

2371



भारत सरकार

Government of India

राष्ट्रीय अनुसूचित जन जाति आयोग

National Commission for Scheduled Tribes

(A Constitutional Body set up under Art. 338A of the Constitution of India)

File No. DSM/14/2018/STGMH/DEOTH/RU-IV

Dated: 05-03-2019

To,

1. **The Chief Secretary,**
Government of Maharashtra,
Mantralaya,
Mumbai – 400 032.
2. **The Director General of Police,**
Government of Maharashtra,
Mumbai.
3. **The Commissioner,**
Vasai-Virar City Municipal,
Bajarward, Virar (East),
Taluka – Vasai, District – Palghar,
Mumbai – 401 305 (Maharashtra).
4. **The District Collector,**
Chintu Pada Road,
District – Palghar,
Maharashtra – 401 404.
5. **The Superintendent of Police,**
District – Palghar,
Maharashtra – 401 404

Sub: On-spot Inquiry report conducted by NCST's team on 14-15 January, 2019, into the matter of alienation of ST land by non STs at Sativali Village, Tehsil Vasai, District Palghar – representation of Devji Shankar Mahali, Tehsil Vasai, District Palghar (Maharashtra).

Sir,

I am directed to enclose herewith a copy of an on-spot Inquiry report conducted by NCST's team on 14-15 January, 2019, into the matter of alienation of ST land by non STs at Sativali Village, Tehsil Vasai, District Palghar – representation of Devji Shankar Mahali, Tehsil Vasai, District Palghar (Maharashtra) for necessary action and submission of action taken report to this Commission within 30 days for placing the same before the Hon'ble Chairperson, NCST.

Yours faithfully,

(Y.K. Bansal)
Research Officer

Encl: As above

Copy alongwith copy of report and Department's report is forwarded to:

Shri Devji Shankar Mahali,
R/o House NO. 1123,
Mahali Niwas, Rambai Ambedkar Nagar,
Near Dena Bank, Sativali, Vasai (West),
Taluka – Vasai, District – Palghar,
Maharashtra – 401 208.

✓ copy to: - SCA, NIC, NCST

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Case File No. DSM/14/2018/STGMH/DEOTH/RU-IV

On the spot Inquiry Report in the matter of alienation of ST land by non STs at Sativali Village, Tehsil Vasai, District Palghar – representation of Devji Shankar Mahali, Tehsil Vasai, District Palghar (Maharashtra).

Date of Inquiry: 14-15th January, 2019

List of officers present in meeting is Annexed

The National Commission for Scheduled Tribes received a representation from Shri Devji Shankar Mahali, R/o House No. 1123, Village Sativali, Vasai (West), Tehsil Vasai, District Palghar (Maharashtra) regarding alienation of ST land by non STs. He represented that his ancestor bought the land measuring 2 acre 20 guntas at Village-Sativali, Taluka –Vasai, District - Thane under Section 32G of Bombay Tenancy Agriculture land Act, 1948. All purchase price for the land was paid as per order of Agricultural Land Tribunal, Vasai District – Palghar to the landlord. Thus, his ancestors were absolute owner of the said land. In the meantime, taking the advantage of his ancestor's ignorance of laws/rules, forcefully alienated the tribal land by the non tribals and executed and registered Lease Deed for the period of 30 years with the help of District Administration. The non STs has not taken permission from the concerned Government authority to construct/development on the land and accordingly constructed illegal structure. After expiry of Lease Deed of the land in the year 2009 no extension of the Lease Deed was taken. The tribal families have objected to the above illegal activities before the District administration and no action was taken. The petitioner, therefore requested for action to be taken under relevant provisions of Atrocity Act, 1989 against the accused non STs. In addition, it has been requested: -

- (a) Return possession of tribal land from accused at the earliest after proper measurement of our land by Taluka Inspector of Land Record, Vasai, District Palghar.
- (b) Demolish rubble stone wall constructed on Government approve public road which is in existence from era of British Government rule;
- (c) Provide the petitioner and his friend Shri Sunil Suma Kaushik a police protection.

