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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 17617 OF 2025

1. Prashant Sunil Kachole
Aged 31 years, Occ: Social worker
Indian Inhabitant of Mumbai
Residing at :- Rohkal, Tal-Khed, Dist.Pune

2. Nilesh Shankar Kad
Age 45 years
At Post Chakan, Tal. Khed,
Dist. Pune

... Petitioners

Versus

1. The State of Maharashtra
Through Housing
Department, Mantralaya, Mumbai
To be served through Government
Pleader, High Court, Bombay (A.S.)

2. The Collector, Pune
To be served through Government
Pleader, High Court, Bombay (A.S.)

3. PMRDA Pune Metropolitan
Region Development Authority,
Maharaja Sayaji Gaikwad Udyog
Bhavan, Ward No. 8,
Survey No. 152-153,
Aundh, Pune- 411 067.

4. The MHADA
(Maharashtra Housing and Area
Development Authority)
Through its Chief Executive Officer
Office situated at Pune
The Chief Executive Officer,
Zilla Parishad Pune

5. The Deputy Conservator of Forests
(Territorial) Junnar,
Dadaji Kondeve Wada, Near Trazari
Building, Junnar, Pune – 410 502.

.... Respondents

Mr.Vaibhav Ugle a/w Mr. Aditya Shinde, for the Petitioners.
Mr. Rohit Sakhadeo, for the Respondent No.3.
Dr. Milind Sathe, Advocate General a/w Mr. P.G. Lad and Ms.
Sayali Apte, for Respondent No.4-MHADA.
Dr. Milind Sathe, Advocate General a/w Mr. O.A. Chandurkar,
Addl. GP and Smt. Tanu N.Bhatia, AGP and Mr. Bhushan
Deshmukh, 'B' Panel, for Respondent – State.

**CORAM : M.S.KARNIK &
S.M.MODAK, JJ.**

**RESERVED ON : 9th MARCH 2026
PRONOUNCED ON : 10th MARCH 2026**

JUDGMENT (PER M.S.KARNIK, J) :

1. Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioners seek to challenge the order dated 01/06/2025 passed by respondent no.2 –the Collector, Pune and the Government Resolution dated 15/10/2024 issued by the respondent no.1- State of Maharashtra. Further relief is sought for a direction to respondent no.1- State of Maharashtra to hold necessary inquiry in respect of representations made by the petitioners and subject to outcome of such inquiry, to initiate

necessary action against the concerned persons. It is further prayed for a direction to the respondents to cancel the reservation/residential scheme which is being implemented by the respondents on the “Gairan Land” (grazing land).

The facts of the case in brief are as under:

2. Petitioner no.1 is the resident of Rohkal, Taluka-Khed, District-Pune. The grievance of the petitioners is that the Collector of Pune passed an order of transfer of the grazing land without consulting respondent no.3-Pune Metropolitan Region Development Authority (‘PMRDA’, for short) which is the planning authority. Respondent no. 4- the Maharashtra Housing and Area Development Authority (‘MHADA’, for short) is the beneficiary of the said transfer. It is the petitioners’ case that respondent no.5-the Deputy Conservator of Forests (Territorial), Junnar has given consent without the gram sabha approval. It is the petitioners’ case that respondent no.2 issued the order of transferring the grazing land for implementation of the residential scheme which was to be implemented under the supervision of respondent no.4. The scheme was to be implemented on the land situated at Gat No. 220, Rohkal, Taluka-Khed, District-Pune. The land in question is a

grazing land. A portion of the said land is inhabited by the Scheduled Tribe ('ST', for short) and Scheduled Caste ('SC', for short) community and without taking the villagers in confidence, it was decided that the ST community be evicted from the subject land. It is also the case of the petitioners that around 5000 trees planted by social forestry are likely to be cut. The case of the petitioners is that the said transfer is contrary to the provisions of the Maharashtra Land Revenue Code, 1966 ('Code of 1966', for short). It is further submitted that without finalizing the list of beneficiaries and without confirming a single beneficiary, MHADA wants to implement the 'Pradhan Mantri Awas Yojana Scheme-Urban 2.0' ('PMAY', for short) which is illegal. The petitioners therefore preferred a representation before the concerned authorities. Learned counsel for the petitioners therefore submitted that the action on the part of the respondents of transferring the grazing land is illegal and contrary to the provisions of law as it affects the interests of not only the villagers but is also prejudicial to the inhabitants belonging to the SC and ST community.

