



सत्यमेव जयते

भारत सरकार
Government of India
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
(A Constitutional Body under Article 338A of the Constitution of India)

Case File No.RR/23/2017/STGMH/DEOTH/RU-IV

01.03.2018

To,

- | | |
|---|---|
| 1. The Principal Secretary,
Tribal Development Department,
Government of Maharashtra,
Mantralaya, Mumbai- 400032
Ph No. 022-22026742 | 2. Shri Manu Kumar Srivastava,
Principal Secretary (Revenue)
Revenue and Forest Department,
Government of Maharashtra,
Mantralaya, Mumbai- 400032
Ph No. 022-22026439. - psec. revenue@maharashtra.gov.in |
| 3. The Vice President & CEO,
MHADA,
Grihanirman Bhawan,
Kalanagar
Bandra (East), Mumbai - 400 051.
Ph. No. 022-26592877
Fax No. 022-26590490. | 4. Chief Executive Officer,
Slum Rehabilitation Authority, Mumbai
Administrative Building,
Anant Kanekar Marg, Bandra (East)
Mumbai- 400051
Ph. 022-26590519
Fax. 022-26590457
Email. info@sra.gov.in |
| 5. Shri Deependra Singh Kushwah,
Collector,
Collector Office
Mumbai Suburban District,
10th Floor, Administrative Building,
Near Chetna College, Government Colony,
Bandra (East), Mumbai - 400 051
Phone (Office): +91-22-26556799
Phone (P.A. to Collector) : +91-22-26514742
Fax : +91-22-26556805
Email :
collector.mumbaisuburb@maharashtra.gov.in | |

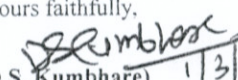
Sub: Representation dated 17.09.2017 received from Shri Rajiv Ranjan, S/o Shri Rajendra Prasad, R/o A/2102, Bay View Opp. Urban Tadka Seven Bungalow, restaurant Versova, Andheri (West) Mumbai- 400061 regarding alienation of ST property and law applicable to the land.


Sir,

I am directed to enclose a copy of the Proceedings of the Sitting held on 04.01.2018 at 12.00 Noon under the Chairmanship of Shri Nand Kumar Sai, Hon'ble Chairperson, National Commission for Scheduled Tribes on the above mentioned subject, for appropriate action. Action taken report in the matter may please be intimated to the Commission, at an early date.

2. In this context, it is also informed that Shri Nand Kumar Sai, Hon'ble Chairperson, National Commission for Scheduled Tribes has fixed a Sitting in the Commission at New Delhi on **15.03.2018 at 2.00 P.M.** for further investigation/inquiry/ action to be taken in the matter. Notice for Sitting has been issued separately in the matter.

Yours faithfully,


 (D.S. Kumbhare)
 Under Secretary


 1515 to 1519
 1/3/18

National Commission for Scheduled Tribes

(F.No. RR/23/2017/STGMH/DEOTH/RU-IV)

A sitting was taken by the National Commission for Scheduled Tribes on 04.01.2018 at 12.00 Noon with Principal Secretary (Revenue), Revenue and Forest Department, Government of Maharashtra, Chief Officer, MHADA and District Collector, Mumbai Suburban District in the matter of land alienation of Shri Santosh Vishnu Baglaniya (Dhodi) and others, R/o Vitthal Nagar Cooperative Housing Society, Devipada, Borivali (East), Mumbai. Chief Executive Officer, Slum Rehabilitation Authority, Mumbai was absent from the sitting. The list of participants is Annexed.

Initiating the discussions, Hon'ble Chairperson expressed deep concern over the alienation of land by Government Departments without proper rehabilitation and compensation and redressing the grievances of the Tribal family. He requested the officers and representative of the applicants present in the sitting to inform the Commission about status of the complaint action taken by them and their view in the matter.

1. Principal Secretary (Revenue), Revenue and Forest Department, Government of Maharashtra, informed that land situated in village Magathane, Taluka Borivali S. No. 34A/5p, admeasuring 3 acre 13 guntha, has been acquired for the Maharashtra Housing and Area Development Authority (MHADA) and the Western Express Highway. Three separate Awards for land acquisition were passed by the competent authorities and compensation for one acquisition has been paid to Smt. Gangubai Dhodi. In another case, the amount of compensation has been deposited in Court and in the third case, the amount of compensation has been deposited in RBI.

He also informed that the State Government, vide notification No. TNC 5157/31190-M dated 29/03/1957, issued under clause (b) of section 88 of the Maharashtra Tenancy and Agricultural Act, has specified village Magathane as being reserved for non-agricultural and industrial development. That is why the Hon'ble Maharashtra Revenue Tribunal, by its order dated 12.03.2013, has up-held the view that the provisions of Tenancy Act are not applicable to the lands at the village Magathane, claimed by the applicants as tenant.

