

(2001) 06 BOM CK 0076
In the Bombay High Court
Case No : Writ Petition No. 1523 of 1988

Baliram Patil

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 27-06-2001

Acts Referred:

Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971 — Rule 31, 41, 41(3)
Maharashtra Land Revenue Code, 1966 — Section 20

Citation : (2002) 2 ALLMR 820 : (2001) 4 BomCR 322 : (2001) 4 BOMLR 157 : (2001) 3 MhLj 742

Hon'ble Judges : N.V. Dabholkar, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : S.C. Bora, for the Appellant; V.D. Sapkal, Additional Government Pleader, S.K. Shelke and V.G. Sakolkar, for the Respondent

Final Decision : Partly Allowed

Judgement

B.H. Marlapalle, J.—This petition, filed in public interest, seeks a writ of mandamus against respondent Nos. 1 to 3, to take the possession of land admeasuring 1 Acre 35 Gunthas from the Survey No. 290 of Nilanga town which was allotted to respondent No. 4 (the former Chief Minister of Maharashtra) by cancelling the certificate of allotment and the occupancy rights and to quash and set aside the order dated 14th October, 1960 issued by the respondent No. 3 as well as the order dated 7th September, 1981 which is in the form of certificate of allotment of land in survey No. 290. The petition also seeks a relief of declaration that the allotment of Government land to the extent of 1 Acre 35 Gunthas from survey No. 290 in favour of respondent No. 4 is illegal, arbitrary and not in accordance with the provisions of the Maharashtra Land Revenue Code, 1966 (the Code, for short) and the Rules framed thereunder and further declaration that the sale deeds executed by respondent No. 4 in favour of respondent Nos. 5 to 13 as illegal and contrary to the provisions of the Code.

2. The Tahsildar, Nilanga has filed return and opposed the petition. Similarly, respondent No. 4 has filed affidavit in reply and opposed the petition. It is stated that the petitioner has not approached this Court bona fide and the petition is an attempt of mudslinging to settle political scores, the petitioner has been convicted by a Competent Court and his action of approaching this Court is not in public interest but a personal vengeance due to political rivalry. It is further contended by the respondent No. 4 that the subject land was allotted to him by an order passed in 1968 with right of ownership and alienation and no conditions, whatsoever, in the said allotment were intimated to him before he entered upon the land. The respondent No. 4 has denied the allegations of political influence or his status in getting the subject land allotted in his favour and prayed that the petition be dismissed.

3. Pursuant to our directions, the Deputy Secretary from the department of Revenue and Forest, Mantralaya, the Additional Divisional Commissioner, Aurangabad and the Collector, Latur are present with the respective record which has been perused by us. It is noted that the respondent No. 4 had approached the Minister for Revenue on 13th of August, 1965 for allotment of land and this request was considered and land admeasuring 2 Acres from survey No. 290 of Nilanga town, which was reserved for Government Godown, was provisionally allotted by order dated 10th August, 1968. A copy of the said order was marked to various authorities including the Collector, Osmanabad who was, in turn, called upon to get the valuation of the land done from the Town Planner. Final order of allotment came to be passed on 16th August, 1971 in favour of the respondent No. 4 allotting him 1 Acre 35 Gunthas Gairan land from survey No. 290 of Nilanga Town on payment of occupancy price as a Class-11 owner and the occupancy price was fixed at Rs. 7,500/- per acre as was determined by the Town Planning and Valuation Department. The said grant was subject to the following two conditions:

(a) terms and conditions as laid down in Government Resolution, Revenue Department No. LND-3955/75117-D dated 7th August, 1956 as modified by subsequent Government Resolution No. LND-2260/5208/A, dated 12th September, 1962 and

(b) Rules 31 and 41 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules.

This order was under the signature of the Under Secretary to the Government of Maharashtra - Revenue and Forest Department and a copy of the same was forwarded to the Collector of Osmanabad. Subsequently, the Collector communicated the said order to the concerned authority i.e. Deputy Collector on 3rd November, 1971 vide letter No. 1971 LND 4287 stipulating therein the above - mentioned conditions. It appears that this land could not be handed over to respondent No. 4 because of certain technical reasons and one of the reasons being that 25 Gunthas of this land was reserved for Tahsildar Quarters and, therefore, the Collectorate at Osmanabad had approached the Government from

time to time. Finally, land admeasuring 1 Acre 10 Gunthas, which was not in reservation, was handed over to the respondent No. 4 on 4th January, 1979. When the Collector did not get response from the Government regarding the query on the balance 25 Gunthas land, steps were taken to hand over the balance land to respondent No. 4 on 19th October, 1980. Certificate of occupancy and ownership was issued on 7th September, 1981 and it was very clearly stated in the said certificate that the allotment was subject to the provisions of the Code and the Rules made thereunder and to the conditions agreed to by the occupant in the agreement executed by him in that behalf. It is apparent from the record that the agreements were not executed in the prescribed form when the land was handed over to respondent No. 4.