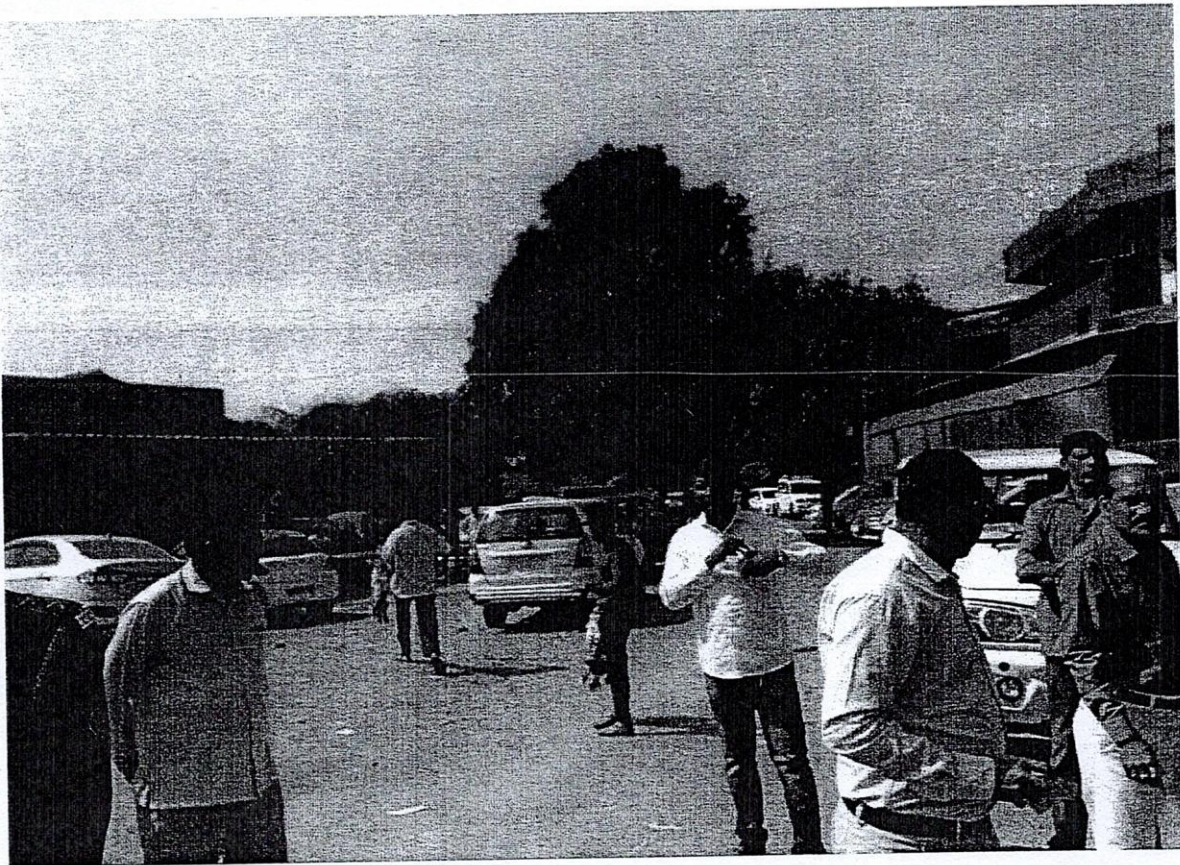
2. Taking serious note on the issue raised in the representation, the Hon'ble Chairperson, NCST has held a sitting in the Commission on 26.11.2018. After detailed discussion with the authority concerned and petitioner, the Commission recommended that the District Collector, Palghar should take action to demolish all construction on the disputed land as the land was mutated in the name of Scheduled Tribe petitioners as agriculture land in Revenue records and the land should be vacated. It was also decided that a team of the Commission will also make a spot visit to assess the case.

3. As per the direction of the Hon'ble Chairperson, NCST, a team from NCST consisting of Shri P.T. Jameskutty, Deputy Secretary and Shri Y.K. Bansal, Research Officer visited the District Palghar and disputed land place on 14-15 January, 2019.

4. During the visit, on 14.01.2019, the team of NCST first interacted with the Scheduled Tribe petitioners and thereafter a discussion was held with the District Collector and other senior officers of the District Palghar at Circuit House, District Palghar to know the status of the case.

