

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1601 OF 1993

Janardhan Pandurang Jadhav and Ors. .. Petitioners
Versus
The State of Maharashtra and Ors. .. Respondent

WITH
INTERIM APPLICATION (ST.) NO.28216 OF 2024
WITH
INTERIM APPLICATION (ST.) NO.28222 OF 2024
WITH
INTERIM APPLICATION NO.7603 OF 2024
WITH
INTERIM APPLICATION NO.2938 OF 2026
WITH
INTERIM APPLICATION NO.14631 OF 2024
WITH
INTERIM APPLICATION (ST.) NO.28212 OF 2024
IN
WRIT PETITION NO.1601 OF 1993

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- Mr. Sanjay Patil, Advocate for Petitioner.
 - Ms. V. S. Nimbalkar, AGP for Respondent – State.
 - Mr. Pramod N. Joshi a/w. Mr. Pratik B. Rahade, Advocates for Respondent No.4A.
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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 08, 2026

P.C.:

1. Heard Mr. Patil, learned Advocate for Petitioner; Ms. Nimbalkar, learned AGP for Respondent – State and Mr. Joshi, learned Advocate for Respondent No.4A.

2. This Writ Petition assails order dated 23.12.1992 passed by the Maharashtra Revenue Tribunal, Bombay (for short “MRT”), copy

of which is appended at Exhibit 'L' – page No.49 of Petition. Petitioner Nos.1 to 6 claim to be landless project affected ex-servicemen. Petitioner No.7 is impleaded by order dated 04.08.2014. Respondent No.1 is the State, Respondent No.2 is the Collector of Nasik and Respondent No.3 is the Tahsildar of Taluka Niphad, Nasik. Respondent No.4 – Champalal Gulabchand Pokarna is the original land holder since deceased now represented through his legal heir i.e. Respondent No.4A. Respondent Nos.5 to 9 are similarly situated persons who claim right in the disputed lands.

2.1. Petitioner Nos.2 and 5 were deleted as Petitioners and consequently were impleaded as Respondent Nos.10 and 11 through an amendment carried out as per order dated 26.03.2024 passed in Civil Application No.3002 of 2017 filed in present Petition. Civil Application No.3002 of 2017 was filed to recall conditional order dated 10.10.2016 passed by this Court whereby present Petition was dismissed due to non-appearance of Petitioners on several occasions. On 10.03.2026, this Court restored the Writ Petition and consequently disposed aforesaid Civil Application.

3. There are six Interim Applications filed in the present Petition which are as under:-

3.1. Interim Application No.7603 of 2024 is filed on 21.03.2024 by Petitioner Nos.1, 3, 4 and 6 seeking to recall conditional order

dated 10.10.2016 passed by this Court whereby it had dismissed present Petition for default. On 11.06.2024, Advocate for Respondent No.4-A filed Affidavit-in-Reply to this Interim Application.

3.2. Interim Application (St.) No.28216 Of 2024 is filed on 15.06.2024 by Petitioner No.4A to implead legal heirs of Petitioner No.2 as parties to Writ Petition. Also Petitioner No.4A sought condonation of delay of 8 years 298 days to file the Interim Application.

3.3. Interim Application (Stamp) No.28222 of 2024 is filed on 15.06.2024 by Petitioner No.4A to implead legal heirs of Respondent No.6 as parties to Writ Petition. Also Petitioner No.4A sought condonation of delay of 4 years 162 days to file the Interim Application.

3.4. Interim Application No.2938 of 2026 is filed on 26.03.2026 by Suryakant Vilas Jadhav – grandson of Petitioner No.1 to implead legal heirs of Petitioner No.1 as parties to Writ Petition.

3.5. Interim Application No.14631 of 2024 is filed on 26.03.2026 by Petitioner No.4A to implead legal heirs of Petitioner No.5 as parties to Writ Petition. Also Petitioner No.4A sought condonation of delay of 9 years 194 days to file the Interim Application.