4. On 24th of November, 1987 the present petitioner submitted a representation to the Minister for Revenue stating therein that the land allotted in favour of respondent No. 4 was sold by Shri Dilip Nilangekar on 21st October, 1987 by demarcating plots and at the rate of Rs. 300/- per square foot and this transaction was illegal and unauthorised. An advertisement was released by the said Dilip Nilangekar for the sale of plots. Prior to approaching the Minister the petitioner had also approached the Collector, Latur who, by his letter dated 19th November, 1987, had called upon the Sub-Divisional Officer, Udgir to investigate into the allegations and submit report. Such a report was submitted on 16th February, 1988 by the Sub-Divisional Officer, Udgir stating therein that the allotment in favour of respondent No. 4 was made for "Agricultural Processing Industry cum residence" and the land was being sold by entering into agreements as per the information gathered by the said officer. It was stated in the said report "that further inquiry would be undertaken to collect exact information. The matter was further probed into and based on these investigations the Collector issued a show cause notice dated 25th February, 1988 against respondent No. 4. This notice was to be served through the Tahsildar, Nilanga and on 26th February, 1988 it was sought to be served on respondent No. 4 at 11.00 a.m. The report of service, as is available in the file, discloses that the respondent No.4 himself read the notice and informed the server that he would accept it in the evening at 5.00 p.m. When the server went in the evening to serve the notice he was informed that the respondent No. 4 had already proceeded to Mumbai. Efforts were made subsequently to serve the said notice but in vain.

5. In the meanwhile, it appears that, the respondent No. 4 approached the State Government and an order of status quo was communicated to the Collector, Latur initially telegraphically on 1st September, 1988 and subsequently by a letter with a copy to the office of the Divisional Commissioner, Aurangabad. The Divisional Commissioner, Aurangabad, by his communication dated 29th of July, 1988 called upon the Collector, Latur to inform the respondent No. 4 to maintain status quo and also the order passed by the State Government. When the Collector sought to serve this order on respondent No. 4, it met with the same fate as the earlier show cause notice and finally it was served on the Personal Assistant of

respondent No. 4.

6. This petition came to be presented before us on 19th September, 1988 and was admitted on 20th September, 1988. While admitting the petition rule on interim relief was issued and by order dated 9th December, 1996 (after about eight years) it was observed by this Court that the question of interim relief would be considered with the writ petition itself and the petition was directed to be fixed for final hearing in the third week of January, 1997. The petition came up for final hearing before us for the first time on 19th June, 2001 and we had issued certain directions on 20th June, 2001 as well as on 25th June, 2001.

7. Shri Shelke, learned counsel appearing for respondent No. 4, submitted that the petition suffers from laches and in any case there is no reason made out to invoke the extraordinary powers of this Court under Article 226 of the Constitution and more so when an alternative remedy of appeal/revision was available to the petitioner under the Code. The learned counsel further submitted that even otherwise the respondent No. 4 allottee may be at the most liable to pay penalty under the provisions of Section 45 of the Code and there is no case made out either to cancel the allotment or to dispossess the respondent No. 4. The learned counsel also referred to the provisions of Rule 31 of the Rules framed under the Code and submitted that the petition deserves to be dismissed as a frivolous litigation, not being in public interest.

