

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 17th February 2023, filed on behalf of the State Government, by Mr. Aseem Gupta, Principal Secretary, (Disaster Management, Relief and Rehabilitation), Revenue and Forest Department, Mantralaya, Mumbai 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 and submit that, 53 project affected persons of Gunjavani project including 15 of the Petitioners viz., Petitioner Nos.1 to 15, having been allotted residential plots from gaothan at Gat No.295 and 415 in Village Jategaon Tal., Shirur Dist., Pune vide order dated 31.03.2001. However, out of the 53 PAPs, actual physical possession of the residential

plots has been delivered on 11/05/2001 to 23 project affected persons including 15 of the Petitioners. I say and submit that as per terms and conditions mentioned in the allotment order of the said plots that the present Petitioner had to abide by the terms and conditions and complete the construction of house on the said plot within a period of one year from the date of allotment. However, the Petitioner had not constructed the house on the residential plots allotted them till date and thus have violated the aforesaid terms and conditions. Copy of the list of 15 Petitioners allotted plots and Taba pavati viz., receipt in respect of handing over of the possession of said 15 plots is hereto annexed and marked as Exhibit-R1 colly.

4. I say and submit that the Projected Affected persons affected by the Gunjavani project had submitted a representation dated 25.11.2013 to the District Collector, Pune wherein they had mentioned their willingness to accept alternate land at any place in the benefit zone of Gunjavani project and had also given an undertaking that they will not demand plots separately at the place wherein they are allotted alternate land. Therefore in the larger interest of PAPs and for convenience and benefit of project affected persons of the Gunjavani project as mentioned in earlier Affidavit, a policy decision has been taken vide Government Resolution dated 6/4/2015, whereby new gaothan has been

created at village Dhanep I and II Tal Velhe for PAPs of Gunjavani project residing at Kanand Tal. Velhe and the earlier decision to create gaothan from village Jategaon Budruk, Taluka Shirur was revoked. Hence, as per this Government Resolution the earlier allotment order for granting plots to 53 project affected persons including 15 of the Petitioners, which have been passed by the then District Rehabilitation Officer Pune in Village Jategaon Tal. Shirur Dist. Pune stands cancelled. Hereto annexed and marked as Exhibit-R2 is the copy of Government Resolution dated 6/4/2015.

5. I say and submit that, as per the Government Resolution dated 6/4/2015, two gaothan with all civic amenities have been developed in Village Dhanep Tal. Velhe Dist. Pune. The Gaothan No.01 is having total 39 residential plots and all 39 plots allotted to 20 PAPs from Kanand Village. Another Gavthan No.02 is having total 264 residential plots. Out of them, 179 residential plots have been allotted to 99 PAPs from Village Kanand.

6. I say that, at present there are 53 residential plots available in Gaothan No.02 from Village Dhanep Taluka Velhe Dist. Pune and said residential plots can be allotted to the Petitioners. Previously, 53 PAPs to whom residential plots have been allotted from old gaothan Village Jategaon BK, Taluka Shirur, Dist. Pune in the

year 2001, out of them, 17 PAPs requested to allot plots in new Gaothan at Village Dhanep and same have been allotted to them. The Petitioners are PAPs from Village Kanand, Tal. Velhe, Dist. Pune. Hence, the petitioners are entitled to be allotted available residential plots from Village Dhanep, Gaothan No.2, Taluka Velhe, Dist. Pune as per their eligibility.”

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.	0 H 20 R 0 H 60 R

			Pune	
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

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.]

(The order is modified as per order dated 9th August, 2023. The corrections are made in para 6 of the order are shown in italics)