He stated that the subject matter of the captioned representation ceases to have any direct connection with the Revenue Department. The issue of giving benefit under slum rehabilitation scheme to the applicants pertains to the Slum Rehabilitation Authority and MHADA. The Commission asked whether the name of family members of applicants appeared in the relevant Revenue records, it was admitted that names of family members appear in 7/12 record maintained by the Talathi and Tahasildar. On further query, the Commission was informed that those who were tenant before 01.04.1957 had a right to purchase the land and this provision does not apply in the case of applicants as prior to that date, which may be called as tillers day, the Government had issued notification dated 29.03.1957 specifying Magathane village as being

Nand Kumar Sai

Chairperson

National Commission for Scheduled Tribes

Govt. of India

New Delhi

reserved for non-agricultural and industrial development. Moreover, the village became Municipal Area from 01.05.1951 and hence there was no right of the applicants to purchase the land occupied by them. This has been upheld by Maharashtra Revenue Tribunal also which analysed the issue and passed an order on 12.03.2013 in case No. TNC.REV. 49/B/2007. The Commission desired to know about the circumstances in which three separate Awards for land acquisition were passed by the competent authorities for land S. No. 34A/5p, admeasuring 3 acre 13 gunthas and compensation for one acquisition paid to Smt. Gangubai Dhodi, and in other two cases, the amount of compensation deposited in Court and RBI. The details of the same were not readily available.

Commission was informed that part of this land admeasuring 30 R was acquired in the year 1963 for Western Express Highway. Thereafter, two more acquisitions took place for MHADA in the year 1973(for 2 acres of land) and 1975(for 20 gunthas of land). In the year 1963, award of Rs. 9735/- was passed and out of that Gangubai Dhodi was paid Rs. 1194/-. In the second award, which was deposited in Court, the amount payable was Rs. 200/- and in the third one, it was Rs. 750/- which was deposited in RBI.

2. Chief Officer, MHADA informed the Commission that the land in question was acquired for public housing scheme of MHADA in the year 1975 which could not be utilized for years resulting in encroachments on it. Later, it SRA came into picture which prepared a list of slum dwellers who were eligible for allotment of flats in its housing schemes. MHADA got the list of 487 eligible persons in Annexure-II in the year 2004. The Commission asked that if the land was not utilized by MHADA for the purpose it was taken, why it could not be de-notified and returned back to the applicants. How it was transferred to SRA where some buildings of Vitthal Nagar Cooperative Housing Society for the eligible persons were constructed. How high rise apartment is being constructed on a part of the site by the private builders? Why the applicants were not given any flat in the Society despite being eligible for such allotment? These questions could not be satisfactorily replied before the Commission.

3. District Collector, Mumbai sub urban District informed that as per revenue records, the name of the family members of applicants continue to be there in the 7/12 abstract of land records and it has not been changed so far. The Commission asked that why the mutation entry of Shri Santosh Vishnu Baglaniya (Dhodi) was not made despite several applications, the District Collector sought some time to inquire into the matter. Principal Secretary, Revenue Department submitted that the name of the family members of applicant would have continued due to oversight as the land was transferred to MHADA or SRA without any incumbencies. District Collector informed that the applicants family is now being given protection by the Police and instructions have been issued to the Tehsildar to ensure that this family continues to stay in the flat presently occupied by them. He assured that a report shall be sent regarding the death of girl of this family who has committed suicide due to alleged threatening by the office bearers of society.


4. Shri Rajiv Ranjan, representative of the applicant strongly denied the submissions made by the officers of State Government and its agencies. He said that the site in question in the


Nand Kumar Sai
Chairperson
National Commission for Scheduled Tribes
Govt. of India
New Delhi

village Magathane was a part of the then Shasthi taluka of Thane District. Presently this place is a part of Borivali Taluka of Mumbai sub-urban district. Though, the geographical boundaries of the District were changed due to creation of Mumbai sub-urban District, this site and village was not a part of Mumbai sub-urban District and continued to be a part of Thane District which is a notified tribal district. Thus, the provisions of notification No. TNC 5157/31190-M dated 29/03/1957, issued under clause (b) of section 88 of the Maharashtra Tenancy and Agricultural Act, by which State Government has specified village Magathane as being reserved for non-agricultural and industrial development does not apply to the land and village in question. He sought some time to produce records in support of his submission. He also informed that the land of the applicants was acquired from the year 1964 to 1967 but they were dispossessed in the year 2007 and thus they had a right of adverse possession on the land. The acquisition is also not complete in terms of LA Act as complete payment has not been made to the family. He also submitted that presence of representative of SRA was also very much required for arriving at any conclusion in the matter. He submitted that MHADA has said that the housing project is made by SRA whereas SRA, in response to a RTI application of Shri Santosh Vishnu Balganiya, has informed him in writing vide letter dated 30.06.2017 that it has not declared plot no. 209, 210, 211 and 213 as slum. If the land in question was not declared a slum, how SRA could have emerged in the picture for development of slum area? He reiterated that the applicants were denied of their legitimate rights on the land and any compensation which they would have received due to land acquisition by MHADA or SRA. He also questioned the utilization of land for construction of high rise apartment by private builder at a part of the site. He submitted that the title of the land still continues in the name of the family members of the applicant and thus, the construction and sale of flats at the site should be immediately stopped.

