and others Vs. State of Maharashtra and others in Writ Petition Nos.2378 of 2018 and 426 of 2011*, which also cannot be made applicable to the facts of the present case as the facts are distinguishable.

19. The suit is filed simplicitor for injunction and there is no prayer for declaration. The cause of action for instituting the suits is a notice issued by Tahsildar. The notices are held to be bad in law. Just because relief of declaration in the suits is not claimed cannot be said to be fatal. I have come to conclusion that action undertaken against the appellants is without following due procedure of law against principles of natural justice and arbitrary. Hence, appellants are entitled to relief of injunction.

20. For foregoing reasons, I find substance in the substantial questions of law raised by the appellants. Both the Courts below have committed patent illegality. Impugned judgments are unsustainable. However, it is clarified that respondents shall be at liberty to take action against the appellants or their predecessor in title by following due procedure of law and extending opportunity of hearing. All the appeals succeed. I, therefore, pass the following order :

ORDER

- (i) All second appeals are allowed.
- (ii) Judgments and decrees passed by the Trial Court in Regular Civil Suit Nos.21, 22, 23, 24 and 25 of 1998 as well as judgments and decrees passed in

Regular Civil Appeal Nos.123, 125, 126, 124 of 1998 and 17 of 2001 are quashed and set aside.

- (iii) Regular Civil Suit Nos.21, 22, 23, 24 and 25 of 1998 stand decreed by granting them injunction as prayed for in the suit.
- (iv) It would be open to the respondents to take action against the appellants or the predecessor in title by following due procedure of law.
- (v) There shall be no order as to cost.
- (vi) In view of disposal of second appeal, pending civil application does not survive. Civil application as such is disposed of.

(SHAILESH P. BRAHME, J.)

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vmk/-