3.6. Interim Application (Stamp) No.28212 of 2024 is filed on 15.06.2024 by Petitioner No.4A to implead legal heirs of Respondent

No.8 as parties to Writ Petition. Also Petitioner No.4A sought condonation of delay of 10 years 114 days to file the Interim Application.

4. Interim Application No.7603 of 2024 is taken up for hearing. It seeks setting aside of conditional order dated 10.10.2016. For the reasons stated in the Application, the order dated 10.10.2016 is quashed and set aside on the condition that Petition will be heard finally. Mr. Patil for the Petitioners agrees for final hearing forthwith. So also, Mr. Joshi, the principal contesting Respondent No.4-A. Writ Petition stands restored back to the record and file of the Court. Delay in filing Interim Application No.7603 of 2024 is condoned. Abatement, if any, is set aside. Interim Application No.7603 of 2024 is allowed and disposed. Writ Petition is heard finally.

5. Petitioner No.4A has filed following four Interim Applications seeking bringing on record legal heirs of deceased parties in the interregnum:-

- (i) Interim Application (St) No.28216 of 2024 – for legal heirs of Petitioner No.2;
- (ii) Interim Application (St) No.28222 of 2024 – for legal heirs of Respondent No.6;
- (iii) Interim Application No.14631 of 2024 – for legal

heirs of Petitioner No.5;

(iv) Interim Application (St) No.28212 of 2024 – for legal heirs of Respondent No.8.

6. There is delay in filing the above Applications for bringing on record the legal heirs which though substantial, will have to be condoned since the Petition was admitted on 29.07.1993 and has never been listed for hearing since then. It is only when the final hearing is taken up, since some of the parties here expired in the interregnum, the above Interim Applications have been filed. Hence, for the reasons mentioned in the above four Interim Applications, the delay in filing them is condoned. Amendment to bring on record legal heirs of Petitioner Nos.2 and 5 and Respondent Nos.6 and 8 is permitted / allowed to be carried out forthwith. Department shall allow the same. Delay stands condoned. Reverification stands dispensed with. Mr. Joshi does not object. Mr. Patil represents the newly impleaded Petitioners. He undertakes to serve legal heirs of Respondent Nos.6 and 8. All four Interim Applications are disposed.

7. Brief facts relevant for consideration and adjudication of present case are as follows:-

7.1. Respondent No.4 – Champalal Gulabchand Pokarna was the original land holder of agricultural lands namely, Gat No.988-B Hissa No.5 and Gat No.988-A Hissa No.1 situated in village Chatori, Taluka

Niphad, District Nasik. The Surplus Land Determination Tribunal, Niphad (for short “**S.L.D.T., Niphad**”) by its order dated 24.03.1976 in Ceiling Enquiry No.314 of 1975 declared 28 Acres 38 Gunthas of land (for short “**Suit lands**”) as surplus holding of Respondent No.4.

7.2. Petitioners and Respondent Nos.5 to 9 claim right in the suit having being allotted the same under Section 27 of the Maharashtra Agricultural Lands (Ceiling on holdings) Act, 1963 (for short “**Ceiling Act**”) in the category of landless / ex-servicemen. Copies of 7/12 extracts of lands allotted to them reflecting the extent are appended at Exhibits 'A' to 'F' - page Nos.17 to 22 of Petition.

7.3. The Additional Commissioner, Bombay Division by Order No.580 of 1976 dated 21.06.1979 directed the S.L.D.T., Niphad to conduct fresh inquiry and inspect whether Suit lands were really uncultivable or unproductive. On 21.06.1979, S.L.D.T., Niphad after holding personal inspection of Suit lands, declared them as surplus land for delimitation. Copy of order dated 21.06.1976 is appended at Exhibit 'G' - page No.23 of Petition.