3. We have heard Mr.Ugle, learned counsel for the petitioners, Mr. Sakhadeo, learned counsel for respondent no. 3 and Dr.Milind Sathe, learned Advocate General appearing for respondent no.4 and learned Additional Government Pleader for respondent-State. Perused the affidavit in replies filed by the respondents.

4. Though an objection as to the maintainability of this writ petition was raised challenging the locus of the petitioners, we proceed to consider the submissions on merits considering that petitioner no.1 is a resident of the said village. There is no dispute that land in question is a government owned land. Being a government owned land, the petitioners cannot claim any vested right to use the said land for any specific purpose. The question is whether the land is reserved for the residential scheme to be implemented has been so reserved by following the appropriate legal process.

5. Learned AGP submitted that the present reservation of land falls under the category of public purpose, over which PMAY is being implemented which is a permitted activity on the said reserved land. The GR dated 19/09/2016 was issued by the

Revenue and Forest Department, Government of Maharashtra whereby a policy decision was taken to make available government land for implementation of approved projects under the PMAY. By GR dated 19/09/2016, the State Government has expressly authorized the District Collectors to allot government land to implementing agencies such as MHADA, local authorities and other Government or semi-Government bodies in exercise of powers under Section 40 of the Code of 1966 read with Rule 5 of the Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971 subject to prescribed terms and conditions. Pursuant to the said policy, the MHADA, vide letter dated 24/04/2025, requested the Collector, Pune for allotment of government land admeasuring 15 Hectares 76 R at Gat no. 220 of Village Rohkal, Taluka Khed, District-Pune for construction of residential houses under the Pradhan Mantri Awas Yojana (Urban). After seeking inputs from Tahsildar Khed, the Circle Officer was instructed to inspect the site and submit a report. The report indicated that land is a Gairan land. The report records that the said land parcel is adjacent to Rohkal to Pimpri Khurd Road and that a Dashkirya Ghat (cremation area) exists on the southern side of the land and

that certain Thakar tribal families are residing in tin sheds on the said portion of the land.

6. Accordingly, after receiving the report from the Circle Officer, Tahsildar prepared and submitted a detailed report dated 05/05/2025 to the Sub-Divisional Officer, Khed certifying that the said land is a Government Gairan land and is suitable for the proposed public purpose.

7. The Forest Department examined the proposal and issued its communication stating that the subject land is not included in any reserved forest. The PMRDA submitted its remark stating that Gat No. 220 falls under public and semi-public use as per the draft development plan and that the proposed housing use is permissible under Rule 21.9(a) of the Development Control and Promotion Regulations, 2018.

8. The Chief Executive Officer, Zilla Parishad, Pune, by letter dated 20/05/2025 communicated no objection for transfer of the said land for implementation of the Pradhan Mantri Awas Yojana. Subsequently, the Group Development Officer, Panchayat Samiti, Khed, by letter dated 03/06/2025 requested issuance of a

correction order by excluding 0.30 R area reserved for 21 individual beneficiaries of the Pradhan Mantri Awas Yojana, thereby making the net land admeasuring 15 Hectares 46 R available.