8. The other private respondents have been represented by counsel but no return has been filed.

9. On record, there is a report submitted by the Sub-Divisional Officer, Udgir on 5th October, 1991 which states that out of land, admeasuring 1 Acre and 10 Gunthas, the respondent No. 4 had demarcated 166 plots and plot Nos. 1, 76 to 78 and 105 were sold to private persons, who are impleaded as respondent Nos. 10 to 13 in this petition. The show cause notice dated 25th February, 1988. Issued by the Collector, was based on the report submitted by Sub-Divisional Officer initially. On 3rd December, 1988 the Collector, Latur submitted a detailed note to the Government with a copy to the Divisional Commissioner at Aurangabad. The show cause notice as well as this report clearly indicated that the respondent No. 4 was guilty of violating the terms of allotment and the land allotted was not used for the purpose stated in the allotment order. The Collector was also satisfied that out of the said land some plots were sold to other private parties for commercial purposes. The report submitted by the Sub-Divisional Officer, Udgir states that these private purchasers have constructed shops on some of the plots. It is clear that this plotting is only in respect of the land admeasuring 1 Acre 10 Gunthas and the petitioner contends that the remaining land admeasuring 25 Gunthas was given in possession of Government Polytechnic for which the respondent No. 4 has received a huge amount (about 3 Lakhs in all) towards rental from Government. However, it appears that as at present the land admeasuring 25 Gunthas and the remaining land, which is unsold out of 1 Acre 10 Gunthas, is lying unused as stated by the learned

Additional Government Pleader, on instructions from the Collector, Latur.

10. The original order dated 16th August, 1971 passed in favour of the respondent No. 4 allotting 1 Acre 35 Gunthas land, was issued under the provisions of Section 20 read with section 31 of the Code and it was subject to the conditions of Rules 31 and 41 of the Rules framed under the Code. Section 20 of the Code inter alia states that it shall be lawful for the Collector, subject to the order of the Commissioner, to dispose of the properties subject always to the rights of way and all other rights of the public or of individuals legally subsisting. Sub-section (5) of the said section states that any person shall be deemed to have had due notice of an inquiry or order under this section, if notice thereof has been given in accordance with Rules made in that behalf by the State Government. Sections 31 and 40, which are relevant for our considerations read as under:

"31. It shall be lawful for the Collector subject to such rules as may from time to time be made by the State Government in this behalf, to require the payment of a price for unalienated land or to sell the same by auction, and to annex such conditions to the grant as may be prescribed by such rules before land is entered upon u/s 30. The price (If any) paid for such land shall include the price of the Government right to all trees thereon and shall be recoverable as an arrear of land revenue."

"40. Nothing contained in any provision of this Code shall derogate from the right of the State Government to dispose of any land, the property of Government, on such terms and conditions as it deems fit."

Similarly, it would be desirable to reproduce the provisions of Rule 31 as it existed at the relevant time.

"31. Grant of land for industrial and commercial purpose. -- Building sites may be granted by the State Government for industrial or commercial purposes u/s 40 on alienable and impartible tenure on payment of such occupancy price as may be fixed by the State Government. The grant, shall be subject to the conditions under rule 41 and the following conditions, namely

(a) that except with the previous permission of the State Government, neither the land shall be sub-divided or any such sub-division be disposed of;

(b) that the land shall not be disposed of except along with the constructions thereon and the factory plant and other installations, if any, and the land so disposed of shall not, except with the approval of the State Government, be used for a purpose other than the purpose for which it was initially granted:

(c) that on disposal of the land along with the factory, plant, structures and other installations by way of sale, the State Government shall be entitled to half the unearned income, and where such land is sold without any constructions aforesaid, the State Government shall be entitled to unearned income not exceeding 90 per cent as the State Government may decide;

(d) that if the State Government has reason to believe that any misrepresentation or concealment is made in regard to the sale price, the sale shall be voidable at the discretion of the State Government.

Explanation.--For the purposes of this rule, unearned income means an amount equal to the difference between the price realised by way of sale and the occupancy price paid to Government at the time of the grant or as the case may be, the price at which the land was purchased immediately before such sale."

11. Section 29 of the Code defines classes of persons holding land and it states that occupants Class-II shall consist of persons who (a) hold unalienated land in perpetuity subject to restrictions on the right to transfer ...