7.4. Respondent No.4 challenged the order dated 21.06.1979 passed by S.L.D.T., Niphad before the MRT. By order dated 25.01.1980, MRT observed that directions for inquiry given by Additional Commissioner were not followed and complied with

properly and hence it directed the S.L.D.T., Niphad to constitute a proper Tribunal to inspect the Suit lands and conduct fresh inquiry.

7.5. By order dated 29.04.1980 S.L.D.T. noted that despite of repeated intimation none of the non-official members remained present for site inspection, finally on 29.04.1980, Chairman of S.L.D.T., Niphad alone completed site inspection and held that as already observed earlier on 03.04.1979, two Acres out of Suit lands which was washed away by floods was to be excluded from the holding of Respondent No.4 alongwith 39 gunthas of land acquired for road from Saikheda to Chatori. The Chairman of S.L.D.T., Niphad further held that land as shown in Tribunal's order dated 21.06.1979 should be delimited as surplus.

7.6. Respondent No.4 challenged order dated 29.04.1980 passed afresh by the S.L.D.T., Niphad before MRT. On 03.02.1988, MRT passed order wherein it held that S.L.D.T., Niphad erred for a second time to conduct inquiry and proper site inspection despite specific directions of MRT. It observed that no reasoning was given by S.L.D.T., Niphad in its order as to how contention of Respondent No.4 was falsified and it failed to consider the circumstances visible on the spot at the relevant time.

7.7. However based on order dated 03.02.1988, proceedings for eviction of allottees on Suit lands was initiated by issuing notice dated

05.03.1992. Since the eviction notice directed restoration of Suit lands to Respondent No.4, it was challenged in Writ Petition No.1324 of 1992 in this Court. By order dated 13.04.1992, eviction notice was set aside with a direction to MRT to rehear the Appeal filed by Respondent No.4 after impleading all proper and necessary parties.

7.8. Thereafter Respondent No.4 filed fresh Appeal and impleaded all allottees on Suit lands as parties before MRT. By order dated 23.12.1992 MRT re-affirmed its earlier decision as per order dated 03.02.1988 and thereby rejected order of S.L.D.T., Niphad.

7.9. Aggrieved by order dated 23.12.1992 passed by MRT, Petitioners filed present Petition to assail the said order and restore order dated 21.06.1979 passed by S.L.D.T., Niphad.

8. Mr. Patil, learned Advocate for Petitioners in the aforesaid facts would submit that MRT erred in holding that it was difficult to presume that Petitioners dug up wells in *pot kharaba* land i.e. part of Suit lands which were allotted to Petitioners at the then time. He would submit that Petitioners' fertile land was acquired for Aeronautics Project at Nasik and in return they were allotted portions in the Suit lands in village Chatori which was 12 to 15 kms. away from the location of their previous lands. He would submit that Petitioners were entitled to fertile land in return as they were/are dependent for their bread and butter on agricultural activities.

8.1. He would vehemently submit that it is an accepted fact that 28 Acres 25 gunthas land was alluvial land which came in the purview of definition of land under Section 2(16)(b) of the Ceiling Act. He would submit that such land could be treated as cultivable land and hence it could be considered for determination of ceiling limit. He would submit that therefore findings of the S.L.D.T., Niphad were correct based on inspection and inquiry.

8.2. He would submit that MRT erred in holding that land acquired for road from Saikheda to Chatori was not properly construed and considered by S.L.D.T., Niphad and it was excluded from surplus land. He would submit that the Officer on Special Duty (for short “**OSD**”) who represented the State confirmed the fact that land acquired for road was excluded. He would therefore submit that finding of MRT that land acquired for road widening purpose was not considered by S.L.D.T., Niphad is incorrect.

