

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5612 OF 2021

Balasaheb Gopalrao Maral & Ors. ...Petitioners

Versus

State of Maharashtra,
The Secretary, Revenue &
Forest Dept. & Ors. ...Respondents

Mr. Y. B. Lengare for the Petitioners.
Ms. M. S. Bane, AGP for the Respondent (State).
Mr. Nitin P. Deshpande for Respondent Nos.7 to 13.

**CORAM : G. S. KULKARNI,
JITENDRA JAIN, J.J.**

DATE : 26th JULY, 2023.

P.C.

. The Petitioners claim to be a project affected person. They have filed the present petition contending that they were allotted plots of land by allotment order dated 31st March 2001, at Jategaon, Bk., Taluka Shirur, District Pune in Survey Nos.295 and 415. Allotment order to that effect is annexed at Exhibit-D, page 52. The Petitioners' contention is that the Petitioners were also put in possession of the said land allotted to them from Gat Nos.415 and 495. However, only on the ground that the Petitioner had not constructed a residential house within one year of the allotment, the allotment would be cancelled and on such

apprehension, the Petitioners have approach this Court praying for the following reliefs:-

“[b-1] That this Hon’ble Court by way of appropriate Writ, Order or direction be pleased to quash and set aside the impugned letter cum order dated 11.09.2019 issued by the Respondent No.1 thereby granting permission for allotting the land bearing Gat No.415 and 295 at Village Jategaon, Tal. Shirur, Dist. Pune to the Respondent No.7 and other PAPs of Gunjawani Project for agricultural purpose.

[b-2] Pending the hearing and final disposal of this Writ Petition, the implementation, execution and operation of the impugned letter cum order dated 11.09.2019 issued by the Respondent No.1 thereby granting the permission for allotting the land bearing Gat No.415 and 295 at Village Jategaon, Tal. Shirur, Dist. Pune to the Respondent No.7 and other PAPs of Gunjawani Project for agricultural purpose be stayed.

[b] That this Hon’ble Court by way of writ, order, or direction be pleased to quash and set aside G.R. dated 6.4.2015 thereby transferring the Gaonthan from land bearing Gat No.415 and 295 admeasuring at Village Jategaon Bk., Tal. Shirur, Dist. Pune to Village Dhanep Tal. Velha, Dist. Pune and further transferring Gat No.415 and 295 Village Jategaon Bk., Tal. Shirur, Dist. Pune to any other gaonthan or any other purpose or agriculture purpose or land pool.

[c] That this Hon’ble Court by way of appropriate writ, order or directions be pleased to hold and declare that the land bearing Gat No.415 and 295 at Village, Jategaon Bk., Tal. Shirur, Dist. Pune are reserved for the residential plot and for public utility for the project

affected persons of the Gunjavani Project.

- [d] That this Hon'ble Court be pleased to issue appropriate writ, order, or direction thereby directing the Respondent No.2 to 5 to forthwith allot the residential plot to the Petitioners from land bearing Gat No.415 and 295 admeasuring 4 Area respectively at Village Jategaon Bk., Tal. Shirur, Dist. Pune and put the Petitioners into the possession of the said residential plot.*
- [e] That this Hon'ble Court be pleased to issue appropriate writ, order, or direction thereby directing the Respondent No.1 to 6 to provide financial assistance to the petitioners for residential houses and carry out necessary repairs and provide all requisite facilities in the gaonthan Gat No.415 and 295 at Village Jategaon, Tal. Shirur, Dist. Pune.*
- [f] Pending the hearing and final disposal of this writ petition, implementation, execution, and operation of G.R. dated 6.4.2015 thereby transferring the Gaonthan from land bearing Gat No.415 and 295 admeasuring at Village Jategaon Bk., Tal. Shirur, Dist. Pune to Village Dhanep Tal. Velha, Dist. Pune and further transferring Gat No.415 and 295 Village Jategaon Bk., Tal. Shirur, Dist. Pune to any other gaothan or any other purpose or agriculture purpose or land pool be stayed.*
- [g] Pending the hearing and final disposal of this Writ Petition, Respondents be restrained from allotting the land bearing Gat No.415 and 295 at Village Jategaon Bk., Tal. Shirur, Dist. Pune for agricultural purpose or any other purposes.*
- [h] Ad-interim and interim order in terms of prayer clause (f) and (g), hereinabove, be granted;"*

2. It also appears that subsequently the State Government passed an order on 11th September 2019 that the land in question be allotted for the agricultural purpose, such order of the State Government is placed on record at Exhibit-J, page 82. A coordinate bench of this Court took up the proceedings for hearing on 18th October 2019 when the Court ordered a status quo to be maintained which, thereafter, appears to have been continued.

