



सत्यमेव जयते

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)

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

04.12.2018

To,

1. The Commissioner & Registrar of Cooperative Societies, Govt. of Maharashtra, 2nd Floor, New Central Building, Dr Baba Saheb Ambedkar Road, Pune, Maharashtra 411001
2. The Commissioner of Police, Maharashtra Police, Mumbai.
3. The Principal Secretary (Revenue) Revenue and Forest Department, Government of Maharashtra, Mantralaya, Mumbai- 400032
4. The Principal Secretary, Tribal Development Department, Government of Maharashtra, Mantralaya, Mumbai- 400032
5. The Vice President & CEO, MHADA, Grihanirman Bhawan, Kalanagar, Bandra (East), Mumbai - 400 051.
6. Chief Executive Officer, Slum Rehabilitation Authority, Mumbai Administrative Building, Anant Kanekar Marg, Bandra (East) Mumbai- 400051
7. The Collector, Collector Office Mumbai Suburban District, 10th Floor, Administrative Building, Near Chetna College, Government Colony, Bandra (East), Mumbai - 400 051
8. The Managing Director, M/s M.R. Construction, Shivaji Chawl Shop No. 1, Devipada, Western Express Highway, Borivali (East), Mumbai - 400 066.

Sub: Representation of Shri Rajiv Ranjan, S/o Shri Rajendra Prasad, Power of Attorney of Shri Santosh Vishnu Baglaniya (Dhodi) and others, R/o A/2102, Bay View Opp. Urban Tadka Seven Bungalow, Restaurant Versova, Andheri (West), Mumbai regarding alienation of ST property by builders and inaction as per law applicable against the guilty persons.

Sir,

I am directed to refer to the subject mentioned above and to enclose herewith a copy of the Proceedings of the Sitting held on 15.11.2018 under the Chairmanship of Shri Nand Kumar Sai, Hon'ble Chairperson, National Commission for Scheduled Tribes for necessary action at your end.

It is requested that an action taken report on the Commission's recommendations may please be intimated to the Commission, expeditiously.

Yours faithfully,

(Y.K. Bansal)
Research Officer

Encl: As above

Copy to:

Shri Santosh Vishnu Baglaniya Dhodi,
Room No. 1B 708, Building No. 1,
Vittal Nagar Co-Operating Society,
Devi Pada, Borivali (E),
Mumbai - 400 066. (Maharashtra).

6 th Floor, 'B' Wing, Lok Nayak Bhawan, Khan Market, New Delhi -110003. Ph. 24657271 FAX: 24624628, 24657474

Toll Free: 1800117777 Website: <http://ncst.nic.in>

copy to: - SAS, NIC, NCST.

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4/12/18
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ISSUED

NATIONAL COMMISSION FOR SCHEDULED TRIBES

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

PROCEEDINGS OF SITTING HELD ON 15.11.2018 CHAIRED BY SHRI NAND KUMAR SAI, HON'BLE CHAIRPERSON, NATIONAL COMMISSION FOR SCHEDULED TRIBES (NCST) IN THE CASE OF SHRI RAJIV RANJAN, S/O SHRI RAJENDRA PRASAD, POWER OF ATTORNEY OF SHRI SANTOSH VISHNU BAGLANIYA (DHODI) AND OTHERS, R/O A/2102, BAY VIEW OPP. URBAN TADKA SEVEN BUNGLOW, RESTAURANT VERSOVA, ANDHERI (WEST) MUMBAI REGARDING ALIENATION OF ST PROPERTY BY BUILDERS AND INACTION AS PER LAW APPLICABLE AGAINST THE GUILTY PERSONS.

Date of Sitting: 15.11.2018

List of officers present in sitting is Annexed.

The petitioner, 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 vide representation dated 17.09.2017 has submitted representation regarding alienation of property belonging Scheduled Tribes situated at Borivali, Mumbai Sub-urban by builders and inaction as per law applicable against the guilty persons.

The petitioner has alleged that the site in question in the 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 Shri Santosh Vishnu Baglaniya (Dhodi) and thus, the construction and sale of flats at the site should be immediately stopped.

2. Taking into cognizance on the petitioner's allegation, the Commission had investigated the matter and issued notice to the concerned authorities for seeking a report. Subsequently, Sittings were held as per the mandate of the Article 338 A of Constitution of India. Accordingly, the Departments concerned i.e. Revenue Department, Govt. of Maharashtra, MHADA and District Collector, Mumbai Sub-Urban have submitted a report before the Commission.



