



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.3437 OF 2022
WITH
CIVIL APPLICATION NO.9365 OF 2025**

Nawab Mohd. Yousufuddin Khan,
s/o. Nawab Mohd. Wajihuddin Khan,
Age : 70 Years, Occ. Agri. and Business,
r/o. H.No.19-3-262/2/5,
Madina Colony, Jahannanuma,
Hyderabad (Andhra Pradesh)

..Petitioner

Vs.

1. The State of Maharashtra,
Through its Principal Secretary,
Public Works Department,
Mantralaya, Mumbai - 32
2. The Divisional Commissioner,
Aurangabad Division,
Aurangabad
3. The District Collector,
Aurangabad District,
Aurangabad
4. The Special Land Acquisition Officer,
Aurangabad District Aurangabad
5. The Chief Engineer,
Public Works Department (B and C)
Bandhkam Bhawan,
Behind Family Court,
Adalat Road, Aurangabad
6. The Superintendent Engineer,
Public Works Department (B and C)
Bandhkam Bhawan,
Behind Family Court,
Adalat Road, Aurangabad

7. The Executive Engineer,
Public Works Department (B and C)
Padampura, Aurangabad ..Respondents

WITH
**CIVIL APPLICATION NO.10163 OF 2022
IN WRIT PETITION NO.3437 OF 2022**

- Akhtarmiya Jalal Shaikh and others ..Applicant
Vs.
Nawab Mohd. Yousufuddin Khan
Nawab Mohd. Wajihuddin Khan
and others ..Respondents

WITH
**CIVIL APPLICATION NO.9367 OF 2025
IN WRIT PETITION NO.3437 OF 2022**

- Shaikh Zuber Ahmed ..Applicant
Vs.
Nawab Mohd. Yousufuddin Khan
Nawab Wajijuddin Khan and ors. ..Respondents

Mr.V.D.Sapkal, Senior Advocate i/b. Mr.V.S.Kadam, Advocate for petitioner in Writ Petition

Mr.P.K.Lakhotiya, AGP for respondent nos.1 to 4 in Writ Petition

Mr.Syed. Moisal Amjadali, Advocate for applicant in C.A. No.9367 of 2025

Mr.T.M.Venjane, Advocate for applicant in C.A. No.10163 of 2022

**CORAM : R.G.AVACHAT AND
ABASAHEB D. SHINDE, JJ.**

**RESERVED ON : OCTOBER 14, 2025
PRONOUNCED ON : NOVEMBER 24, 2025**

FINAL ORDER (PER R.G.AVACHAT, J.):

This Writ Petition, under Article 226 of the Constitution of India, is filed for the following main relief:-

(B) This Hon'ble Court be pleased to issue appropriate writ, order or direction in the like nature may pleased be directed to the Respondent Authorities to re-initiate the Land Acquisition proceeding as per prevailing market rate in respect of the land in Survey Nos. 7, 10,11, 13, 31 and 215/P, total admeasuring about 22 Acres 25 Gunthas situate at Fazilpura, Aurangabad by name "Bagh Maan Khan" and now more particularly known as Vishwas Nagar, Labour Colony, Aurangabad.

(C) This Hon'ble Court be pleased to issue appropriate writ, order or direction in the liken nature may pleased be directed to the Respondent Authorities to restore possession back to the present Petitioner in respect of the land in Survey Nos. 7, 10,11, 13, 31 and 215/P, total admeasuring about 22 Acres 25 Gunthas situate at Fazilpura, Aurangabad by name "Bagh Maan Khan" and now more particularly known as Vishwas Nagar, Labour Colony, Aurangabad.

2. Learned senior counsel for the petitioner would submit that the writ lands (Survey Nos.7, 10, 11, 13, 31 and 215/P), totally admeasure 22 Acres and 25 Gunthas, situated at Fazilpura, Aurangabad. The petitioner claims to have become the owner of the writ lands by virtue of succession in terms of the Mohammadan Law.