5. The petitioner Shri Devji Shankar Mahali submitted the brief of the case that his ancestor Shri Budha Pandia Olamba (belonged to ST community) was cultivating the land bearing No. 41/2 area 3 acre 1 guntha (equivalent to 12100 sq. mtre.) at Village Sativali, Tehsil Vasai, District Palghar since 1939 as protected tenant. After death of Shri Olamba, the property was substituted and mutated to his legal heirs Shri Sukrya Navshya Mahali and late Shankar Navshya Mahali in 1963. Subsequently on the death of both persons in 1984 and 1987 respectively, the property was later substituted to 11 legal heirs namely (1) Shri Atmaram Sukya Mahali (2) Shri Bistari Navsha Mahali alias Mrs. Parvati Yashvant Sambare (3) Shri Changuna Shankar Mahali (4) Shri Barku Shankar Mahali (5) Shri Ankush Shankar Mahali (6) Shri Babu Shankar Mahali (7) Mrs. Narmada Kashtya Mahali (8) Mrs. Sangita Kashtya Mahali (9) Shri Madhukar Kashtya Mahali (10) Shri Ananta Shankar Mahali (11) Shri Devji Shankar Mahali.

Earlier, his ancestor had bought the said land u/s 32G of Bombay Tenancy Agriculture Land Act, 1948 and had paid purchase price of the land to the landlord Shri Chandulal Kasinath Pratap as per the order of the agriculture land tribunal, Vasai, Tehsil Vasai, District Palghar on 13.05.1958. Accordingly, the land was registered under 7/12 extract and Mutation Entry No. 254, 308,456,623, 1040 in the name of his ancestor. Thus, the ST petitioner are sole owner of the land. Before purchasing of the land, an enquiry was conducted in 1958 by the Revenue authorities and the purchase of land was declared as legal.



On 31.03.1979 the father and uncles of the petitioner, who were illiterate, having no legal knowledge and ignorance about legal terms, signed a Lease Deed for 30 years in the name of Smt. Lalita Dhirajlal Shah. The Lease Deed was not legally approved as no prior permission of District Collector was taken. According to Section 36(3) of Maharashtra Land Revenue Code 1966 it is mandatory to take prior permission of the Government before executing and registering Lease Deed. Thus, the aforesaid Lease Deed was illegal and void. In addition, the Lease Deed holder had constructed illegal structure on the said land without prior permission of the concerned Govt. authority according to clause 2(e) of Lease Deed. The Lease Deed was expired on 01.04.2009. However, the Lease Deed holder (Smt. Shah) did not vacate the land. In the meantime, Smt. Shah has further sub-Leased the property to another non ST persons without consent of ST property owner and without approval of the Govt. authorities in 1991. Here it is to mention that as per law enacted under Maharashtra Land Revenue Code, 1966 section 36, 36(a), the Lease cannot be registered without the prior approval of the Govt. of Maharashtra, in case the land belongs to Scheduled Tribes. Since, alleged illegal Lease Deed of the said land was expired on 31.03.2009, the Tehsiladar, Vasai removed the name of leased deed holder Smt. Shah & others from Revenue record under 7/12 extract vide mutation entry no. 1308 dated 02.11.2012 saying that the said land belongs to tribal land owner and the alleged persons have not taken any prior permission under Section 36(3) of Maharashtra Land Revenue Code, 1996 The SDO, Vasai has also upheld orders of Tehsildar, Vasai in appeal.

In the year 2005, the Forest Department had issued notice to all tribal land holders including petitioner stating that the land belongs to Forest Department, Govt. of Maharashtra, which was affected by section 35(3) of Maharashtra Private Forests Acquisition Act, 1975. According to this Act, the land was declared Private forest and a Mutation Entry No. 1012 dated 31.03.2005 was registered on 7/12 extract in Revenue record in the name of Forest Department. In this regard, the petitioner stated that the claim of Forest Department is based on false statement/documents as the land does not cover under private forest Act. As per the Act, the prior enquiries were not conducted by the Revenue Department/Forest Department. The mutation of land in the name of Forest Department by the Revenue Officer, Sativali was also illegal as the land was legally mutated in the name of Scheduled Tribe (Shri Mahali family) persons in 1958 with conducting of enquiries of the land. In addition, on 20.12.2013, the SDO, Vasai had issued letter to Tahsildar, Vasai stating that said land belongs to ancestors of ST petitioner who has got the said land under Bombay Tenancy Act and shall not come under Maharashtra Private Forests (Acquisition) Act, 1975. Moreover, the ST petitioners did not receive any notice from the Forest Department stating that land belongs to private forest. Thus, the District Collector, Palghar and other Revenue authorities has failed to protect the interest of the Scheduled Tribes in ST land matter.