8.3. He would submit that MRT erred in holding that it was difficult to presume that Petitioners were allotted *pot kharaba* lands i.e. part of Suit lands wherein they dug up 6 wells for irrigation purpose. He would submit that according to Soil Conservation Department Report, Petitioners dug up wells after they were put in possession of Suit lands by Tahsildar because it was necessary for them to carry out agricultural activities and household needs. He would

submit that it was the same land which was declared surplus land. He would submit that this fact was confirmed by the OSD, however MRT did not consider it.

8.4. He would submit that according to Petitioners there is no uncultivable land in Survey No.988-A and Survey No.988-B. He would submit that Petitioners were allotted 11 parcels of land from Survey No.988-B.

8.5. He would submit that Respondent No.4 did not prefer any appeal against the order dated 24.03.1976 in Ceiling Enquiry No.314 of 1975 passed by S.L.D.T., Niphad. He would submit that learned Additional Commissioner in review set aside the aforesaid order and after remand Respondent No.4 challenged the same before MRT. He would submit that meanwhile Respondent No.4's surplus land was distributed to Petitioners in the year 1975-1976 i.e. during the time when matter was *lis pendens*.

8.6. He would submit that Petitioners were never impleaded as parties in the proceedings filed by Respondent No.4 until 1992. He would submit that it was only in March 1992 Petitioners came to know about the proceedings when they were asked to remain present to handover possession of the allotted lands to Respondent No.4. He would submit that Petitioners thereafter have challenged the order passed by MRT.

8.7. He would submit that Petitioners were given possession of the Suit lands in the year 1976 and are in continuous possession. He would submit that Petitioners cannot be dispossessed or removed from the Suit lands without following the due process of law since their title in the allotted lands is perfected due to allotment and long standing possession.

8.8. He would submit that MRT did not consider the submissions of the OSD that 29 Acres of uncultivable land was allotted to Petitioners. He would submit that the OSD also reiterated fact that 12 Acres of land was already acquired for road which was considered by S.L.D.T., Niphad at that time.

8.9. He would submit that Petitioners are residing and carrying out their agricultural activities on the Suit lands from 1976 till date. He would submit that Petitioners are in peaceful and legal possession of Suit lands allotted to them for more than 50 years. He would submit that Petitioners' family members are dependent on the income generated from agricultural produce harvested from the Suit lands. He would submit that Respondent No.4 has more than 50 Acres of land standing in his name otherwise whereas Petitioners, if dispossessed, would become landless because they do not have any alternative land. He would submit that therefore balance of convenience is in Petitioners favour.

8.10. On the basis of above submissions, he would urge the Court to set aside order dated 23.12.1992 passed by MRT and restore order dated 21.06.1976 passed by S.L.D.T., Niphad.

9. Private Respondent No.4, now represented by Respondent No.4-A and the State have both vehemently opposed the Petition.

10. *PER CONTRA*, Ms. Nimbalkar, AGP for Respondent – State would submit that on 20.04.2026 Respondent No.3 – Vishal Arun Naikwade, Tahsildar, Niphad, District Nasik has filed Affidavit-in-Reply on behalf of Respondent Nos.1 to 3 as per directions of this Court vide order dated 10.03.2026 and she draws my attention thereto.

10.1. She would submit that as per directions to assist this Court with respect to the question whether Petitioners were not compensated for lands acquired for the purpose of Sinnar – Saikheda Raod, Belwadi Road and Sangaon Road aforesaid Affidavit-in-Reply has been filed. She would submit that the office of Sub-Divisional Officer, Niphad and Sub-Divisional Officer, P.W.D., Niphad tried to find out record of acquisition of part of Suit lands acquired for aforementioned roads, however after due search it was not traceable. She would submit that hence they issued letters dated 10.04.2026 and 07.04.2026 certifying non-availability of record. Letters dated 10.04.2026 and 07.04.2026 are appended at Exhibit – ‘R1’ Colly at page Nos. 67 and 68 of Affidavit-in-Reply dated 20.04.2026.