According to him, the writ lands originally belonged to one Nawab Mohammed Rafiuddin Khan and others, predecessors of the petitioner. They had purchased those lands under the registered sale deeds in the year 1863. According to him, the family had properties in the State of Andhra Pradesh. A Civil Suit (No.7 of 1958) was filed in the High Court of Judicature of Andhra Pradesh, at Hyderabad, for partition and separate possession of all the family properties including the writ lands. Sahebzadi Sultan Jahan Begum, petitioner and One Nawab Zaheer Yar Jung Bahadur withdrew from the suit after taking their respective shares in the suit properties. A preliminary decree was passed in the suit on 06.04.1959, holding the suit lands to be liable for partition. As per the preliminary decree, the petitioner along with others were declared entitled to right, title and interest in the writ lands.

3. Learned senior counsel would further submit that way back in 1952-1954, an 'integrated subsidised housing scheme' was introduced. Housing colonies for industrial labours came up on the writ lands. Our attention was adverted to certain communications including a notification under Section 6 of the Land Acquisition Act, 1894. Certain communications made by the petitioner with the respondent/authorities were also adverted to. According to learned

senior counsel, for one or the other reason, the acquisition proceedings were not taken to its logical conclusion by passing an award. The petitioner became expropriated land owner. A suit, being 350 of 2000, was filed for perpetual injunction restraining the respondent/authorities from creating third party interest or changing nature of the writ lands, without proceeding for acquisition of the writ lands and culminating by passing an award granting compensation to the petitioner and others owners of the writ lands. The suit was decreed. There was little over ten years delay in preferring the appeal against the judgment and decree passed in the said suit. An application was preferred for condonation of delay along with the appeal. It was dismissed in default. The subsequent application preferred for setting aside the order of dismissal of the said application in default, too met with the same fate. Further the application for setting aside the order passed in last such application, though pending before the District Court, could not be termed to be a challenge to the decree in R.C.S.No.350 of 2000. According to learned senior counsel, the decree stands attained finality. It is not the case of the respondents that the decree is nullity.

4. According to learned senior counsel, the right to property is a constitutional right, in view of Article 300A of the Constitution of

India. He would further submit that the said right has now been recognised as human right as well. No landowner can be dispossessed of his property without following the due process of law and giving him just and adequate compensation. Various documents were relied on to submit that the respondents/authorities have initiated construction of big complexes for housing their officers. If the same is allowed to go on, the decree passed in favour of the petitioner would be of no avail. Our attention was also adverted to the various documents filed on record to indicate as to how the petitioner does have title to the writ lands. According to learned senior counsel, the petitioner was not party to the proceedings between the State Government authorities and the occupants of the labour colony, standing on the writ lands. Whatever findings recorded that Writ Petition would, therefore, not be binding on the petitioner. Learned senior counsel, therefore, urged for allowing the present Writ Petition.

5. Learned AGP would, on the other hand, submit that the application for recall of the orders passed in M.A.R.J.I. application preferred for setting aside the order dismissing the application for condonation of delay, is still pending before the District Court. The decree passed in R.C.S. No.300 of 2000, therefore, could not be said

to have attained finality. Our attention was also adverted to the subsequent suit filed by the petitioner which was allowed to be withdrawn. Learned AGP relied on the judgment passed in a Writ Petition to suggest the High Court to have held the State to be the owner of the writ lands. According to him, the application preferred by the petitioner in the said Writ Petition was dismissed. He also took us through sale deeds relied on by the petitioner to submit that not more than 6-7 Gunthas of land was comprised therein; while the petitioner claims title to the writ lands totally admeasuring little over 22 acres. According to him, it was a decree passed in the suit for injunction simplicitor. No issue of title of writ lands was matter directly and substantially therein. In this Writ Petition, no title to the suit lands could be decided. He, therefore, urged for dismissal of the Writ Petition.

6. We have considered the submissions advanced. Perused the documents relied on. True, in **Bernard Francis Joseph Vaz and another Vs. Government of Karnataka and others, (2025)7 SCC 580**, the Apex Court observed the the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor

must be paid. We have also perused the said judgment, wherein a number of judgments of the Apex Court in this regard have been referred to. A gist thereof is that the right to property is constitutional right and is now even recognised as human right as well. No owner of the lands could be dispossessed of immovable property without following the due process of law and granting him adequate compensation.