9. We thus find after considering all the aforesaid documents and reports that the Collector, Pune has passed a reasoned order dated 12/06/2025 granting permission to MHADA to implement the PMAY on a government land admeasuring 15 Hectares 46 R from Gat No. 220. The said order grants advance possession subject to compliance with statutory provisions and safeguards the rights of existing inhabitants. From the order dated 16/06/2025 of the Sub-Divisional Officer, Khed, it is seen that MHADA has been directed to rehabilitate the Adivasi/Thakar families by allotting 10.50 square metres of land to them within the same Gat number, thereby ensuring that no displacement takes place without lawful rehabilitation.

10. We have also perused the affidavit in reply filed by the respondent no. 4 on behalf of MHADA. As indicated earlier MHADA is carrying out a project known as 'Pradhan Matri Awas Yojana-Urban 2.0'. The said project is a flagship project of the

Ministry of Housing and Urban Affairs, Government of India. The said project has been launched with a mission of providing housing for all to fulfill the need for housing in the urban areas. Under the said scheme, affordable houses are being offered to the economically weaker section category as well as to all other people who fulfill the criteria under the said scheme. MHADA is the implementing authority for the said project. As per UDCPR, the proposed reservation is for public amenities and ODR-58, 18 mtrs and 15 mtrs are proposed. The land is within 200 mtrs radius from village (gautha) and as per Development Control Regulations, 2018 ('DCR', for short) more particularly, Regulation 21.9(a) for Development of Houses under Pradhan Matri Awas Yojana, the permission of Development Authority is necessary. Respondent no.5- The Deputy Conservator of Forests (Territorial), Junnar has given consent.

11. Gam Panchayat's objection has been considered by the Collector in the order dated 12/06/2025. Even after the aforesaid order dated 12/06/2025, the Collector, Pune had held a meeting on 24/09/2025 of all concerned including Tahsildar and Sarpanch of Village – Rohakal. In the said meeting, all the objections were

considered by the Collector, Pune and after considering the said objections, the Collector Pune had decided to make alternate land along with other basic amenities available for villagers in the adjacent land bearing Gat No. 223. MHADA has forwarded the minutes of the said meeting vide its letter dated 08/10/2025 to the Collector, Pune. Thus, in the said meeting, Collector, Pune has taken care of the concerns of the local residents of the said village and has assured to make alternate land and funds available.

12. In the context of the present case, it will be necessary to extract Section 22A of the Code of 1966 which was relied upon by MHADA which reads thus :

“22A. Prohibition on diversion of use of Gairan Land-

(1) The land set apart by the Collector for free pasturage of village cattle (hereinafter referred to as "the Gairan Land") shall not be diverted, granted or leased for any other use, except in the circumstances provided in sub-sections (2) or (3), as the case may be.

(2) The Gairan land may be diverted, granted or leased for a public purpose or public project of the Central Government or the State Government or any statutory authority or any public authority or undertaking under the Central Government or the State Government (hereinafter in this section referred to as "Public Authority"), if no other suitable piece of Government land is available for such public purpose or public project.

(3) The Gairan land may be diverted, granted or leased for a project of a project proponent, not being a Public Authority, when such Gairan land is unavoidably required for such project and such project proponent transfers to the State Government, compensatory land as

provided in sub-section (4) and (5).

(4) The compensatory land to be transferred to the State Government under sub-section (3) shall be in the same revenue village have area equal to twice the area of the Gairan land and its value shall not be less than the value of the Gairan land so allotted under sub-section (3):

Provided that, the area of compensatory land shall have to be suitably increased, wherever necessary, so as to make its value equal to the value of the Gairan land so allotted under sub-section (3).

(5) The compensatory land to be transferred to the State Government under sub-section (3) shall, notwithstanding anything contained in any other law, rule or orders made thereunder, be assigned by the Collector under section 22 for the use only of free pasturage of village cattle or for grass or fodder reserve.

(6) The powers of diversion, grant, lease of Gairan land under this section shall be vested in the State Government:

Provided that, notwithstanding anything contained in section 330A, the powers of the State Government under sub-section (3) shall not be delegated to any officer or other authority sub-ordinate to it.

