

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2662 OF 2024

Mr. Balnath Dharma Patil
 Age – 79, Occ. Labour,
 R/at – Vaijali (Hashivare),
 Tal. - Alibag, Dist. - Raigad.

...Petitioner

Versus

1. The State of Maharashtra
 Through the Secretary,
 Revenue & Forest Department,
 Mantralaya, Mumbai
2. District Level Committee
 Through its Chairman,
 (Constituted under the Scheduled Tribes
 and Other Traditional Forest Dwellers
 (Recognition of Forest Rights) Act, 2006,
 Having Officer at – Collector Office,
 Alibag, Raigad

3. The Sub Divisional Officer,
 Having Office at - Alibag, Raigad

...Respondents

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WITH

WRIT PETITION NO. 2665 OF 2024

Mr. Dnyaneshwar Shrirang Mokal
 Age – 78, Occ. Retired,
 R/at – Vaijali (Hashivare),
 Tal. - Alibag, Dist. - Raigad.

...Petitioner

Versus

1. The State of Maharashtra
 Through the Secretary,
 Revenue & Forest Department,
 Mantralaya, Mumbai
2. District Level Committee
 Through its Chairman,

(Constituted under the Scheduled Tribes
and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Act, 2006,
Having Officer at – Collector Office,
Alibag, Raigad

3. The Sub Divisional Officer,
Having Office at -
Alibag, Raigad ...Respondents

**WITH
WRIT PETITION NO. 2668 OF 2024**

Mr. Chandrakant Dharmaji Mokal
Age – 78, Occ. Retired,
R/at – Vaijali (Hashivare),
Tal. - Alibag, Dist. - Raigad. ...Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai
2. District Level Committee
Through its Chairman,
(Constituted under the Scheduled Tribes
and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Act, 2006,
Having Officer at – Collector Office,
Alibag, Raigad
3. The Sub Divisional Officer,
Having Office at -
Alibag, Raigad ...Respondents

**WITH
WRIT PETITION NO. 2666 OF 2024**

Smt. Tulsabai Namdeo Thakur
Age – 83, Occ. Household,
R/at – Vaijali (Hashivare),
Tal. - Alibag, Dist. - Raigad. ...Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai
 2. District Level Committee
Through its Chairman,
(Constituted under the Scheduled Tribes
and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Act, 2006,
Having Officer at – Collector Office,
Alibag, Raigad
 3. The Sub Divisional Officer,
Having Office at -
Alibag, Raigad
- ...Respondents

**WITH
WRIT PETITION NO. 2667 OF 2024**

1. Mr. Parshuram Vitthal Mhatre
(since deceased through L Rs)
 - 1a. Maltibai Parshuram Mhatre
Age 75, occ. Labour,
 - 2b. Paradip Parshuram Mhatre
Age 59, Occ. Labour
 - 3c. Meghnath Parshuram Mhatre
Age 51, Occ. Labour
 - 4D. Prabhavati Dnyaneshwar Patil
Age 49, Occ. Labour
 - 5E Dayavati Parshuram Mhatre
Age 48, Occ. Labour
 - 6F. Aradhana Suryakant Gawand
Age 47 years, Occ. Labour
 - 7G. Manohar Parshuram Mhatre
Age 45, Occ. Service
 - 8H. Ahuti Mukund Bhagat
Age 42, Occ. Business.
- All 1 to 8 R/at – Vaijali (Hashivare),
Tal. - Alibag, Dist. - Raigad.
- ...Petitioners

Versus

1. The State of Maharashtra
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai

2. District Level Committee
Through its Chairman,
(Constituted under the Scheduled Tribes
and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Act, 2006,
Having Officer at – Collector Office,
Alibag, Raigad

3. The Sub Divisional Officer,
Having Office at -
Alibag, Raigad

...Respondents

**WITH
WRIT PETITION NO. 2664 OF 2024**

1. Smt. Surekha Narayan Patil
(Since Deceased Through L Rs.)
- 1a. Anita Narayan Patil
Age 57, occ. Labour,
- 2b. Vijay Narayan Patil
Age 55, Occ. Labour
- 3c. Rashmi Ramakant Gharat
Age 46, Occ. Labour
- 4D. Sangeeta Baliram Patil
Age 47, Occ. Labour
- 5E Geeta Narayan Patil
Age 43, Occ.
- All 1 to 5 R/at – Vaijali (Hashivare),
Tal. - Alibag, Dist. - Raigad.

...Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai
2. District Level Committee
Through its Chairman,
(Constituted under the Scheduled Tribes
and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Act, 2006,
Having Officer at – Collector Office,
Alibag, Raigad
3. The Sub Divisional Officer,
Having Office at -

Alibag, Raigad

...Respondents

Mr. Siddhesh Pilankar, for the Petitioners in all petitions.
 Ms. M.S. Bane, AGP, for the Respondent – State in WP/2662/2024.
 Mr. Y.D. Patil, AGP for the Respondent – State in WP/2665/2024.
 Mr. M.M. Pable, AGP for the Respondent – State in WP/2666/2024.
 Ms. S.S. Bhende, AGP for the Respondent – State in WP/2668/2024.
 Ms. T.J. Kapre, AGP for the Respondent – State in WP/2667/2024.
 Ms. P.J. Gavhane, AGP for the Respondent – State in WP/2664/2024.

**CORAM : G. S. KULKARNI &
 ADVAIT M. SETHNA, JJ.**

DATE : 13 JANUARY 2025

ORAL JUDGMENT (Per Advait M. Sethna, J.):

1. Rule on all the petitions, returnable forthwith. Respondents waive service. By consent of the parties, heard finally.
2. This is a batch of petitions wherein similar reliefs being sought, the same would be decided by this common judgment.
3. The issues arising in all these petitions revolve around the challenge to the impugned order dated 25 June 2021 passed by the State of Maharashtra Forest Department, Office of Collector and District Magistrate, Raigad, Alibag i.e. Respondent No.2. By the impugned orders, the claim of the petitioner was rejected on the ground that there was no management/no cultivation since several years, under the provisions of Section 2(g) and 3(1)(a) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (“the Act” for

short) in respect of certain forest rights pertaining to the land bearing Survey No./Gat No.154, admeasuring 140 square meters situated at village Hashiware (Vaijali), Taluka Alibag under the provisions of the said Act. Writ Petition No.2665 of 2024 was heard by us as the lead petition.

The only substantive prayer as made in this petition reads thus:-

“a) Be pleased to call for records and proceedings of the order dated 25/06/2021 passed by the Respondent No. 2 and thereby rejecting the claim of the petitioner under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and after going through its legality, validity and propriety, be pleased to quash and set aside both the orders;”

4. Mr. Pilankar, learned counsel for the petitioners has made extensive submissions. It is his submission that the impugned order is passed in complete violation of the principles of natural justice, inasmuch as the petitioner was not given an opportunity of being heard and thus, was not properly represented before the respondent no.2, who passed the impugned order.

5. Mr. Pilankar would urge that the petitioner had submitted various documents such as electricity bills, ration card, tax receipt, etc. which constituted material, documentary proof/evidence placed on behalf of the petitioners in support of their rights under Section 3(1)(a) of the said Act read with Rule 13(3) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 (**“the Forest Rules 2007”** for short). These were not considered by the respondent no.2 in

passing the said impugned order let alone dealt with in adjudicating the claim of the petitioners. The respondent no.2 acted in an arbitrary manner without recording any reasons and/or findings on such material placed before respondent no.2. In this regard, it is the petitioner's grievance that respondent no.2 summarily rejected such claim of the petitioners. The petitioner would thus urge that the impugned order is a non-speaking order, passed in violation of principles of natural justice, is arbitrary, and lacks application of mind.

6. Mr. Pilankar would submit that the petitioner had in written submissions addressed to respondent no.2 set out all documents which were duly annexed thereto. He would in this regard rely on the affidavit of rejoinder dated 14 August 2024 filed in this Court, exhibiting the said submissions/documents placed before the respondent no.2. Mr. Pilankar was at pains to point that none of these material and relevant documents were considered in passing the impugned order causing grave prejudice of the petitioner.