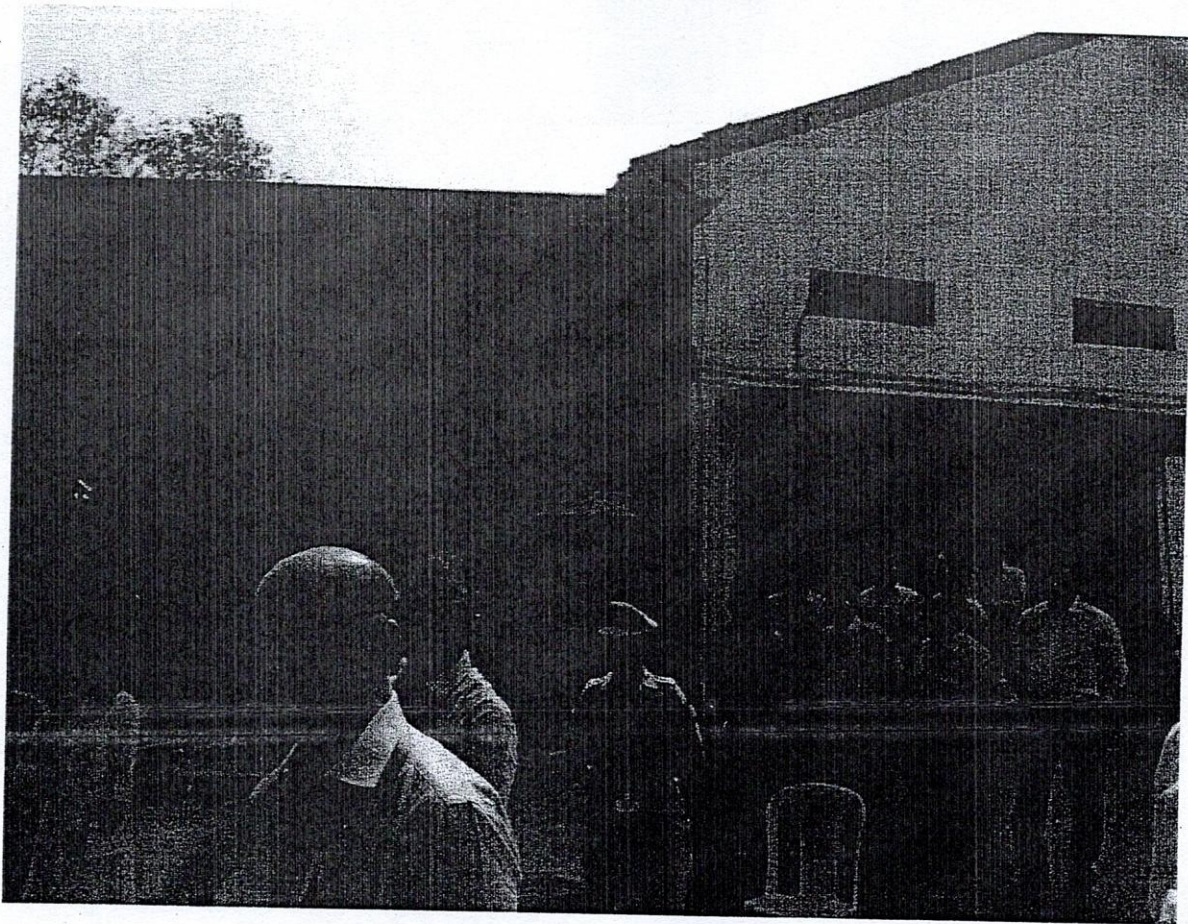
In addition, the District Police authority has failed to take action against the accused persons for grabbing and alienation of tribal land under section 3(i)(f) and (g) of Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act, 1989.



Shri Mahali (petitioner) further informed that on 26.12.2018, the Hon'ble Chairperson, NCST has passed an order to the District Collector, Palghar to demolish all constructions made on the ST property with immediate effect and handed over possession of the land to the Scheduled Tribe petitioners. Along with all accused should also be booked under Atrocity Act for grabbing the ST land. However, the District Collector, Palghar and District Police authority have failed to implement the Commission's order.

6. On 14.01.2019, a meeting with the District Collector, Palghar and other Senior officers of various Department concerning to the case was held. During the meeting, the petitioner, Shri Devji Shankar Mahali was also present.