(7) Notwithstanding anything in sub-sections (1) to (6) or any other provision of this Act, Gram Sabhas shall be competent to preserve, safeguard and manage Guiran land in Scheduled Areas:

Provided that, no Gairan land in the Scheduled Areas shall be diverted or disposed of without the prior informed consent of the Gram Sabhas concerned."

13. A reading of the provisions indicates that Gairan land can be used or diverted for a public purpose or public project. In terms of the communication dated 12/06/2025, the MHADA has, vide its letter dated 10/07/2025 submitted a Deed of Guarantee to the Tahasildar Khed. Perusal of the clause 7 of the allotment order dated 12/06/2025 indicates that clause 7 mandates the

implementing authority to plant the trees. Clause 8 of the said order mandates the implementing authority to make sure that the said people are rehabilitated.

14. The PMAY is a scheme undertaken by the Central and State Government to discharge the obligation under Article 21 and Article 39(b) of the Constitution. MHADA has already issued a tender on 04/11/2025 for construction of 8001 number of 1 BHK dwelling units for residential purpose of economically weaker section beneficiaries including construction of all required on-site and off-site infrastructure supporting self-sustainability under the said project. The said tender has been issued for an estimated cost of Rs.11,60,94,51,000/-. We thus find that the said transfer is permissible under the Code of 1966 and proper procedure has been followed by the respondents while transferring the said Gairan land which is to be used for public purpose.

15. Learned Advocate General invited our attention to the decision of this Court dated 12/09/2024 in **Santosh Madhukar Bhondve and ors. Vs. State of Maharashtra and ors.** in Writ Petition No. 3098 of 2021. Paragraphs 22 to 26 of the said decision read

thus :

“22. Main plank of argument of Shri Anturkar, learned Senior Advocate representing the petitioners is that in terms of the provisions contained in Section 22A of the MLRC, 1966, Gairan land cannot be diverted or granted or leased for any other use and since in this case Gairan land has been allotted in favour of respondent No.4 - Corporation for use of construction of houses for economically weaker section, the same is illegal being violative of the prohibition contained in Section 22A of the MLRC, 1966. It is his further submission that exception to prohibition as carved out in sub Section (2) of Section 22A of the MLRC, 1966 will operate only with a pre-condition that Gairan land may be diverted or granted or leased for public purpose/project only if no other suitable land of the Government is available for such public purpose/project and in the instant case, there is nothing on record to establish that any other Government land was available for the construction of houses for economically weaker section under the PMAY. Thus, it is his contention that the allotment was is unlawful.

23. However, the said submission of Shri Anturkar on behalf of the petitioners has to be scrutinized keeping in mind what Section 40 of the MLRC, 1966 provides for. The said submission also needs to be tested on the legal proposition as argued by Shri Kumbhakoni, learned Senior Advocate representing respondent No.4 - Corporation that in view of the provisions of Section 3(3)(a) and 3(3)(b) of the Corporations Act, 1949 on inclusion of subject land within the municipal area of respondent No.4 Corporation, the provisions of the MRTTP Act, 1966 and the Development Plan sanctioned by the State Government under Section 34/35 of the MRTTP Act, 1966 will operate and therefore, any violation of the land use as determined by the Development Plan prepared under Section 34/35 of the MRTTP Act, 1966 will not be permissible.

24. Section 40 of the MLRC, 1966 as extracted above, vests almost absolute right in the State Government to dispose of any land or property of the Government on such terms and conditions as it deems fit. The language in which Section 40 is couched leaves no room of doubt that the right of the State Government to dispose of any of its land or property is irrespective of any provision of MLRC, 1966 for the reason of opening phrase occurring in Section 40 is "nothing contained in any provision of this Code". Thus, we are of the opinion that by operation of Section 40 of the MLRC, 1966, the State Government is vested with right to dispose of any land of the Government on such terms and conditions which are to be determined by it irrespective of any other provision available in

MRLC, 1966 including Section 22A. Such, an interpretation of Section 40 qua Section 22A of the MLRC, 1966 is based on the rationale that the Government is the absolute owner of its own property and land and hence, putting any fetter on the right of the Government to dispose of any property on the terms and conditions to be determined by it, in our opinion, will not be permissible and therefore, in the view of the Court, notwithstanding the prohibition contained in Section 22A of the MLRC, 1966, the Government still will have all the authority and power to dispose of its land.