7. Mr. Patil, learned AGP for the State would support the impugned order dated 25 June 2021 passed by the respondent no.2. The learned AGP would refer to and place reliance on the affidavit-in-reply of one Mr. Mukesh Kisan Chavan, Sub-Divisional Officer dated 23 February 2024 filed by respondent nos.2 and 3. In this regard, Mr. Patil would submit that under provisions of the said Act, respondent No. 3 heard the

Petitioner and vide order dated 26 April 2010, rejected the claim of Petitioner on merits for the reason of failure of the petitioner to prove that he has been a forest dweller for more than three generations (i.e. 75 years) prior to cut off date, i.e., 13 December 2005 as mandated under provisions of Rule 13 of Forest Rules, 2007 read with Section 2(o) of the said Act. Being aggrieved by such order, the petitioner preferred an appeal to respondent No. 2. Respondent No. 2 after hearing the petitioner, rejected said Appeal of the petitioner vide order dated 11 June 2012. The petitioner challenged said order in Writ Petition No. 12520 of 2015 before this Court. The Court vide order dated 8 June 2018 was pleased to set aside said order dated 11 June 2012 and remanded said matter back to respondent no. 2 with directions to decide it fresh after giving opportunity of being heard to the Petitioner.

8. Mr. Patil would then submit that in compliance of the Court's order dated 8 June 2018, Chairman of Respondent No. 2 Committee vide notice dated 12 September 2018, informed the petitioner to submit his say/documents if any in support of his claim. The petitioner accordingly appeared before respondent no. 2 Committee through Adv. Shailesh Mokal. Respondent No. 2 Committee fully heard the petitioner on the dates fixed for hearing i.e. 07 September 2018 and 17 October 2018 and provided ample opportunity to the petitioner to submit all the documents and evidence in support of his claim as per Government Circular dated 11

May 2018. However, the petitioner failed to prove that he has been a forest dweller for a period more than three generations (i.e., 75 years) prior to cut off date, i.e., 13 December 2005 as required under Provisions of Rule 13 of the Forest Rules, 2007. The respondent no. 2 after duly hearing the petitioner and after taking into consideration the evidence placed on record, has passed the order dated 25 June 2021, which warrants no interference.

9. We have heard the learned counsel for the parties. With their assistance, we have perused the record.

10. A perusal of the impugned order would indicate that respondent no.2 has failed to consider the submissions along with the documents submitted by the petitioner to respondent no.2. There are no findings recorded on such documents placed before respondent no.2 by the petitioner, which also forms part of the rejoinder of the petitioner dated 14 August 2024 which is also perused by us. The respondents have not controverted such position/stand taken by the petitioner. The tabulated chart of such documents set out in the written submissions of the petitioners filed before respondent no.2 and part of their affidavit in rejoinder, read thus :-

1.	State Z.P Primary School, Hashivare, Tal. Alibag has issued School Leaving Certificate of Claimant's father Shrirang Pandurang Mokal, wherein his date of birth has been mentioned as 31.12.1913.
2.	The School Leaving Certificate of the Claimant by name

	Dnyaneshwar Shrirang Mokal has been issued by State Z.P. Primary School, Hashivare, wherein his date of birth has been mentioned as 01.06.1945.
3.	The School Leaving Certificate of Claimant's son Shailesh Dnyaneshwar Mokal wherein his date of birth has been mentioned as 03.08.1978.
4.	The claimant has submitted the extract from property card, map in respect of the land bearing City Survey No.591 admeasuring 13.1 sq.mt. which is in the name of the claimant by way of heirship right thereto, situated adjacent to the property encroached upon by the claimant and the extract from the Enquiry Register.
5.	The property situated at village Vajjali, besides the said suit property (forest land) standing in the name of claimant's father Shrirang Pandurang Mokal and his siblings. Copy of the registered Sale-Deed bearing No.1068 dated 30 th July, 1931 for sale thereof.
6.	Statement of the old person by name Shri Shankar Ganu Daki, age : 92 years, to the effect that the claimant and the claimant's father by name Shri Shrirang Pandurang Mokal have been residing in the suit property since last 80 to 85 years by encroaching upon the same.
7.	Affidavit by the claimant Dnyaneshwar Shrirang Mokal to the effect that the information about the Genealogy given by him is true and correct.
8.	In all 2 Assessment Extracts for the years 1986-87 and 1998-99 in respect of the claimant's residential house No. 321 located on the said forest land.
9.	Claimant's Genealogy.

