
(2020) 02 BOM CK 0116

In the Bombay High Court

Case No : Public Interest Litigation No. 91 Of 2012

Charudatta And Anr

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 27-02-2020

Acts Referred:

Maharashtra Land Revenue (Disposal Of Government Land) Rules, 1971 — Rule 6, 6(1), 7, 7(1)

Citation : (2020) 02 BOM CK 0116

Hon'ble Judges : Z.A. Haq, J;S.M. Gavhane, J

Bench : Division Bench

Advocate : Ajinkya Kale, U.R. Awate, Talekar S.B., S.B. Yawalkar, V.R. Dhorde

Judgement

Z.A. Haq, J

1. Heard.

2. Rule. Rule made returnable forthwith.

3. By this Public Interest Litigation (PIL), the petitioners have challenged the allotment of Government land, admeasuring 3-H & 5-R to respondent

No.4 Sanstha under Rules 6 and 7 of the Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971.

4. We are not required to deal with the issue of locus of the petitioners, as the PIL is being heard by this Court since 2012.

5. Though various submissions are made by the Advocates and the learned AGP representing the parties, we are of the view that the petition can be

disposed of accepting the submissions made by the learned advocate for the petitioners relying on Rules 6 and 7 of Maharashtra Land Revenue

(Disposal of Government Land) Rules, 1971 (herein after referred as "the Rules of 1971").

6. Rules 6(1) and 7(1) of the Rules of 1971 read as follows:-

6. Power of collector to make revenue-free grants.-

(1) Subject to the provision of this rule, land may be given by the Collector free of occupancy price and free of revenue, whether in perpetuity or for a term, for the purpose specified in column I of the Table below from which benefit is expected, upto the limits specified in column 2 thereof;

Provided that land which in the opinion of Collector is in the neighborhood of a railway station shall not be granted for dharamshalas under clause (b)

in the table unless when erected they are to be in the charge of such Municipal Corporation, Municipal Council, Zilla Parishad or Village Panchayat:

Provided further that, land shall not be granted under this rule for any purpose mentioned in Rule 7.

7. Grant of land for play-grounds, gymnasiums, etc.-

(1) Land may be leased at a nominal rent of one rupee (Re. 1) a year for play-grounds or other recreational purposes to educational institutions or

local authorities or for gymnasiums recognised by Government for a term not exceeding [thirty years], by the Collector, when the revenue-free value

of the land does not exceed Rs.[2,50,000]; and with the sanction of the Commissioner, when the revenue-free value of the land exceeds Rs.

[2,50,000]but does not exceed Rs.[7,50,000].

7. The learned advocate for the petitioners submitted that the Government land can be given free of occupancy price and free of revenue by the

Collector for the purposes specified in column No.1 of table below the Rule 06 of the Rules of 1971, after ascertaining that no benefit is expected

from that Government land above the limit specified in column No.2 of the table below that Rule.

8. Admittedly, in the present case, the Government land is given to respondent No.4-Sanstha for running a school and for playground. It being so,

before issuing the order granting the land in question to respondent No.4-Sanstha, it was obligatory on the part of respondent No.3-Collector to

ascertain whether benefit above Rs.5 lakh was not expected from that land. Table below Rule 6 of the Rules of 1971 lays down that in case the

benefit from the land in question is more than Rs.5 lakhs, then the Collector has to seek sanction of the Commissioner and in such case, the

Commissioner has to ascertain whether the benefit from the land in question is

not expected above Rs.12,50,000.

The figures ₹5,00,000 and ₹12,50,000 are substituted in the table below Rule 6 of the Rules of 1971 by notification dated 19.5.2015 for the figures ₹2,50,000 and ₹6,25,000.

