



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1735 OF 2024

Prakash s/o Atmaram More

.. Petitioner

versus

The Assistant Commissioner
Panchayat Samiti, Erandol & others

.. Respondents

Mr. H. V. Tungar, Advocate for the Petitioner.

Mr. N. D. Raje, AGP for the State.

Mr. A. D. Sonkawade with Mr. A. V. Hon, Advocate for Respondent
Nos. 3 and 4.

CORAM : R. M. JOSHI, J.

RESERVED ON : 6th MARCH, 2025.

PRONOUNCED ON : 11th MARCH, 2025.

PER COURT :

1. This petition takes exception to the order dated 07.08..2023 passed by the Sub-Divisional Officer, Erandol rejecting application filed by father of the Petitioner requesting to exchange the plot out of Gat No. 452 with plot out of Gat No. 162/1.

2. The facts as they appear from the petition can be narrated in brief as under :-

Tahsildar, Erandol allotted plots to needy agricultural labours from Gat No. 452 in the year 1994 and mutation entry

bearing No. 6512 came to be certified. Petitioner's father was allotted plot No. 58 admeasuring 50 x 60 sq. ft. But the plot was never given in possession of father of petitioner. Petitioner's father on 08.06.1996 filed application to Sarpanch of Talai Gram Panchayat contending that he has deposited the amount of Nazarana in respect of the said plot and permission for construction thereof was sought. On 22.05.1996, petitioner's father received notice from circle officer indicating that the hearing on his application for exchange of plot is scheduled before the Tahsildar. It is claimed by petitioner that Gat No. 162/2 is the open land and there is no encroachment thereupon. In short, it is the case of the petitioner that since he is the lawful allottee of the plot, his request of exchange of the plot could not have been rejected by the authorities. It is his further submission that Gram Panchayat Talai passed resolution on 25.01.1997 for cancellation of allotment of plot from Gat No. 452 and recorded no objection to allot the plot out of Gat No. 162. Pursuant thereto, a sum of Rs. 1715/- came to be deposited as Nazarana amount. It is claimed by petitioner that some of the plot allottees were given exchange of plot in Gat No. 162. No order, however, was passed during the life time of father of petitioner. After the death of father, petitioner persuaded the same matter before the Tahsildar, Erandol

and filed detailed application before him. A proposal was sent to the Chief Executive Officer, Zilla Parishad, Jalgaon, for construction of constitution hall on the plot available on Gat No. 162/1. In spite of the same, the Tahsildar has communicated by letter dated 23.08.2022 that there is no any impediment to allot the petitioner a plot out of Gat No. 162. Since action was not taken by the authority, Writ Petition No.14750/2023 came to be filed before this Court in which direction was issued to take action on communication dated 23.08.2023. The Sub-Divisional Officer by order dated 07.08.2023 rejected the application filed by the father of petitioner for exchange of plot. Hence, this petition.

3. Learned counsel for petitioner submits that the facts as they appear from the record do not justify the impugned order. He drew attention of the Court to the resolution passed by the Gram Panchayat in the year 1997 and, without there being any material on record to show that said resolution has been withdrawn or any subsequent resolution is passed by the Gram Panchayat, it is not open for the Gram Panchayat to oppose the application filed by petitioner's father. It is his submission that the Sub-Divisional Officer has committed error in ignoring the report of Tahsildar,

Erandol, dated 23.08.2022 and irrespective of the fact that there was a proposal for construction of constitution hall on plot No. 162/1, he has recommended grant of plot in exchange. It is his submission that since this is not a case wherein the petitioner has encroached upon the Government land, the question of applying the judgment in case of Jagpal Singh vs. State of Punjab, **(2011) 11 SCC 396** does not arise.

4. Learned AGP supported the impugned order by contending that in view of the said judgment, it is now not permissible for the Government to allot any public/gairan/gaothan land to any individual. Thus, it is his contention that in the light of judgment of Hon'ble Supreme Court, no interference is required in the impugned order.

5. Even if it is accepted that the petitioner is not an encroacher and that the plot was allotted to him in Gat No. 452, the question arises as to whether now it is open for the said authority to allot any land to any individual in view of judgment of Hon'ble Supreme Court in case of Jagpal Singh (supra), unless the case is covered by the exceptions made therein.

6. The said judgment is passed on account of inaction on the part of the authorities for removal of encroachment from the village/Gram Panchayat land, the observations of the Hon'ble Supreme Court and the directions issued to the authorities concerned needs to be considered. The directions aim that all the State Governments in the country are directed to restore to the Gram Panchayat for the common use of villagers of the village lands unauthorisedly and illegally occupied. There is also direction for speedy eviction of illegal occupants after giving show cause notice and brief hearing. The Hon'ble Supreme Court has therefore passed the order by keeping in mind the interest of people at large who are entitled to have the said open spaces.

7. In paragraph no. 23 of the judgment, it is held thus :-

“23. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorised occupants of the Gram Sabha/Gram Panchayat/poramboke/shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State

Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show-cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularising the illegal possession. Regularisation should only be permitted in exceptional cases e.g. where lease has been granted under some government notification to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.

8. Thus above directions make exception for regularisation in case of the lands granted under some Government notification to landless labourers or members of Scheduled Caste and Scheduled Tribe or where there is already a school, dispensary or a public utility on the land. In respectful view of this Court the same cannot be construed as a permission/license given to the authorities to make allotment afresh of any land. This is not a case wherein the petitioner is seeking for regularisation of his land from Gat No. 162. The land allotted to the petitioner is from Gat No.452 and that the

said land is still available at his disposal. The impugned order takes note of the subsequent development in the matter in form of establishment of community centre in Gat No. 162 and sanction of funds by Government to that purpose. Merely because at some point of time in the past Gram Panchayat recorded no objection for the exchange of land, the same would not bind indefinitely and it is not permissible to the authorities to ignore subsequent public need and also effect of judgment in case of Jagpal Singh (supra).

9. There are cogent reasons recorded by Authority for not considering request of exchange of land now and in the facts of the case the order impugned cannot be termed as perverse. It is always public interest would prevail over the individual's desire and hence petitioner failed to make out any case to cause interference therein. As a result of which petition stands dismissed.

(R. M. JOSHI)
Judge

dwb