10.2. She would submit that acquisition for aforementioned roads was completed in the year 1970-1971 i.e. 50 years back, hence without prejudice demand of Petitioners for compensation is clearly hit by delay and laches. With respect to demand of compensation pursuant to acquisition, she has referred to an identical issue of delay and laches decided by Supreme Court in case of *State of Maharashtra V/s. Digambar*¹ wherein it held that undue delay of such long period on part of Petitioner to invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for grant of compensation for alleged acquisition suggests that it has not happened at all. She would submit that Supreme Court held that if it was taken against Petitioner's consent, then he had acquiesced in such taking and waived his right to take compensation for it. She would submit that findings of aforementioned judgment are squarely applicable to the facts and circumstances of the case in hand wherein compensation is claimed by Petitioner for acquisition of their land merely on paper without any substantiation of their claim of acquisition.

10.3. She would submit that pursuant to aforementioned Supreme Court judgment, State has issued Government Resolution (GR) dated 26.10.2010 thereby directing to reject such Applications demanding compensation towards land acquisition filed after many long years. Copy of GR dated 26.10.2010 is appended at Exhibit – 'R-3' at

¹ (1995) 4 Supreme Court Cases 683

page No.80 of Affidavit-in-Reply dated 20.04.2026.

10.4. Hence, she would persuade the Court to hold that Petitioners' claim is devoid of merits and Petition be dismissed.

11. Mr. Joshi, learned Advocate for Respondent No.4-A would submit that order dated 23.12.1992 passed by MRT has been correctly passed in accordance with the law applicable to the facts of Petitioners' case. He would submit that MRT, in its order dated 03.02.1988 and confirmed by its order dated 23.12.1992 appreciated the facts on record and correctly held that land holding of the Respondent No.4 was not in excess of the Ceiling Limit which was acquired from the said Respondent as surplus land in competent proceedings.

11.1. He has relied upon the 7/12 extract of the Suit lands which showed 4 Hectares area as '*Ohalpad*'. He would submit that observations made in the *Punchanama* dated 09.03.1987 during inquiry mentioned about one Nala passing through the Suit lands. He would submit that observations made in the Certificate dated 08.10.1987 issued by Assistant Engineer Class – I, Scarcity (PWD) Sub-Division Niphad, showed existence of road passing through the Suit lands. He would submit that letter dated 06.11.1979 issued by Collector, Nashik confirmed that same portion of the Suit lands was washed away by floods of river Godavari.

11.2. He would submit that according to Section 2(16) of the

Ceiling Act, authorities correctly held that area covered by *Nala*, river bed and roads to the extent of 28 Acres was considered as uncultivable and could not be included in the excess holding of Respondent No.4 to be treated as Surplus land.

11.3. He would submit that Petitioners did not produce any oral or documentary evidence proving the said findings during inquiry to be incorrect. He would submit that Petitioners' case is only based on equity and they would also not deny the legal position that answering Respondents' land was illegally declared surplus and such land allotted to the Petitioners. He would submit that Petitioners never challenged the main issue about the Suit lands being beyond or below the ceiling limit which was admittedly *lis pendens* at the time of allotment made to the Petitioners. He would submit that Petitioners have argued their case only on equity stating that they have improved and cultivated upon the lands allotted to them and therefore due to long standing possession the lands should remain as their holding forever.

11.4. He would submit that order passed by S.L.D.T., Niphad on 24.03.1976 which was reviewed by the Additional Commissioner, clearlyb directed conduct of fresh inquiry and re-inspection by all members of S.L.D.T., Niphad. He would submit that despite these specific directions S.L.D.T., Niphad flouted and passed order dated 21.06.1979. He would submit that contention of Petitioners that both

aforesaid orders passed by S.L.D.T., Niphad were correct cannot be accepted. He would submit that order dated 21.06.1979 of S.L.D.T., Niphad was set aside by order dated 25.01.1980 of MRT.