नन्द कुमार साय/Nand Kumar Sai
अध्यक्ष/Chairperson
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

(a). The Revenue Department, Govt. of Maharashtra informed the Commission 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.

It was further informed 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 names of family members were also appeared in 7/12 record maintained by the Talathi and Tahasildar. In addition, 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 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.

The 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.

(b). The MHADA authority submitted a report 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.

(c). The District Collector, Mumbai Sub-urban District also submitted a report stating 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.

3. Since the report was found to be unsatisfactory and therefore, the Commission has decided to access the matter by conducting an on the spot enquiry. Accordingly the case was investigated by a team from NCST under the chairmanship of Smt. Maya Chintamni Inate, Hon'ble Member NCST through on the spot enquiry at Devipada, Borivali (East) Mumbai on 21.11.2017 to 22.11.2017. The Commission made following observation:

आवेदकों से हुई चर्चा, कागजातों के अवलोकन और संबंधित अधिकारियों के साथ बैठक के आधार पर आयोग का जांच दल प्रथम दृष्टया इस निष्कर्ष पर पहुँचा है कि आवेदकों के परिवार के कब्जे में उक्त भूमि कई दशकों से थी जिस पर वे पहले खेती करते रहे और बाद में उन्होंने झोपड़ियाँ बनाकर किराए पर दे दीं। उनकी जमीन के अधिग्रहण के मामले में MHADA तथा SRA के अधिकारियों द्वारा पारदर्शिता नहीं बरती गई, आवेदक के विधिक अधिकारों का गंभीरता से परीक्षण नहीं किया गया और उनके द्वारा विभिन्न कार्यालयों को प्रस्तुत आवेदनों और आपत्तियों का निराकरण नहीं हुआ अथवा इस संबंध में एकतरफा निर्णय लिए गए जिनसे आवेदक के परिवार के हित विपरीत रूप से प्रभावित हुए

4. Thereafter, a sitting was also taken by Hon'ble Chairperson on 04.01.2018 with Principal Secretary Revenue, Department of Revenue and Forest, Government of Maharashtra, Chief Officer, MHADA and District Collector, Mumbai Suburban. During the Sitting, the Commission observed that the Principle authority in the matter is Slum Rehabilitation Authority (SRA) and therefore the SRA may be asked to submit the action taken report. However, the Commission had made the following recommendations:

- (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).

5. Another Sitting was held on 15.03.2018 under the Chairmanship of Hon'ble Chairperson, NCST. The Commission had recommended that:

- Family of affected person should be allotted a flat on permanent basis in the said society by the SRA and MHADA, as way their due,
- SRA should re-examine the matter, as there were some more eligible tenements in the family of Shri Vishnu Govind Bagalnia.
- Chronological events in relation to land in question should be prepared by Revenue Department, Govt. of Maharashtra and submitted to the Commission.
- All Construction and sale activities by MHADA, SRA or private builders at the site in question should be stopped immediately till the rights of Scheduled Tribes on this land are duly examined by the NCST.
- An action taken report in the matter should be submitted before the Commission within 30 days from the receipt of the proceedings of the Sitting.

6. The Commission observed that no action taken report on the Commission's recommendations was submitted by the SRA authority. Hence, the Commission fixed a Sitting on 15.11.2018 in the matter.

7. For the Sitting, the Commissioner & Registrar of Cooperative Societies, Govt. of Maharashtra, the Commissioner of Police, Maharashtra, the Principal Secretary (Revenue), Revenue and Forest Department, Government of Maharashtra, the Principal Secretary, Tribal Development Department, Government of Maharashtra, the Vice President & CEO, MHADA, Mumbai, the Chief Executive Officer, Slum Rehabilitation Authority, Mumbai, the Collector, Mumbai Suburban District, and the Managing Director, M/s M.R. Construction, Builders and Developers, Boriwali (East), Mumbai along with the petitioner were called to present their points of view.

8. During the Sitting, on behalf of Commissioner and Registrar of Co-operative Societies, Shri Bhajirao V. Shinde, Joint Registrar, Co-operative Societies, on behalf of the Principal Secretary, Revenue and District Collector Mumbai Sub-urban, Miss Vaidehi Ranade and on behalf of Vice-President & CEO, MHADA, Shri Sanjay Bhagwat, Joint Chief Officer were appeared. Similarly, on behalf of MR Construction Builders, two Advocates namely Shri P.M. Bhagat and Shri Y.R. Mishra attended the Sitting. The petitioner Shri Santosh Vishnu Baglaniya was also present. The CEO, SRA did not appear before the Commission. He also did not sent any communication for exemption. Hence, the Commission has taken it very seriously.