3. Thereafter, on 6th April 2022, a Coordinate Bench of this Court passed an order recording that it was not disputed in the Affidavit filed by the Principal Secretary, Revenue and Forest Department that the Petitioners were placed in possession of the residential plot at Jategaon, Bk., Taluka Shirur, District Pune. The Court, accordingly, had passed the following order:-

“1. We have heard learned Counsel for the petitioners and learned AGP. It is not disputed in the affidavit filed by the Secretary, (Disaster Management, Relief and Rehabilitation), Revenue and Forest Department on behalf of Respondent No.1 that the petitioners were placed in possession of the residential plot at Jategaon Budruk. The affidavit states that the petitioners failed to construct the houses within one year and vide resolution dated 06/04/2015, the Government had canceled the Gavthan created at Jategaon Budruk, Tal Shirur. In the affidavit no statement is made as to

whether the possession from the petitioners is taken back. If the petitioners are placed in possession of the property as the Project Affected Persons, then no purpose would be served by dislodging them and placing the other persons in possession.

- 2. The learned AGP seeks time to explain as to whether the possession from the petitioners is taken back.*
- 3. Place the matter on 20th April 2022.*
- 4. The ad-interim order passed earlier to continue till then.”*

4. Thereafter, on 12th September 2022, the Division Bench of this court was pleased to pass the following order:-

- “ The reply is filed on behalf of the Respondent – State that the Petitioners have violated the conditions of allotment for not constructing the premises within one year of allotment inspite of the fact that the Petitioners were put in possession on 11 May 2001. It is stated on oath by the Secretary, Disaster Management Relief and Rehabilitation that on 11 May 2001, Petitioners were put in actual physical possession of the residential plot, and the Petitioners did not construct house on the residential plot, and thereafter, on 6 April 2015, the Gavthan created was cancelled. To this reply, which is an assertion on oath, the Petitioners have not filed any rejoinder demonstrating the claim of the Petitioners that the Petitioners were not put in physical possession, as stated, and that the Petitioners were continuously making representations from the date of allotment.*

2. *After arguing for some time, the Petitioners seeks time to file additional rejoinder. By way of indulgence, we permit the Petitioners to file additional rejoinder.*
3. *As regards continuation of the ad-interim order is concerned, which is a status-quo, the same was granted in the year 2019, as a consequence, none of the project affected persons are getting any benefit of resettlement. While we continue the ad-interim order, we clarify that it will only be restricted to the Petitioners, and it will not preclude the State from taking the steps as regards the other project affected persons are concerned.*
4. *Stand over to 11 October 2022.”*
5. Accordingly, the ad-interim relief granted earlier was continued. Thereafter, another order dated 4th January 2023 was passed by this Court, which recorded the statement of Mr. Deshpande, learned counsel for Respondent Nos.7 to 19 that the plot which was allotted to the Petitioners, allotment of which is cancelled, are now proposed to be allotted to his clients. In such circumstances, the State Government was directed to file additional affidavit, so as to adjudicate such contentions as arising on the petition and in regard to the case as urged by the Petitioners. The said order dated 4th January 2023, which reads thus:-

- “1. *Learned counsel for the Petitioners states that possession of the land was not given to the Petitioners in the year 2001. Petitioners have not been given the*

possession of the plots though it was allotted by allotment order dated 31.03.2001. Per contra, it is the case of the State Government that the possession was in fact given to the Petitioner in the year 2001 itself pursuant to the allotment order dated 31.03.2001. However, since the Petitioners have not constructed any structure within one year from the date of allotment order, the allotment is cancelled. It is submitted that the Government Resolution dated 06.04.2015 cancelled the Gavthan created in Jategaon Budruk Tal. Shirur as per representations received from the Project Affected Persons at large. Accordingly, no such proposal has been forwarded by the State Government before the alleged cancellation with the Government Resolution dated 06.04.2015.