11.5. He would submit that MRT decided the matter afresh by order dated 03.02.1988 wherein it made observations regarding illegalities committed by S.L.D.T., Niphad. He would draw my attention to this order appended at Exhibit 'H' – page No.27 of Petition. He would submit that MRT, reaffirmed its findings after hearing the Petitioners and passed order dated 23.12.1992.

11.6. He would submit that as far as Petitioners are concerned, they never put forward any oral or documentary evidence to show that holding of land of Respondent No.4 was erroneous. He would submit that Petitioners have enjoyed the Suit lands belonging to Respondent No.4 because of illegal allotment of the Authorities who distributed the alleged surplus lands to them, despite the issue being sub-judice and challenge to such declaration of surplus land pending.

11.7. He would submit that Respondent No.4 in Affidavit-in-Reply dated 07.12.2023 filed in Civil Application No.3002 of 2017 has stated the specific reasons as to why Petitioners ought not to have been allotted the Suit lands either under Section 27 of the Ceiling Act and/or under the Provisions of the Maharashtra Land Revenue Code. He would submit that aforesaid Affidavit-in-Reply of Respondent No.4

has not been contested and or denied by the Petitioners.

11.8. He would submit that present Writ Petition only assails legality and validity of impugned order dated 23.12.1992 and hence further consequences should be left with the concerned authorities based on the aforesaid order. He would submit that Petitioners have not prayed for any relief about protecting their possession based on illegal allotment and hence such directions cannot be issued in their favour in Writ jurisdiction. He would submit that observations made by MRT in its order dated 23.12.1992 in paragraph No.12 on page No. 58 of Petition *prima facie* conclude illegal actions on the part of the Distribution Authorities / Competent Authority who wrongfully allotted the Suit lands to Petitioners.

11.9. He would submit that it is also observed that there is an inordinate delay in prosecuting the present Petition. He would submit that Petitioners have always been negligent in bringing legal heirs of original Petitioners on record after their demise and have been delaying the hearing of Writ Petition. He would submit that Respondent No.4 has regularly filed replies and contested the applications. He would submit that legal heirs of two of the demised Petitioners chose not to file any application to bring their names on record. He would submit that some allottees of Suit lands who have been impleaded as Respondent Nos.5 to 9 in present Writ Petition cannot get benefit as they have chosen

not to participate in the present proceedings despite been served.

11.10. He would next draw my attention to Additional Affidavit dated 27.04.2026 filed by Respondent No.4-A that no acquisition proceedings were either initiated or completed by the Collector and/or Land Acquisition Officer while constructing the said roads. He would submit that the said roads are existing since 1970. He would submit that one of the roads is classified as Major District Road No.27 as per letter dated 15.04.2026 issued by PWD, Niphad which is supported by Certificate issued by Talathi. He would submit that Certificate dated 08.10.1987 issued by Assistant Engineer, Class – I, PWD also supports the aforesaid contention.

11.11. He would submit that it is not necessary to consider here the question of payment of amount of compensation for acquisition of roads while determining surplus land. He would submit that according to provisions of Section 2(16) of Ceiling Act, 'land' is defined as land not only to be used but also capable of being used for agriculture purposes. He would submit that after construction of road, said land became incapable of being used for agriculture purposes and hence said land area of 12 Acres covered by road has been rightly excluded from the holding of Respondent No.4 which led to declaration of surplus land.

11.12. In support of his submissions, he would place reliance on the

decision of Supreme Court in the case of *A. K. Kraipak & others etc. V/s. Union of India & others*² which holds that when procedure is unfair, subsequent order passed becomes invalid.

11.13. In light of above submissions, he would submit that Writ Petition be dismissed and MRT's order dated 23.12.1992 be confirmed.

12. I have heard Mr. Patil, learned Advocate for Petitioners, Ms. Nimbalkar, AGP for Respondent – State and Mr. Joshi, learned Advocate for Respondent No.4 (now Respondent No.4-A) and with their able assistance perused the record of the case. Submissions made by all learned Advocates at the bar have received due consideration of the Court.