12. The provisions of the Code and the Rules framed thereunder make it abundantly clear that the respondent No. 4, though was allotted land in perpetuity, the allotment was subject to the restrictions on the right to transfer and these conditions are set out in Rules 31 and 41 of the Rules. Rule 31 states that previous permission was required to be obtained for either sub-dividing the land or for disposing of any such sub-divisions, the land shall not be disposed of except along with the constructions thereof and the factory plant and other installations, and the land so disposed of shall not be used for a purpose other than a purpose for which it was initially granted. It further provides that on disposal of the land, without any constructions, the State Government shall be entitled to unearned income not exceeding 90% as the State Government may decide and if the State Government has reason to believe that any misrepresentation or concealment is made in regard to the sale price, the sale shall be voidable at the discretion of the State Government. The term "unearned income" means an amount equal to the difference between the price received by way of sale and the occupancy price paid to the Government at the time of the grant or as the case may be the price at which the land was purchased immediately before such sale. Rule 41 of the Rules sets out conditions for grant of land for non-agricultural purpose and sub-rule (I) states that such land shall be used for the purpose for which it was granted and will be subject to such terms and conditions as the Collector may annex to the grant in accordance with the provisions of the said Rules. Sub-rule (3) of Rule 41 states that the grantee shall, within three years (or such further period as the Collector may allow) from the date of grant, erect a building of a substantial and permanent description on the land failing which the land shall be liable to resumption on payment of compensation not exceeding the occupancy price paid by the grantee.

13. The record placed before us does indicate that (a) the allotted land has not been used for the purpose for which it was allotted viz, agricultural processing industry cum residence, (b) part of the land has been sold by making plots and (c) the balance of the allotted land is remaining unused and barren even after a period of about 30 years, leave alone three years as stipulated in Rule 41(3) and (d) there is nothing on record that the Collector Osmanabad or Latur had exercised powers under Rule 41(3) and granted extension.

14. Shri Shelke, the learned counsel appearing for respondent No. 4, submitted that the provisions of section 45 of the Code will come into play and the respondent No. 4 cannot be dispossessed of the allotted land. He also submitted that it is for the Government to take appropriate decision in the pending proceedings after hearing the allottee and other parties. These submissions do not impress us. The provisions of section 45 will have to be read with section 44 of the Code and it is clear that these provisions come into play in respect of the land which is in possession of the allottee and not for a land which is sought to be alienated by sale or by any other means by a class-II holder. The respondent No. 4 was not entitled to transfer this land by sale and he has failed to comply with the provisions of Rule 41(3) as well as the provisions of Rule 31. The Collector was right in issuing the show cause notice dated 25th February, 1988 and the proceedings were obviously aborted by the intervention of the State Government. We are surprised to note from the record that in spite of the reminders by the Collector, Latur the Government has done precious little to proceed against respondent No. 4 except holding meetings in the chamber of the Minister for Revenue from time to time. When we passed an order on 25th of June, 2001 the Department of Revenue and Forest of the Government of Maharashtra seems to have acted with lightening speed to approach the Department of Law and Judiciary in seeking its opinion. Such an opinion has been furnished on 26th June, 2001 and it is concluded that the subject matter being sub judice in the instant petition it would be advisable for the Government to await our decision. We refrain from making any comments on this opinion.

15. Even if it is presumed that the petitioner was convicted by a competent Court at some time, that itself will not be a ground for us to dismiss this petition filed in public interest. The petitioner has brought to light the action of the respondent No. 4 in misusing the allotted land and the failure on the part of the State Government to take timely action against the said allottee. Availability of alternative remedy is not necessarily a bar per-se in entertaining a petition and more so when the petition has been filed in public interest and admitted by this Court. While admitting the petition, this Court did not leave the issue, regarding the maintainability of the petition, open. The learned Additional Government Pleader invited our attention to the rejoinder affidavit filed by the petitioner on 25th June, 2001 and more particularly the statements made against the Government Pleader. Though these statements are not in good test, the fact remains the affidavit filed by the Tahsildar failed to come to the expectations in bringing before us the factual position and it was only after the rejoinder affidavit was filed we deemed it appropriate to cause further investigations and direct the concerned officers to submit the record before us. This rejoinder affidavit did serve its purpose in undertaking the fact finding exercise regarding the deeds of the respondent No. 4 and the inaction on the part of the State Government.

16. For the reasons stated above, we allow the petition partly and make Rule absolute in terms of prayer clauses (D) and (F). We further direct the Collector, Latur to assess the unearned income of respondent No. 4 by way of sale of the

plots from the subject land and recover the same amount as per the provisions of Rule 31 of the Rules framed under the Maharashtra Land Revenue Code, 1966. The Collector shall enquire whether the allottee had received rent from the Government Polytechnic and if so proceed to recover the said amount from respondent No. 4. This shall be done within a period of two months from today. The respondent No. 4 is directed to pay costs quantified at Rs. 5,000/-, and this amount shall be deposited with the Registry of this Court within a period of two weeks from today.