7. In meeting, the District Collector, Palghar briefed about the case relating to illegal encroachment and construction on the Scheduled Tribe land by non STs at Sativali village, Vasai Tehsil on land survey number 41/2 area 0-84-0 Ha. and Potkharaba 0.17.0 Ha. He stated that the illegal encroachment and construction from non-tribal person on the said land will be demolished by the Forest Department with the help of Revenue Department. In this regard, Deputy Conservator of Forest, Thane has issued 7 days' notice on dated 09.01.2019 to non ST persons which will expire on 17.01.2019. After expiry notice period, necessary action will be taken to demolish all illegal encroachment/construction in the said land. Regarding, title change issue and land ownership issue, the same will be decided by the Sub Divisional Officer (SDO),



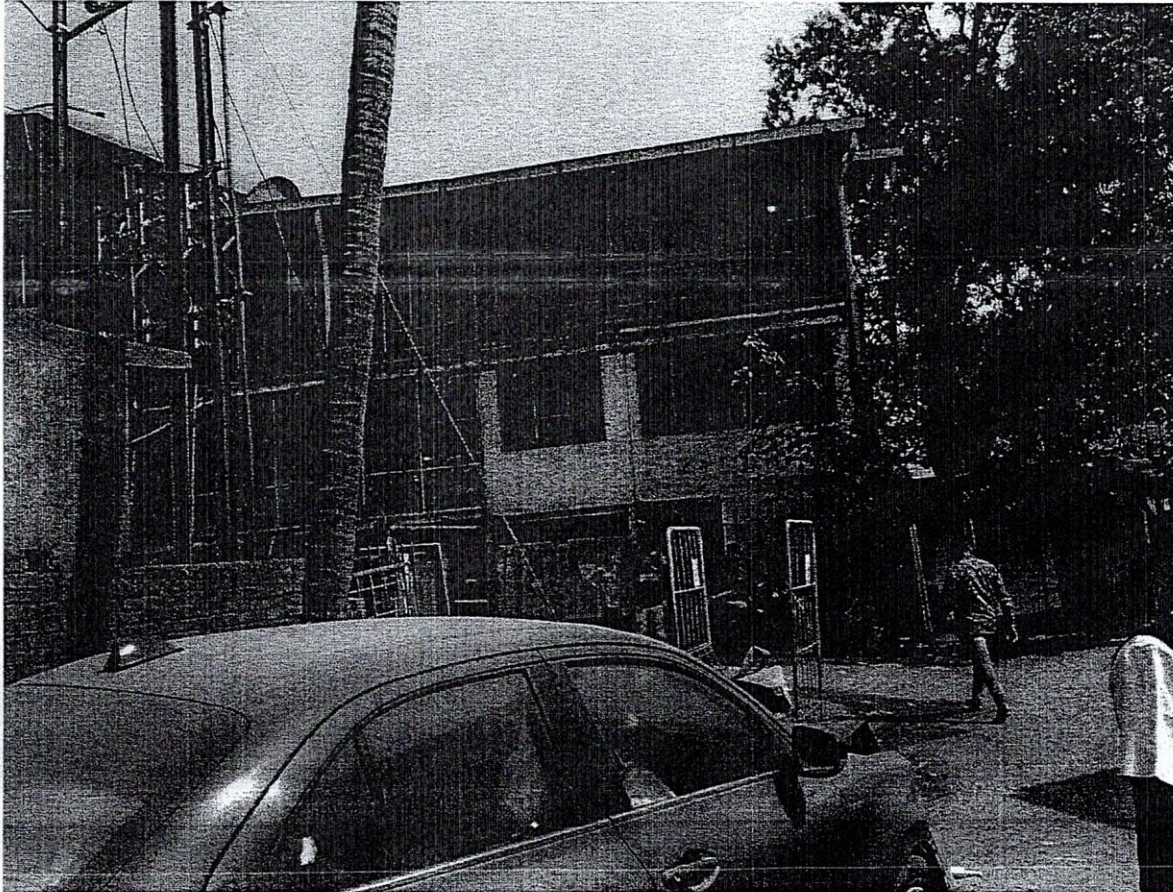
Shri Mahali (petitioner) further informed that on 26.12.2018, the Hon'ble Chairperson, NCST has passed an order to the District Collector, Palghar to demolish all constructions made on the ST property with immediate effect and handed over possession of the land to the Scheduled Tribe petitioners. Along with all accused should also be booked under Atrocity Act for grabbing the ST land. However, the District Collector, Palghar and District Police authority have failed to implement the Commission's order.