5. After the above discussion, the Commission observed that the land in occupation of the tribal applicants was reported to be reserved by the State Govt. vide notification dated 29.03.1957 under clause (b) of section 88 of the Maharashtra Tenancy and Agricultural Act for non-agricultural and industrial development but the applicants have denied this statement and raised the issue of creation of new District from parts of Thane District and the status of land site in either of the Talukas of Thane or Mumbai Suburban District is disputed. The land admeasuring 3 acres 13 gunthas on which the applicant's family was a protected tenant, was taken by MHADA for public housing scheme which remained unutilised and thereafter it was transferred to SRA. The reasons of transfer of this land to SRA has not been clarified by MHADA. The applicant family has not received compensation of two awards which has been deposited in Court/RBI. The family was not allotted a single flat in lieu of their land despite the fact that the name of applicant Santosh Vishnu Baglaniya (Dhodi) appears in the list of persons eligible for allotment of flat. This tribal family seems to be deprived of their livelihood and a house in the metropolitan city to live in. On the other hand, his tenants have been allotted flats in the Vitthal Co-operative Housing Society and a high rise private apartment has come up on a part of the land which was once in occupation of the applicant family where flats costing in crores are being sold to the customers by the builders.

6. In view of the need to safeguard the rights on his land of Schedule Tribe family, as per powers conferred into it under Article 338(A) of the Indian Constitution, the National


Nand Kumar Sai
Chairperson
National Commission for Scheduled Tribes
Govt. of India
New Delhi

Commission for Scheduled Tribes recommends the State Government and other concerned authorities to take following steps for protection and safeguarding the interest of the tribal applicants:

- (i) The family of the applicant may be allotted a flat on permanent basis in the Vitthal Co-operative Housing Society as per his eligibility in the list prepared by MHADA and SRA. (action: CEO, SRA).
- (ii) Chief Officer, MHADA to submit a detailed chronological report to the Commission regarding acquisition of land of the applicants, purpose of acquisition, reasons for not utilising the land by the Government, claim of adverse possession of the applicant and reasons of transferring the land to SRA. Copies of relevant records/ orders also be enclosed in support.
- (iii) Chief Executive Officer, Slum Rehabilitation Authority, Mumbai to submit a detailed report to the Commission that in what circumstances the applicant family was deprived of a flat in Vitthal Co-operative Housing Society despite the name of Shri Santosh Vishnu Baglaniya (Dhodi) appearing in the list of persons eligible for allotment of flat and the reason and justification of transfer of the land in question from MHADA to SRA and then a part of it to private builders. It should also clarify that if the acquired plot no. 209, 210, 211 and 213 occupied by the applicants were not declared as a slum, how the Vitthal Co-operative Housing Society was formed and the area was developed by SRA for construction of flats? (action: CEO, SRA). Copies of relevant records/ orders also be enclosed in support.
- (iv) Protection should be provided to the applicant family and Shri Rajiv Ranjan, Advocate pursuing their case who are allegedly being threatened by builder lobby and office bearers of above society ensuring their safety and security so that they feel protected and safe in the society and its vicinity. (action: District Collector, Mumbai Sub-urban/ DCP zone- 12, Mumbai).
- (v) A report may urgently be sent to the Commission regarding death of a family member of the applicant namely Snehal D/o Mrs. Kanu Kharvi who allegedly committed suicide due to threatening by the officer bearers of the society for vacating the flat and the action taken by local Police on the complaint of the applicant Shri Santosh Vishnu Baglaniya (Dhodi). A copy of FIR, Post-mortem report and enquiry report of Police may be forwarded to the Commission within 15 days of receipt of this report. (action: District Collector, Mumbai Sub-urban/ DCP zone- 12, Mumbai).
- (vi) All Construction and sale activities by MHADA, SRA or private builders at the site in question may be immediately stopped till the decision on rights of Scheduled Tribe applicant on this land are thoroughly examined by the Commission through the agencies involved in the matter. (action: Principal Secretary, Revenue, Revenue and Forest Department, Government of Maharashtra).


Nand Kumar Sai
Chairperson
National Commission for Scheduled Tribes
Govt. of India
New Delhi

National Commission for Scheduled Tribes

Annexure-I

F.No. RR/23/2017/STGMH/DEOTH/RU-IV

List of Participants

NCST

1. Shri Nand Kumar Sai, Chairperson
2. Miss. Anusuiya Uikey, Vice-Chairperson
3. Shri H.K. Damor, Member
4. Smt. M.C. Ivnate, Member
5. Shri Raghav Chandra, Secretary,
6. Shri s.K.Ratho, Joint Secretary
7. Shri D.S. Kumbhare, Under Secretary
8. Shri R.K. Dubey, Assistant Director
9. Shri R.S. Misra, Senior Investigator

Revenue Department, Government of Maharashtra

1. Shri Manu Kumar Srivastava, Principal Secretary
2. Shri D.S. Kushwaha, Collector Mumbai Suburban

Tribal Development Department, Govt. of Maharashtra

Nil

MHADA, Mumbai

Shri Subhash Lakhe, Chief Officer

Slum Rehabilitation Authority, Mumbai

Nil

Petitioner

Rajiv Ranjan (Representative)