7. Needless to mention, no title to any property could be decided in the proceedings under Article 226 of the Constitution of India. The record indicates that the neither the petitioner nor his so called predecessors in interest/title have been in possession of the writ lands for little over 80 years. We cannot read the sale deeds relied on in this proceeding. Even if we look at those sale deeds for the sake of the petitioner's case, the land comprised therein did not exceed even 10 R. True, in a suit for partition filed in the High Court of Judicature of Andhra Pradesh, the writ lands were said to be the subject-matter. In terms of the Mohammedan Personal Law, there are various sharers and residuaries, who succeed to the estate of the deceased.

8. For deciding the present Writ Petition, the only document in favour of the petitioner, which could be read is the decree passed in R.C.S. No350 of 2000. The pleadings in the said suit, therefore, need to be adverted to. The plaintiffs in the said suit were: (i) Nawab Mohd. Yousufuddin Khan s/o. late Nawab Mohd. Vajihuddin Khan; (ii) Syed Azam Ali s/o. Syed Ali; and (iii) Mohd. Abdul Qavi s/o. late Abdul Qavi Awaz. The petitioner herein was one of the three plaintiffs therein. He also claimed to have filed the said suit for and on behalf of the decree holders (original defendant nos.2 to 12 and 14 to 22). Same suggests, if at all the petitioner has any right, title and interest in the writ lands, it is so meagre. The prayers in the said suit were as follows :-

(A) Permanent Injunction may please be issued against defendants from changing the nature of the property in dispute and from alienating the same to any person and from creating third party interest in those lands from disturbing possession.

(B) Mandatory Injunction be issued against Defendants and particularly Defendant No.1, the Govt. of Maharashtra for acting and taking action as per Section 48 or other relevant Sections of Land Acquisition Act, 1894, or alternately if the Govt. desires to continue their possession over the lands in dispute then Govt. should be directed to act and take resort to the provisions of Land Acquisition Act, 1894 under sections 6, 9, 11, 12 and other relevant sections, as per Law.

9. The aforesaid prayers would indicate that the plaintiffs in the said suit had not asked for the relief of possession of the writ lands. The trial court decreed the said suit. Although it appears to have referred to certain documents, the fact is that one of the plaintiffs in the said suit, filed his affidavit of evidence. No further evidence was adduced. Although the trial court referred to certain documents, the suit was mainly decreed on the ground of there being no challenge to the case of the plaintiff/petitioner herein and the oral evidence adduced went unchallenged. It is true that after a period of ten years, an appeal was preferred against the judgment and decree passed in the said suit. Necessarily an application was filed for condonation of delay in preferring the appeal. The application was dismissed. Another application filed for recall of the order dismissing the application for condonation of delay also met with the same fate. Admittedly, none of those applications were decided on its own merits. Those were dismissed in default. A further application filed for recall of these two orders is pending before the District Court. It is true that this Court cannot make any observation on merit of those applications.

10. The fact is that the market value of the writ lands may go beyond Rs.100 Crores. This Court had expressed inclination to direct the State authorities to deposit hefty amount, provided the petitioner gives consent for deciding the suit on merits. The petitioner did not accept the same. True, this court might have travelled beyond its powers for deciding the present Writ Petition. It is a matter of public money. The then defendants in the said suit and even learned District Government Pleader and learned Addl. Government Pleader to whom the said suit was assigned, need to be taken to task. Be that as it may.

11. In the writ jurisdiction, no direction to hand over the possession could be issued. The prayers in the Writ Petition are indirectly in the nature of seeking execution of the decree passed in R.C.S. No.350 of 2000. The petitioner has equally efficacious alternate remedy to file the proceedings for execution of the decree. At the cost of repetition, it is observed that the said suit was decreed simply on the affidavit filed by the plaintiff therein. The writ lands admeasure more than 22 acres, the market value whereof may be Rs.100 Crores plus.

12. For all the aforesaid reasons, we are not inclined to exercise our discretionary jurisdiction to allow the present Writ

Petition. The Writ Petition, therefore, stands dismissed. In view of disposal of the Writ Petition, the Civil Applications stand disposed of.

[ABASAHEB D. SHINDE, J.]

[R.G. AVACHAT, J.]

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