6. On 14.01.2019, a meeting with the District Collector, Palghar and other Senior officers of various Department concerning to the case was held. During the meeting, the petitioner, Shri Devji Shankar Mahali was also present.

7. In meeting, the District Collector, Palghar briefed about the case relating to illegal encroachment and construction on the Scheduled Tribe land by non STs at Sativali village, Vasai Tehsil on land survey number 41/2 area 0-84-0 Ha. and Potkharaba 0.17.0 Ha. He stated that the illegal encroachment and construction from non-tribal person on the said land will be demolished by the Forest Department with the help of Revenue Department. In this regard, Deputy Conservator of Forest, Thane has issued 7 days' notice on dated 09.01.2019 to non ST persons which will expire on 17.01.2019. After expiry notice period, necessary action will be taken to demolish all illegal encroachment/construction in the said land. Regarding, title change issue and land ownership issue, the same will be decided by the Sub Divisional Officer (SDO),

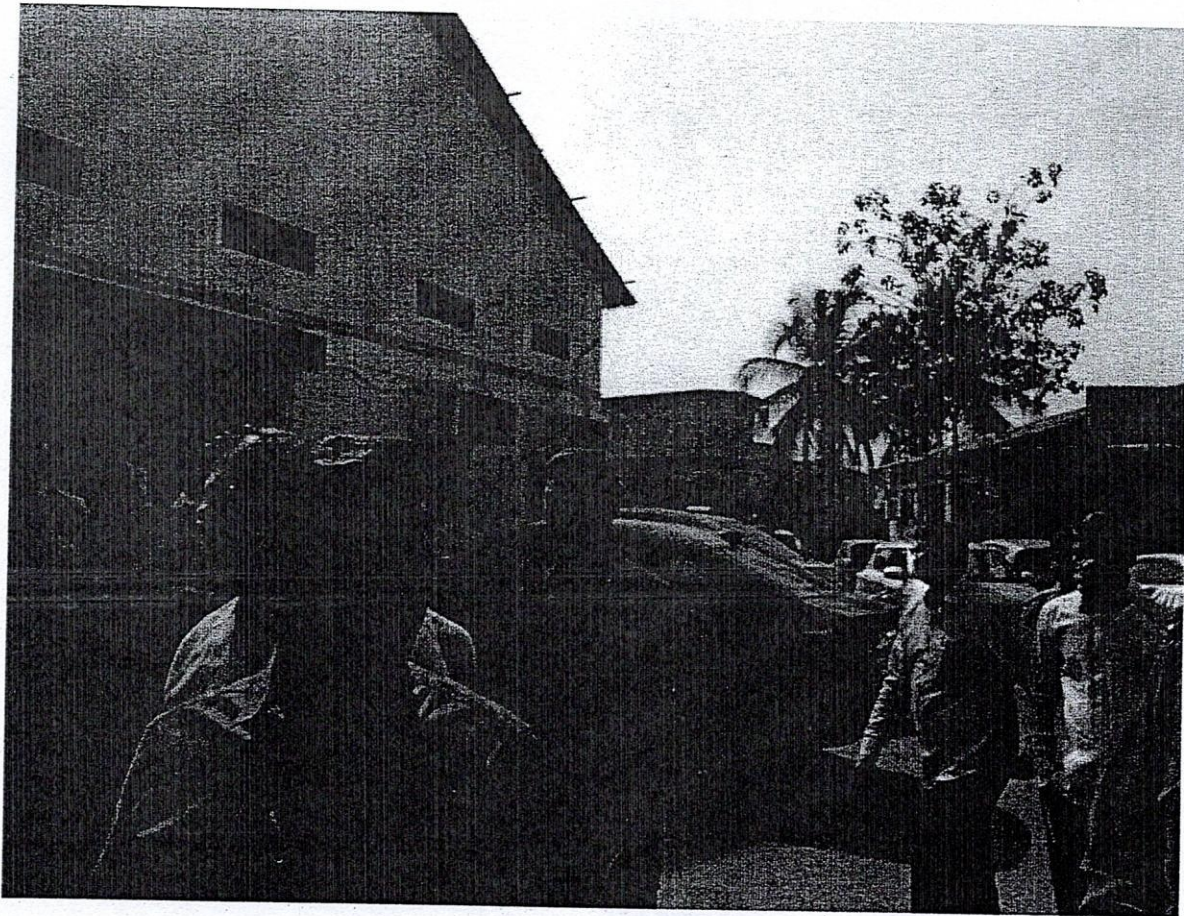
Vasai and Tahsildar, Vasai within 3 months. The petitioners will submit all relevant documents pertaining to the land ownership documents to the authority concerned and the same will be taken into consideration at the time of deciding of the case.