13. *Prima facie*, it is an admitted position borne out from record that the Distribution Authorities i.e. Tahsildar, Niphad and the S.L.D.T., Niphad erred while performing their statutory duties. S.L.D.T., Niphad flouted the directions to conduct inquiry / inspection given by Additional Commissioner and subsequently by MRT in statutory proceedings. It is seen that Tahsildar, Niphad ought not to have distributed the Suit lands among Petitioners merely because the Suit lands were declared to be surplus land holding of Respondent No.4 in view of *lis pendens* registered at the relevant time.

14. It is seen that there was *Punchanama* drawn by the Circle

² AIR 1970 Supreme Court 150.

Officer on 09.05.1987 based on the 7/12 extracts of Suit lands which reflected crop entries therein for several years which belonged to Respondent No.4. Moreover, it observed that 7/12 extracts transpired that column for crop entries for years 1983-1984 to 1987-1988 reflected 4 Hectares of land in respect of Gat No.988-B and 7 Hectares of land in respect of Gat No.988-A recorded as 'Ohalpad' i.e. total 11 Hectares of land was shown as uncultivable. It is seen that aforesaid fact supported the contention of Respondent No.4 and subsequently his surplus land holding was set aside, but not before his acquired land being distributed to the Petitioners.

15. On perusal of record of case, it is seen that apart from aforementioned 11 Hectares, it is a fact that roads were constructed through Gat No.988-B and Gat No.988-A which encompassed and occupied total 12 Acres out of the Suit lands. It is seen that aforesaid fact was supported by certificate dated 08.10.1987 issued by Assistant Engineer Class – I, Scarcity (P.W.D.) Sub-Division, Niphad in presence of local *Punchas* and the Circle Officer. Thus, this land holding was also to be considered outside the ceiling limit of Respondent No.4's holding.

16. It is seen that order dated 03.02.1988 passed by MRT, has correctly observed that 85 Acres total land holding of Respondent No.4 was dry crop land as there were no irrigation facilities available which

was supported by documentary evidence on record. MRT observed that total area of 39 Acres under 'Ohalpad' and roads was uncultivable land. Therefore, as observed from above findings if we deduct 39 Acres from 85 Acres of his total holding (i.e. $85-39=46$ Acres) Respondent No.4's actual land holding land for consideration under the Ceiling Act was not beyond the ceiling limit and hence it could not have been declared surplus land.

17. It is seen that according to the Ceiling Act a person as one family unit is entitled to hold 54 Acres of dry crop cultivable land. It is seen that MRT's order dated 03.02.1988 has correctly observed this fact that actual holding of Respondent No.4 which comes to 46 Acres was below ceiling limit i.e. 54 Acres and hence Respondent No.4's land holding could not be declared surplus.

18. It is also seen that on the basis of order dated 03.02.1988, proceedings for eviction of Petitioners and Respondent Nos.5 to 9 was initiated by issuing notice dated 05.03.1992. However, eviction proceedings were set aside by this Court because Petitioners were not impleaded as parties during the said proceedings before MRT.

19. It is brought to the notice of this Court that Petitioners are in possession of other lands of their own in addition to the allotted Suit lands to them which were from the surplus land belonging to Respondent No.4. It is seen that details of such properties are set out in

paragraph No.11 of the Affidavit-in-Reply dated 07.12.2023 filed by Respondent No.4-A in Civil Application No.3002 of 2017.

20. On perusal of aforesaid Affidavit-in-Reply dated 07.12.2023, it is also seen that Petitioners being project affected persons due to acquisition of their lands for Aeronautics project, they and their heirs were given government jobs alongwith compensation. It is also seen that they do not depend only on income from the agricultural activities.