11. In the above context, reproduced below is Section 3(1)(a) of the said Act and Rule 13 of the Forest Rules, 2007:-

“3. Forest rights of Forest dwelling Scheduled Tribes and other traditional forest dwellers.—

(1) For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:—

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation

for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;”

“13. Evidence for determination of forest rights. - (1) The evidence for recognition and vesting of forest rights shall, inter alia, include :-

- (a) public documents, Government records such as Gazetteers, Census, survey and settlement reports, maps, satellite imagery, working plans, management plans, micro-plans, forest enquiry reports, other forest records, record of rights by whatever name called, pattas or leases, reports of committees and commissions constituted by the Government, Government orders, notifications, circulars, resolutions;
- (b) Government authorized documents such as voter identity card, ration card, passport, house tax receipts, domicile certificates;
- (c) physical attributes such as house, huts and permanent improvements made to land including leveling, bunds, check dams and the like;
- (d) quasi-judicial and judicial records including court orders and judgments;
- (e) research studies, documentation of customs and traditions that illustrate the enjoyment of any forest rights and having the force of customary law, by reputed institutions, such as Anthropological Survey of India;
- (f) any record including maps, record of rights, privileges, concessions, favours, from erstwhile princely States or provinces or other such intermediaries;
- (g) traditional structures establishing antiquity such as wells, burial grounds, sacred places;
- (h) genealogy tracing ancestry to individuals mentioned in earlier land records or recognized as having been legitimate resident of the village at an earlier period of time;
- (i) statement of elders other than claimants, reduced in writing.

(2) An evidence for Community forest Rights shall, inter alia, include--

- (a) community rights such as nistar by whatever name called;
- (b) traditional grazing grounds; areas for collection of roots and tubers, fodder, wild edible fruits and other minor forest produce; fishing grounds; irrigation systems; sources of water for human or livestock use, medicinal plant collection territories of herbal practitioners;
- (c) remnants of structures built by the local community, sacred trees, groves and ponds or riverine areas, burial or cremation grounds;

(3) The Gram Sabha, the Sub-Divisional Level Committee and the

District Level Committee shall consider more than one of the above-mentioned evidences in determining the forest rights.”

A perusal of the above provisions make it incumbent on the authorities to follow the procedure including considering the “documents/ evidence” placed before it, in determining the forest rights, as claimed by the petitioner.

12. The respondent no.2 acting in a manner contrary to the statutory provisions, has arrived at the conclusion citing the relevant provisions of the said Act falling short of recording any reasons and/or findings. It has summarily rejected the claim of the petitioner by referring to Rule 13 of the Forest Rules, 2007. The Respondent No.2 ought to have applied its mind, to say the least in adjudicating the rights/claim of the petitioners arising under the provisions of the said Act and Forest Rules 2007.

13. In view of the above discussion, in our opinion, the impugned order dated 25 June 2021, is a non-speaking order, passed without recording findings/reasons. It is, therefore, an order which is quite mechanical, resulting it to be arbitrary. It thus cannot be sustained. Accordingly, it would be required to be quashed and set aside. In view thereof, we allow the petitions in terms of the following order:-

ORDER

- (i) The impugned order dated 25 June 2021 passed by State

of Maharashtra, Forest Department, Office of Collector and District Magistrate, Raigad, Alibag i.e. Respondent No.2, is hereby quashed and set aside.

- (ii) The proceedings stand remanded to respondent no.2 for *de novo* consideration and determination of the claim of the petitioners on all issues in accordance with law.
- (iii) The respondent no.2 shall pass appropriate orders after hearing the parties, in accordance with law not later than eight weeks from the date on which this order is made available to respondent no.2.
- (iv) All rights and contentions of parties are expressly kept open. No order as to costs.
- (v) Rule is made absolute in the above terms. No costs.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]