- 2. Mr.Deshpande, learned counsel for Respondent Nos.7 to 19 states that the plot which was allotted to the Petitioners, allotment of which is cancelled, are not proposed to be allotted to his clients.*
- 3. The State Government is directed to file an additional affidavit and to indicate as to whether allotment made to the Petitioners in the year 2001 is stayed, cancelled or not and if not cancelled, whether the Petitioners are entitled to the allotment of some other land in lieu of the residential plots allotted to them in the year 2001. The affidavit shall also indicate the proof of the possession, if handed over to the Petitioners in pursuance of the letter of allotment issued in the year 2001.*
- 4. The State Government is directed to file an affidavit within three weeks from today without fail with a copy to be served upon the Petitioners' advocate simultaneously. Petitioners would be at liberty to file a rejoinder to the affidavit within two weeks thereafter*

with a copy to be served upon the Respondents' advocate simultaneously.

5. *Place this matter on board for 'Admission' on 20.01.2023.*

6. *Ad-interim order granted by this Court in the year 2019 and modified by order dated 12.09.2022 to continue till next date."*

6. It is on such backdrop the proceedings are before us today. We have perused the additional affidavit dated 8th October 2022, filed on behalf of the State Government, by Mr. Ashish Gupta, Principal Secretary, Revenue and Forest Department, *interalia* stating that the Petitioners have not constructed a house within one year from the date of allotment. He has also referred to a Government Resolution dated 6th April 2015, wherein a decision was taken by the Government to convert the "Gairan land" (grazing land) into agricultural land. The relevant extract of the said affidavit is required to be noted which reads thus:-

"3. I say that the Petitioners were allotted the agricultural land at Village Jategaon Bk., Tal. Shirur, Dist. Pune. The various PAPs were allotted the land at Village Jategaon Bk., Mukhai, Ganegaon Khalasa, Dhaonre and Khandale. I say that 110 Hectare 67 Are were allotted to the PAPs of the Gunjawani Project and therefore, the Respondents have developed the residential Gaothan from Gat No.415 and 295 at Village Jategaon Bk., and accordingly, various PAPs have been allotted the residential plots by allotment order dated 31.03.2001. However, the possession is not given and the Petitioners have

consistently followed the matter with the Respondents.

- 4. I say that the Petitioners by their representations dated 08.12.2015, 13.01.2016, 18.01.2016, 23.09.2016, 08.05.2017 and 07.06.2017 has requested the Respondents to give the possession of the residential plots and enter their name to the 7/12 extract. The said representations are at Exhibit "F" at page No.59 to 67 of the Writ Petition. The Petitioners have also requested to enter their names to the 7/12 extracts of the plots allotted to the Petitioners and give the possession by letters dated 22.05.2016, 03.01.2017, 10.03.2019, 23.09.2019, 10.10.2019, 03.12.2020, 14.12.2020 and 07.10.2022. The Respondents have not given possession and have also not entered their name to the 7/12 extract of the land bearing Gat No.415 and 295 at Village Jategaon Bk., Tal. Shirur, Dist. Pune. Hereto annexed and marked as **Exhibit "1"** collectively are the copies of the said letters.*
- 5. I say that the Respondent, authority has developed the Gaothan at Village Jategaon, Bk., and spent an amount of Rs.59.74 Lakhs for school building, grampanchayat building, water tank, well, pipe line, internal road, electric supply, drainage, public toilet, etc. The said fact is reflected in the report dated 07.12.2015 submitted by the Respondent No.3 to the Respondent No.2. A report dated 27.10.2015 Tahasildar-Shirur, report dated 21.10.2015-Neera Devdhar Project. I say that taking into consideration these reports, the Respondent No.3 has prepared comprehensive report about the expenses spent of Rs.59.74 Lakhs. The photographs also shows the grampanchayat building, school building, water tank and layout of the plots. I say that there are 142*

