



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION No. 3811 of 2024

<u>PETITIONER</u>	:		Smt. Kamalabai W/o Sampat Badwaik, Aged about 78 years, Occ. Household, R/o Prabhag No. 16, At Post Parseoni, Tah. Parseoni, Dist. Nagpur
VERSUS			
<u>RESPONDENTS</u>		1.	Union of India through the Ministry of Rural Development Office at Krishi Bhavan Dr. Rajendraprasad Road, New Delhi – 110001
		2.	Nagar Panchayat Parseoni, through Chief Officer, office at Tah. Parseoni, Dist. Nagpur
		3.	The Tahsildar, Office at Tahsildar Karyalaya, Parseoni, Dist. Nagpur
		4.	Sub Divisional Officer, through Sub Divisional Officer / Magistrate, Office at Ramtek

Mr. U.K. Bisen, Advocate for the petitioner.

Mrs. Suhasini Deshpande, Adv.for Respondent No.1

Mr. M.I. Dhattrak, Advocate for Respondent No.2

Mr. J.Y. Ghurde, AGP for Respondent Nos.3 and 4

**CORAM: AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.**

DATED : 2nd MAY, 2025

ORAL JUDGMENT [Per : Avinash G. Gharote, J.]

Heard Mr. Bisen, learned counsel for the petitioner,

Mrs. Deshpande, learned counsel for the respondent No.1,

Mr. Dhattrak, learned counsel for the respondent No.2 and Mr. Ghurde, learned Assistant Government Pleader for the respondent nos. 3 and 4 / State. Rule. Rule is made returnable forthwith.

2. The petition questions the communication dated 11.6.2024 (page 22), calling upon the petitioner to vacate the land of City Survey No. 1085, admeasuring 144.12 Sq.Mtr., situated at Parseoni Tah. Parseoni, Dist. Nagpur, as well as the order 30.4.2024, passed by the respondent no.4, directing the petitioner to surrender the aforesaid land, on account of the violation of the condition of the lease on which it was granted, as it is stated therein, that though it was granted for residential purpose, it was being used for the commercial purpose, and so also for the reason, that the land was being required by the respondent No. 2 for the purpose of constructing Food Court thereupon.

3. Mr. Dhattrak, learned counsel for the respondent No. 2, submits that since the land is being acquired for a public purpose, the personal interest of the petitioner, should give way. He, therefore, tries to justify the impugned communication and the order in this regard.

4. Mr. Ghurde, learned Assistant Government Pleader for the respondents No.3 and 4, supports the impugned orders contending, that there is violation of the condition of grant of the lease and fact, that it is being required for public purpose.

5. The aforesaid land was granted to the petitioner, by the State, Department of Revenue, in permanent lease hold rights, in exercise of the powers under Rule 49 of the Maharashtra Land Revenue (Disposal of Government Lands), Rules, 1971. A certificate for grant of land in terms of the Rule 49 of the Rules which is dated 19.5.2018 is filed on record at page No.27, the issuance of which, is not disputed by the respondent Nos.3 and 4. It is also not disputed, that by the order dated 09.01.2023, passed by the District Superintendent of Land Records, in Revenue Appeal 254/2022-23 (page 29) an enquiry in terms of Rule 20(2) of the Maharashtra Land Revenue Code was directed and that in pursuance thereto, the Deputy Superintendent of Land Records Parseoni by its order dated 03.5.2023 has directed a number to be given to the aforesaid land, which is City Survey No. 1085. Both these orders record the fact that the

aforesaid land has been granted to the petitioner on a the permanent lease. That being the position, any acquisition of the rights of the petitioner under the permanent lease, should only be by way of the procedure as prescribed by law. It is also necessary to note, that the petitioner had applied to the respondent No.2, for grant of approval to a building plan, which came to be approved by the respondent no.2 by calling upon the petitioner to deposit the fees which has been so deposited on 25.1.2023 (page Nos. 35 and 36), in pursuance to which, sanction has been granted by the respondent no.2 on 07.02.2023 (page 37), under the Prime Ministers Housing Scheme. It is thus apparent, that the plan for constructing residential premise, has been approved by the respondent no.2 upon the land of City Survey No. 1085. It is not disputed that the construction has been made thereupon. The bone of contention is that on a portion of the land of city survey no. 1085, certain constructions have been made, in which commercial activities are being permitted. It is also necessary to note, that the purpose for cancellation of the permanent lease is stated to be a construction of a Food Court by the respondent No. 2, which would indicate to us that in terms of

the Building Regulations applicable the land of City Survey No. 1085 is being capable of being put to commercial use. If that is the position, then the permanent lease granted to the petitioner cannot be cancelled on the ground, that the land of city survey no. 1085, is being put to commercial use, as that is something which is permissible in terms of the Building Regulations. It was, therefore, not open for the respondent No. 2 to cancel the building permission dated 07.02.2023 (page 37), granted to the petitioner or for that matter the Sub-Divisional Officer to have passed the order dated 30.04.2024 (page 24) and for the Chief Officer of the respondent No.2 to have issued the communication dated 11.06.2024 (page 22).

6. Though it is also contended, that an alternate remedy is available to the petitioner to prefer an appeal, however, in view of the fact, that the cancellation is at the behest of the respondent No. 2 by the respondent No. 4, however, since the constitutional right of the petitioner to hold property and to continue to do so in terms of Article 300-A of the Constitution of India, is in question, which cannot be deprived without following due process of law, we

are of the opinion, that the plea of alternate remedy cannot come in the way of the petitioner, approaching this Court under Article 226 of the Constitution of India.

7. In view of the above discussion, we, therefore, quashed and set aside the order dated 30.04.2024 (page 24), as well as subsequent communication dated 11.06.2024, issued by the respondent No.2.

8. Needless to mention, that the earlier communication dated 21.2.2023 (page 40), by the respondent No. 2, also would not survive.

9. The petition is allowed in the above terms. No costs.

Rule is made absolute in the above terms.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)