9. In Sitting, the petitioner Shri Santosh V Baglaniya has submitted his grievances of alienation of tribal land by the non STs and Builders. He also submitted that no compensation

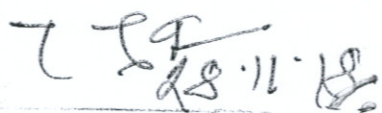
of the land acquired was paid to him and his family members. A threat to kill his family members by the Builders was received to him and the Police did not act on his complaint. The Government's action in the matter was also limited to the protection of the Builders and not for the poor members of STs.

10. The Advocate appeared before the Commission on behalf of the Builders stated that the land was given by the MHADA and SRA authority to develop the residential building and the Builders has no role to alienate the land. However, the Commission is requested to provide an opportunity to file a detailed reply along with relevant documents in the matter before the Commission.

11. The Additional Collector, Mumbai Sub-urban has submitted a report. She stated that the petitioner was not owner of the land. Actually, they were encroacher. The Government of Maharashtra acquired the land and developed Residential Building for the welfare of resident including SC/ST/OBC and others. The compensation of the acquired land as well structuring there on was paid to the concerned owner/encroachers. The petitioners have denied to accept the compensation and accordingly their compensation amount was deposited in the Registry of the Hon'ble Mumbai High Court. It was also informed that as per the Commission's recommendations, all construction activities on the disputed land have been stopped.

12. The case was discussed in detail. The Commission observed that the Principle authority in the matter is Slum Rehabilitation Authority, Mumbai and no action taken report was filed by said authority. Moreover, despite issuing of notice for Sitting the said authority did not appear before the Commission. In addition, no officer from the Tribal Welfare Department, Maharashtra appeared before the Commission to submit their points of view. The report submitted by the District Collector, Mumbai Sub-urban seems to be unsatisfactory. Since, the matter is serious in nature wherein the Scheduled Tribe occupants cultivating the land and residing there since, 1939 were deprived their legitimate rights and forcefully evicted from the land, hence the matter will be taken up for next Sitting. Accordingly, the Commission recommends that:

- Summons for appearance before the Commission in the next Sitting be issued to the CEO, SRA, Mumbai and notice to (i) the CEO, MHADA (ii) the DGP, Maharashtra and (iii) the District Collector, Mumbai Sub-urban. All authorities should submit detailed report in the matter, within a period of two weeks.
- The DGP, Maharashtra to provide the police protection to the petitioners in view of the threatening calls from the Builder and Developers. At the same time the petitioner is advised to submit a complaint to the Commission for taking up the matter with the DGP, Maharashtra.
- The SRA is a Principle authority in the matter. Hence, specific action taken report on the Commission's recommendations dated 15.03.2018 be submitted before Commission within two weeks.


नन्द कुमार साय/Nand Kumar Sai
अध्यक्ष/Chairperson
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Annexure

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

List of participants

NCST

1. Shri Nand Kumar Sai (In chair)
2. Miss Anusuiya Uikey, Hon'ble Vice-Chairperson
3. Shri Hari Krishna Damor, Hon'ble Member
4. Shri S.K. Ratho, Joint Secretary
5. Shri Y.K. Bansal, Research Officer
6. Shri H.R. Meena, Sr. Investigator

Officers of the Commissioner & Registrar of Co-operative Societies, Govt. of Maharashtra, Mumbai and SRA, Mumbai.

Shri Bajirao V. Shinde, Joint Registrar, Co-operative Societies

Officers of the Principal Secretary (Revenue), Revenue and Forest Department, Government of Maharashtra, Mumbai and District Collector, Mumbai Sub-urban District.

Ms. Vaidehi Ranade, Additional Collector, Mumbai Sub-urban District

Officers of the Vice- President & CEO, MHADA, Mumbai

Shri Sanjay Bhagwat, Joint Chief Officer

M/s M.R. Construction, Builders and Developers, Boriwali (East), Mumbai

1. Shri P.M. Bhagat, Advocate
2. Shri Y.R. Mishra, Advocate
3. Shri Jawaharlal, Developer

Petitioner

Shri Santosh V Baglaniya