



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

WRIT PETITION NO. 13556 OF 2025

- 1) Kerba Bhujang Gawale,
Age: 75 years, Occu: Agri.,
- 2) Tukaram Mariba Gawale
Age: 78 years, Occu: Agri.,
- 3) Kondiba Narayan Gawale
Age: 63 years, Occu: Agri.,
- 4) Datta Ram Gawale
Age: 30 years, Occu: Agri.,
- 5) Dattarao Munjaji Makhapalle
Age: 78 years, Occu: Agri.,
- 6) Vyankati Narayan Makhapalle
Age: 69 years, Occu: Agri.,
- 7) Digambar Munjaji Gawale
Age: 77 years, Occu: Agri.,
All R/o. Teljapur, Tq. Palam,
Dist. Parbhani.

-----PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Secretary,
Revenue and Forest Department
Mantralaya, Mumbai.
2. The District Collector, Parbhani.
Dist. Parbhani.
3. The Sub Divisional Officer Gangakhed,

Tq. Gangakhed, Dist. Parbhani

4. The Tahsildar, Gangakhed
Dist. Parbhani.

----RESPONDENTS

Mr. S. V. Mundhe, Advocate for petitioners
Mr. S. B. Narwade, AGP for respondent-State

**CORAM : Smt. Vibha Kankanwadi &
Hiten S. Venegavkar, JJ.**

DATE : 14th November, 2025

JUDGMENT (PER : Hiten S. Venegavkar, J) :-

1. Petitioners in this petition invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India seeking a direction to the respondent authorities to regularize their alleged encroachments upon Barren Government Land and gairan land on the basis of the Government Resolution dated 28.11.1991 issued by the State of Maharashtra.

2. It is the case of the petitioners that petitioners are agriculturists by profession and are cultivating the Government Barren Land since last 50 years. Thus, they are in possession of the said land and earning their livelihood from the agricultural produce of the said land. Petitioners placed reliance on 7/12 extract of Survey No. 10 and have thus argued that as per the Government Resolution dated 28.11.1991, the State of Maharashtra has decided to regularize the encroachment upon the said land and on the basis of the said

Government Resolution, the possession of the barren land is with the petitioners from 01.04.1978 to 14.04.1990 and are thus entitled to be regularize in the name of the petitioners. It is also submitted that in pursuance of the Government Resolution dated 28.11.1991, respondent No. 3 has also prepared panchanama in 2007 and on the basis of the said panchnama, the names of the petitioners are mentioned therein clearly reflects that the petitioners are in possession of the barren land and is being cultivated for agricultural purpose.

3. Learned AGP appearing for the State opposes the petition contending that the petitioners are admitted encroachers upon Government land and no vested or statutory right exists in their favour which would warrant exercise of extraordinary jurisdiction under Article 226. It is further argued that repeated representations made and allegedly not decided for decades cannot create a right in favour of encroachers. The AGP relies upon judgment of the Hon'ble Supreme Court holding that encroachment upon Government land cannot be directed to be regularized and such lands must be restored for public interest and public purpose.

4. We have heard the learned counsel for the petitioners and the learned AGP for the State and have perused the material placed on record. Ordinarily, in a case where representations are pending

consideration, this Court may direct the authorities to decide them. However, in the present matter barren government land and gairan land, which is property of the State held for public purpose, and any direction to even consider regularization must be examined strictly in the light of the Hon'ble Supreme Court jurisprudence on illegal encroachment.

5. The Hon'ble Supreme Court in decision of **Jagpal Singh v. State of Punjab, (2011) 11 SCC 396**, has held that public lands, village common lands, grazing lands, forest lands, tanks, and water bodies cannot be permitted to be encroached upon, nor can the Court issue directions for regularization of illegal occupation. The Hon'ble Supreme Court emphatically held that:

- Encroachers have no equity in their favour.
- Government land must be protected and restored to its original public use.
- Courts must not pass orders which encourage encroachment or compel the State to regularize such illegal occupation.
- Welfare or poverty cannot justify perpetuating illegality against public property

These observations apply squarely to the present petitions.

6. Turning now to the Government Resolution dated 28.11.1991 relied upon by the petitioners, particularly Clause 10, the

policy clearly mandates that only those encroachers whose names appear in the list prepared by the Collector for the period 01.04.1978 to 14.04.1990 are eligible for regularization. In cases where names are not included, the concerned Sub-Divisional Officer must first conduct an inquiry into occupation, verify eligibility, and only then forward such cases to the Collector for decision.

7. In the present matter, none of the petitioners have demonstrated either in their representations or in this petition that their names figure in the Collector's list prepared for the period 1978–1990, prior to 1990-1991. They have also not pleaded or produced any material to show that the Sub-Divisional Officer has ever conducted the mandatory inquiry contemplated under Clause 10. The representations merely assert long-standing possession; they do not establish eligibility as per the Government Resolution. Thus, even on the petitioners' own showing, the foundational requirements of the 1991 Government Resolution are not satisfied.

8. Even otherwise, the policy of 1991 cannot override statutory protections or subsequent judicial directions of the Supreme Court. The Court cannot, under Article 226, compel the State to regularize encroachment in the face of binding precedent which prohibits such regularization.

9. There is yet another insurmountable obstruction for the petitioners gross delay and latches. The petitioners claim to have made an application in the year 2007 and it is the contention of the petitioners that some punchnama was drawn by the authorities in respect of the barren land showing petitioners are in possession and cultivation. Thereafter, on 02.04.2018, the petitioners' proposal was forwarded to the District-level committee as well as to the State-level committee for an appropriate decision. The record also shows that on 06.02.2019, the petitioners proposal of regularizing has been rejected by the District Collector, Parbhani. Against the said decision, petitioners have not taken any steps till date. The petitioners have directly approached this Court on 12.08.2025 seeking directions to the respondent authorities to regularize the encroachment on the subjected land. Thus, the delay that has been caused since 1991 till 2007 and, thereafter, from 2007 till 2018 and further from 2019 till August, 2025, has absolutely not been averred or explained. Such unexplained delay of decades is fatal to the writ petition. The Hon'ble Supreme Court has constantly held that stale claims cannot be revived through writ jurisdiction, especially where Government land is involved and third party rights and public rights stands affected.

10. This Court cannot shut its eyes to the constitutional obligation of the State to protect public lands for community use. Permitting encroachers to remain indefinitely or granting even a direction

for “consideration” of regularization would effectively defeat the mandate of the Hon’ble Supreme Court and result in perpetuation of illegality.

11. In view of:

(a) the clear law laid down by the Supreme Court prohibiting regularization of government land encroachments;

(b) the failure of petitioners to satisfy mandatory requirements of the 1991 Government Resolution;

(d) the extraordinary delay and laches in approaching this Court,

No relief can be granted to the petitioners under Article 226 of the Constitution of India

12. Consequently, writ petition stands dismissed.

13. No order as to costs.

(Hiten S. Venegavkar, J.)

(Smt. Vibha Kankanwadi, J.)

B. S. Joshi