The DSP, Vasai informed the Commission's team that as per the Commission's recommendation, a FIR under relevant provisions of the SC/ST (POA) Act, 1989 has been registered against one accused. He was arrested and a charge sheet has also been filed before the Court. In this regard, the petitioner's allegation for non filing FIR against other non ST accused person, the District Collector, Palghar informed that the Court will take cognizance on this issue. The District Police officials will abide the orders of the Hon'ble Court.



8. On 15.01.2019, the NCST team inspected the disputed property land at Sativali Village, Vasai, District Palghar. During the inspection, the Deputy Commissioner, Vasai-Virar Municipal Corporation, DSP and Senior Officers from Police Department along with SDO and Tehsildar, Vasai were present. The ST petitioners were also present. There, the team observed concrete construction of big hall, offices and running of business of auto service centre on the land in question. The Deputy Commissioner, Vasai-Virar Municipal Corporation under jurisdiction the said land falls stated that a survey of the entire land would be conducted and the Municipal Corporation will take action to remove the illegal construction. The Deputy Superintendent of Police, Vasai informed the Commission that 7 days' notice for removal of illegal construction issued by the Forest Department will be implemented.

The team of NCST has however, advised all the authority concerned to implement the Commission's order and provide protection to Scheduled Tribe families.



FINDINGS/RECOMMENDATIONS OF THE INQUIRY TEAM

On the basis of the submission made by the Scheduled Tribe petitioners and detailed discussion held with District Officials, the team of Commission observed that the land bearing No. 41/2 at Sativali Village, Tehsil Vasai is agriculture land and mutated in the name of ST petitioner (Shri Mahali family) in Revenue record in 7/12 extract. The Mutation Entry has been made in the name of legal heirs of the STs. The land has been encroached. Illegal structures have been constructed on the land by the non STs without prior permission of the District Collector, Palghar. The Commission has already directed to the District officials to demolish the illegal construction which has not been complied with. Therefore, the team made following recommendations for action taken by the District Collector, Palghar.

- The illegal encroachment and constructions made on the land bearing No. 41/2 by the non STs should immediately be demolished by the Revenue Department.
- The 7 days' notice for vacating of land issued by the Deputy Conservator of Forest, Thane vide its notice dated 09.01.2019 should be complied with in toto and in case, failing which necessary action for demolition of

all illegal encroachment/construction in the said land should be taken against the accused persons.

- The Sub Divisional Officer (SDO), Vasai will decide the title change and ownership issue of the land within 3 months. The SDO, Vasai will also ensure that no injustice should be meted out against the petitioner and all the petitioner's documents should be taken into consideration.
- Police protection should be provided to the ST family and their property.
- If any legal hurdle comes in between demolition of illegal construction, then the District Collector, Palghar should immediate take necessary corrective action.
- An action taken report on the Commission's recommendations should be submitted before the Commission.

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Annexure

(File No. DSM/14/2018/STGMH/DEOTH/RU-IV)

List of participants

NCST

1. Shri P.T. Jameskutty, Deputy Secretary
2. Shri Y.K. Bansal, Research Officer

Officers from District Palghar, Maharashtra

1. Dr. Prashant Narnaware, District Collector & DM, Palghar
2. Shri Jitendra S Rangeekar, DCF, Thane
3. Shri Sambhaji Adkune, Deputy Collector, Palghar
4. Shri Dipak Kshirsagar, S.D.O., Vasai
5. Shri Subhash Govindbuva Ban, PSI (LCB)
6. Shri Kiran M. Suravase, Tehsildar, Vasai
7. Shri Vinod D Pawar, Deputy Accountant, Vasai
8. Shri Dharmaraj R. Deshmukh, Clerk (Tenancy)

Petitioners

1. Shri Devji S Mahali
2. Shri Nagendra B Singh
3. Shri Sunil Suman Kaushik