25. It is further noticed that Section 3(3)(a) of the Corporations act, 1949 permits the State Government to exclude or include by way of alteration of limits to exclude or include any area from the municipal limits by its alteration. Section 3(3)(b) provides that in case any area is included within the municipal limits of a Municipal Corporation by the State Government in exercise of its powers available to it under Section 3(3)(a) various acts, such as appointments, notifications, notices, taxes, orders, schemes, licenses, permissions, rules, bye-laws etc. made or issued or imposed or granted under the Corporations Act, 1949 or any other law for the time in force, shall apply to and be in force in the additional area also from the date of its inclusion in the municipal limits under Section 3(3)(a). The relevant phrase occurring in Section 3(3)(b) is various acts done under "this Act" that means the Municipal Corporations Act or "any other law". Thus, any act of the Municipal Corporation referable to MRTP Act, 1966 will be covered by the phrase "any other law" occurring in Section 3(3)(b) of the Corporations Act, 1949. Since the Development Plan for the additional area is prepared by the Corporation with the sanction of the State Government under Section 34/35 of the MRTP Act, 1966, therefore, such a Development Plan will apply to and shall be in force in respect of the additional area as well. Meaning thereby, such Development Plan will apply to the subject land for the reason that the subject land was included in the municipal area of respondent No.4 by the State Government vide its notification dated 11th September 1997.

26. The land use prescribed in the Development Plan prepared by respondent No.4 in respect of subject land under Section 34/35 of the MRTP Act, 1966 will operate and apply and will over-ride the use of the subject land as Gairan land also keeping in view the provisions contained in Section 52(2) of the MRTP Act, 1966. The reason for such application of Development Plan is that Section 52 of the MRTP Act, 1966 provides that any person who contravenes the provisions of the Development Plan invites certain penal consequences. Thus, if user of any land before its inclusion in the Municipal Corporation was other than the user prescribed in the Development Plan prepared by

the Municipal Corporation, after its inclusion in the municipal limits, earlier user is impermissible and such use has penal consequences. Therefore, we conclude that the user of the land as per the prescription of the Development Plan prepared under Section 34/35 of the MRTP Act, 1966 in respect of the additional area will prevail over the land use of the land in the additional area which was in existence prior to inclusion of the additional area within the municipal limits of the Municipal Corporation.”

16. The upshot of the above discussion is that Section 40 of the Code of 1966 vests the State Government with an overriding authority to dispose of Government land on such terms and conditions as it deems fit, notwithstanding anything contained in any other provision of the Code. Consequently, the restriction regarding diversion or grant of Gairan land under Section 22A of the Code of 1966 does not limit the State Government’s power to dispose of such land.

17. For the aforesaid reasons, we do not find the order passed by the Collector, Pune of transferring the said land for the purpose of a public project for constructing houses for economically weaker section of the society under the Central Government scheme, is perverse or that the Collector, Pune while transferring the said land has committed any illegality contrary to the statutory provisions. The land is to be used for the public purpose. The

aforesaid decision in **Santosh Madhukar Bhondve & ors** (*supra*) supports the case of the respondents. We, therefore, do not find any merit in this writ petition. The writ petition is dismissed.

(S.M.MODAK, J.)

(M.S.KARNIK, J.)

18. Learned counsel for the petitioners at this stage requested for stay of this order. We do not see any reason to stay this order at the behest of the petitioners. The request is rejected.

(S.M.MODAK, J.)

(M.S.KARNIK, J.)