Similarly, when the grant is under rule 7(1) of the Rules of 1971, if the Government land is given on lease for play ground or other recreational purposes to the educational institution or local authorities or for gymnasium recognized by the Government, then before granting the lease, the

Collector has to ascertain that the value of the revenue free land does not exceed Rs.2,50,000 and if the value of the land in question exceeds

Rs.2,50,000 then the Collector has to seek sanction of the Commissioner and in such case, the Commissioner has to ascertain whether revenue free

value of the land in question exceeds Rs.7,50,000. The figures of ₹2,50,000 and ₹7,50,000 are substituted by the Notification dated

19.5.2015 for the figures ₹1,25,000 and ₹3,75,000.

9. We find that respondent No.3-Collector has not undertaken any exercise in consonance with the mandatory requirements of Rule 6(1) and Rule

7(1) of the Rules of 1971. Neither the learned Assistant Government Pleader, nor the learned advocate for respondent No.4-Sanstha has pointed out

that before giving/ granting the land, the respondent No.3 Collector ascertained whether the land in question could have benefited the Government

above Rs.2,50,000 or above Rs.1,25,000/- as mandated by the provisions of Rule 6(1) and Rule 7(1) of the Rules of 1971. As we find that the

respondent No.3-Collector has failed to exercise his powers in consonance with the mandatory requirements of Rules 6(1) and 7(1) of the Rules of

1971, the prayers made by the petitioners have to be granted.

10. The learned advocate for respondent No.4-Sanstha submitted that the Collector has to take action as per Government Resolutions dated 8.2.1983

and 30.6.1992. This submission is recorded as it is made before us but the exercise as laid down in the Government Resolutions can be taken only

after complying with the mandatory provisions of Rule 06(1) and/or Rule 07(1) of the Rules of 1971 and as stated earlier, there is nothing on record to

show that the exercise as mandated by the provisions of Rules 6(1) and 7(1) of the Rules of 1971 was undertaken by the respondent No.3-Collector

before giving/granting Government land to respondent No.4-Sanstha.

11. To support the submission that the impugned orders are illegal and unsustainable in law, the learned Advocate for the petitioners relied upon the following judgments:-

(a) Judgment given by Honourable Supreme Court in the case of Krishan Lal Gera vs. State of Haryana & Ors reported in (2011) 10 SCC 529.

(b) Judgment given by the Division Bench of this Court at Nagpur in case of Dr. Bhalchandra s/o Jageshwar Subhedar versus State of Maharashtra and others (PIL No.23/2013 decided on 6.5.2014).

12. In view of our conclusions, we pass the following order:-

ORDER

(i) Order issued by the the respondent No.3-Collector on 24.10.2008 is quashed.

(ii) Order issued by the respondent No.3-Collector on 30.9.2010 is quashed.

(iii) Matter is remitted to the respondent No.3-Collector for taking fresh decision in the matter, keeping in view the provisions of Rules 6(1) and 7(1) of

the Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971.

(iv) Respondent No.3-Collector shall take into consideration valuation of the land in question while considering the requirements as laid down in the

table below Rules 6(1) and 7(1) of the Rules, 1971 as of now, as the request of the respondent No.4-Sanstha for grant of land is being considered

now. The valuation as it existed at the time when the impugned orders came to be issued, would not be relevant for consideration.

(v) The Respondent No.3 " Collector shall take fresh decision in the matter keeping in view the guidelines laid down by the Judgments of

Honourable Supreme Court and this Court referred earlier and any other Judgment which may be pointed out to him.

(vi) The Respondent No.3 " Collector shall take fresh decision in the matter till 15.5.2020. Needless to say that respondent No.3- Collector shall

grant hearing to the respondent No.4 Sanstha and also to the petitioners. [The representative of respondent No.4-Sanstha, and the petitioners shall

appear before the respondent No.3 " Collector on 18.3.2020.]

(vii) As the respondent No.4-Sanstha is in possession of the land in question since the issuance of impugned orders, and according to the respondent

No.4-Sanstha, the land is being used for the purposes for which it was given / granted, it is directed that the possession of the respondent No.4 -

Sanstha on the land in question would not be disturbed till fresh decision is taken in the matter and it is communicated to the respondent No.4-Sanstha.

12. Rule is made absolute in the above terms.

In the circumstances, parties to bear their own costs.