residential plots and common utility plots were developed. I crave leave to refer to and rely upon the copy layouts as and when found necessary. Hereto annexed and marked as **Exhibit "2"** is a copy of the photographs. It was also found that 569 PAPs have deposited 65% amount and they are entitled for 393.97 Hecter. Out of that 414 PAPs have been allotted 269.97 Hectare land and the remaining PAPs of 101 will be allotted the land from the Villages at Ganegaon Khalasa, Jategaon Bk., Khandale and Mukhai. As per the said reports, it has been reported by the Respondent No.3 to the Respondent No.1 that the land bearing Gat No.415 and 295 is a Gairan land and the same should not be allotted for agricultural purposes. The said fact has been informed to the Divisional Commissioner. **Similarly, by report dated 31.03.2018 the Deputy Commissioner (Resettlement), Pune Division, Pune has informed the Additional Chief Secretary, Revenue and Forest Department that the land bearing Gat No.415 and 295 reserved for Gaothan should not be allotted for agricultural purpose. The Gaothan is made as per the master plan of the Gunjawani Project. The said reports were not taken into consideration by the Respondent No.1 while issuing the G.R. dated 06.04.2015. Copy of the said reports are on page No.128 to 138 of the Writ Petitions.**

6. I say that though the Additional Collector and Deputy Commissioner has informed the Additional Chief Secretary, Revenue and Forest Department that the land is earmarked and included in the master plan of the Gunjawani Project for the residential Gaothan and the same will not be available for agricultural purpose, the Respondent No.1 sidelined the said report and the

residential plots have been decided to be allotted for the agricultural purposes with the vested interest.”

7. Today, Mr. Lingare has brought to our notice that 7 orders are passed by the District Collector, Pune, (Rehabilitation Division) allotting lands to project affected persons in Survey Nos.295 and 415. The details of the chart are as under and copies of the said orders are taken on record and marked ‘X1’ to ‘X7’.

Sr. No.	Name of Allottee	Allotment No. & Date	Gat No. & village	Admeasuring
1.	Yogesh Ganpatrao Nagine & Ors.	JPUA/ GUNJAVNI/ SR/01/2023 30.06.2023	Gat No.415 Village Jategaon Tal. Shirur, Dist. Pune	1 H 60 R
2.	Maruti Bhiva Devgirikar	JPUA/ GUNJAVNI/ SR/02/2023 30.06.2023	Gat No.415 Village Jategaon Tal. Shirur, Dist. Pune	1 H 60 R
3.	Ghanshyam Dattatray Gujrati & Ors.	JPUA/ GUNJAVNI/ SR/03/2023 30.06.2023	Gat No.415 Village Jategaon Tal. Shirur, Dist. Pune	1 H 60 R
4.	Ramnath Motiram Gujrati Through LR	JPUA/ GUNJAVNI/ SR/04/2023 30.06.2023	Gat No.415, 295, Village Jategaon Tal. Shirur, Dist. Pune	0 H 20 R 0 H 60 R
5.	Smt. Chaturabai Keshav Nagine	JPUA/ GUNJAVNI/ SR/01/2023 30.06.2023	Gat No.295 Village Jategaon Tal. Shirur, Dist. Pune	0 H 40 R
6.	Vitthal Dhondiba Devgirikar	JPUA/ GUNJAVNI/ SR/01/2023 30.06.2023	Gat No.295 Village Jategaon Tal. Shirur, Dist. Pune	1 H 20 R

7.	Keshavrao Baburao Nagine and Ors.	JPUA/ GUNJAVNI/ SR/01/2023 30.06.2023	Gat No.412 Village Jategaon Tal. Shirur, Dist. Pune	1 H 60 R
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8. Mr. Lingare submits that if the position as taken on behalf of the State Government in the affidavit filed by Mr. Ashish Gupta, Principal Secretary, Revenue and Forest Department is to be accepted, then such allotment orders could not have been issued and that too without the rights of the Petitioners being recognized. He, accordingly, submits that he be granted permission to amend the petition so as to raise appropriate contentions in regard to the said orders. Insofar as the applicability of the Government Resolution dated 6th April 2015 is concerned, Mr. Lingare submits that his case would squarely be covered by such Government Resolution.

9. In the aforesaid circumstances, we permit the Petitioners to amend the petition with the appropriate amendments be carried out within a period of one week from today. Copy of the amended petition be served on the Respondents.

10. Insofar as the orders dated 30th June 2023 are concerned (X1 to X7), we direct the State Government not to take any further action and/or maintain status quo in regard to these

lands till further appropriate orders are passed on this petition. Needless to observe that the Petitioners are also at liberty to implead/add Respondents, let such added Respondents be served by private service and affidavit to that effect be placed on record.

11. Stand over to **9th August 2023, High on Board.**

12. Ad-interim relief shall grant for a period till the adjourned date of hearing.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]