21. It is seen that by order dated 16.01.1991 passed in Regular Civil Suit No.16 of 1991 filed by Respondent No.4, Court granted interim injunction whereby it directed Petitioners / allottees not to dig wells in the Suit lands as well as restrained them and directed *status quo*. It is seen that despite aforesaid order Petitioners altered the Suit lands without any authorization when matter was *subjudice* and despite clear injunction order.

22. It is seen that Petitioners fully knowing well that parts of Suit lands allotted to them were disputed surplus lands, made expenses to improve them which cannot be the reason to entitle them to Suit lands. It is further seen that some of the Petitioners have developed and enjoyed the Suit lands allotted to them for a long time. It is seen that it is Petitioners who have prolonged the proceedings for several years which led to dismissal of the Petition earlier and its subsequent restoration. Such delay cannot be held to the advantage of the

Petitioners who have purposefully delayed the hearing of the Petition.

23. In view of the above, impugned order dated 23.12.1992 passed by the MRT has to be upheld because the Suit lands belong to the original land holder i.e. Respondent No.4 which were incorrectly declared as surplus land and despite the pending challenge were distributed to Petitioners by the Distribution Authority / Competent Authority. By virtue of aforesaid fact allotment of Suit lands to Petitioners by Tahsildar, Niphad has to be cancelled and order dated 03.02.1988 needs to be upheld.

24. In so far as Petitioners claiming to be project affected persons or ex-servicemen are concerned, they were allotted portions of Suit lands by government in lieu of their lands acquired for aeronautics project is concerned. It is seen that government ought not to have distributed the Suit lands to Petitioners and Respondent Nos.5 to 9 which were *lis pendens* at the relevant time.

25. In so far as such Suit lands are concerned, merely because they were allotted to the Petitioners by the government at the relevant time, does not mean that they belong to Petitioners. These lands belong to Respondent No.4. Instead, they should be returned to the original land holder i.e. Respondent No.4 (now represented by his legal heir Respondent No.4-A). This is because only government lands ought to have been allotted to Petitioners, if at all the Competent

Authority had to allot the lands to the Petitioners and Respondent Nos.5 to 9. The lands allotted to those parties was not government land as it was illegally acquired as surplus land and subsequently declared to be within ceiling limit.

26. By virtue of Respondent No.4 succeeding in injunction proceedings the Suit lands are considered as private lands and hence government cannot allot private lands i.e. Suit lands to Petitioners. Due to aforesaid reason Petitioners are not allowed to keep the Suit lands with them which belong to the original land holder i.e. Respondent No.4.

27. Therefore by upholding impugned order dated 23.12.1992, it is further directed that Petitioners can apply for fresh allotment to the government which may be considered by the government in accordance with law after ascertaining the benefits received by the Petitioners and Respondent Nos.5 to 9 after their original lands were acquired for the Aeronautics Project as it has come on record that these parties not only received compensation for their acquired lands but also job in the Public Sector Company for one family member in lieu of such acquisition. Consequently, Suit lands are directed to be restored to its original holder i.e. Respondent No.4 or his legal heirs.

28. In that view of the matter, I am not inclined to accept the submissions made by Mr. Patil and the same stand rejected.

Submissions made on behalf of Respondent No.4-A by Mr. Joshi stand duly accepted.

29. With the above directions, Writ Petition is dismissed. In view of dismissal of Writ Petition, pending Interim Application Nos.7603 of 2024, 28216 of 2024, 28222 of 2024, 2938 of 2026, 14631 of 2024 and 28212 of 2024 are also disposed as directed.

[MILIND N. JADHAV, J.]

30. After this order is pronounced, Mr. Patil persuades the Court to keep this order in abeyance to enable Petitioners to challenge the legality and validity of the order in the Supreme Court. However, in view of the observations and findings recorded by me in the above order, I am not inclined to accept the request made by Mr. Patil in view of alternate avenue made available to Petitioners to apply to the Government for seeking fresh allotment in accordance with law. Hence request made by Mr. Patil is rejected.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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