

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.6188 OF 2008

Vikas s/o Bhaulal Janjale,
Age 37 years, Occ. Service,
R/o Vishwa Jyoti Chowk,
Yawal, Taluka Yawal,
District Jalgaon

... PETITIONER

VERSUS

1. The State of Maharashtra
through its Secretary for
Ministry of Revenue and Forest
Department, Mantralaya, Mumbai
(Copy to be served on G.P.,
High Court of Bombay,
Bench at Aurangabad)
2. The Collector,
Jalgaon, District Jalgaon.
3. The Special Land Acquisition Officer,
(3), Upper Tapi Project, (Hatnoor),
Jalgaon.
4. District Rehabilitation Officer,
Jalgaon, District Jalgaon
5. Superintendent Engineer,
Public Works Division,
Jalgaon, District Jalgaon

... RESPONDENTS

.....
Shri Swapnil S. Patil, Advocate for petitioner
Mrs. M.A. Deshpande, A.G.P. for State
.....

CORAM: R.D. DHANUKA AND
 SUNIL K. KOTWAL, JJ.

DATED: 12th September, 2017.

ORAL JUDGMENT (PER R.D. DHANUKA, J.) :

1. By this Writ Petition filed under Article 226 of the Constitution of India, the petitioner has prayed for quashing and setting aside the order dated 8/9/2008, passed by the respondent No.4, thereby cancelling the certificate of project affected person, issued by respondent No.3 in favour of the petitioner as far back as in the year 1995.

2. Some of the relevant facts for the purpose of deciding this Writ Petition are as follows :

 The grandfather of the petitioner namely Ganu Sakharam Janjale was the owner of agricultural land bearing Gat No.96, admeasuring 1 H. 37 R. The said land was acquired by the respondents for Hatnoor Project. It is the case of the petitioner that, after conducting due enquiry in the matter, the respondent No.3 issued the certificate in favour of the petitioner as project affected person, being the grandson of Ganu

Sakharam Janjale. It is not in dispute that, under the Government policy for issuing such certificate of project affected person, one of the grandchild of the person whose land was acquired, could be conferred certificate of project affected person.

3. Based on the said certificate dated 19/5/1995, issued by respondent No.3 in favour of the petitioner, the petitioner applied for a job in the category of project affected person with the respondent No.5. On 4/7/1996, the petitioner was appointed as permanent Junior Clerk in the said category. On 5/2/2003, the petitioner was made permanent in the said job as Junior Clerk/ Typist.

4. On 11/3/2008, the respondent No.2 issued notice to the petitioner informing the petitioner that an enquiry in respect of the certificate of project affected person, issued by the respondent No.3 in favour of the petitioner was conducted and the petitioner was called upon to remain present before the enquiry officer.

5. On 8/9/2008, the respondent No.4 passed an order cancelling the certificate of project affected person issued by the

respondent No.3 on 19/5/1995 in favour of the petitioner. This order dated 8/9/2008 is impugned by the petitioner in this Writ Petition on various grounds.

6. Learned counsel for the petitioner submits that, it was not the case of the respondents that the petitioner has suppressed any true and correct facts before the respondent No.3 who had issued the certificate of project affected person in favour of the petitioner on 19/5/1995. He submits that, relying upon the said certificate, the petitioner was already granted employment by the respondent No.5 as far back as on 4/7/1996 and was thereafter made permanent on 5/2/2003.

7. It is submitted by the learned counsel that, even if the respondent No.4 could have applied the Government Resolution dated 1/1/1980 annexed at Exhibit R-2 to the affidavit-in-reply, the respondent No.2 being not responsible for grant of such project affected person certificate to the petitioner as far back as on 19/5/1995 and petitioner being in employment of the respondent No.5 since 4/7/1996, the services of the petitioner cannot be affected in view of the order of cancellation of the certificate of project affected person by the respondent No.4 vide order dated 8/9/2008.

8. Learned A.G.P. invited our attention to the Government Resolution dated 1/1/1980 and more particularly condition prescribed in clause 2(a) thereof, and would submit that, after issuing such certificate of project affected person to the petitioner, it was subsequently found that the residual cultivable area of land with the grandfather of the petitioner was more than 1 Hectore with the grandfather of the petitioner, whose land was acquired by the respondent. Learned A.G.P. submits that, in view of these conditions, the petitioner at the first instance, could not have been granted such project affected person's certificate by the respondent No.3. Learned A.G.P. submits that, the respondent No.4 has passed an order on 8/9/2008 after conducting proper enquiry and has cancelled the said project affected person's certificate, issued by the respondent No.3 in view of the fact that the same was issued in violation of the Government Resolution dated 1/1/1980.

9. It is not the case of the respondents that the petitioner had furnished any wrong information or had suppressed any material facts before the respondent No.3 when the petitioner was issued a certificate of project affected person as far back as on 19/5/1995. It is also not in dispute that no

action in respect of the said certificate dated 19/5/1995 was initiated by the respondent No.4 till 11/3/2008 i.e. for a period of 13 years. The notice dated 11/3/2008 issued by the respondent No.2, calling upon the petitioner for an enquiry, does not indicate that there were any allegations of fraud or suppression made by the authority against the petitioner while issuing the certificate of project affected person by the respondent No.3 on 19/5/1995. The learned A.G.P. does not dispute that the petitioner has been already in service since 4/7/1996 as a Junior Clerk in the category of project affected person with the respondent No.5 and was made permanent on 5/2/2003 in the post of Junior Clerk/Typist.

10. A perusal of the order dated 8/9/2008, passed by the respondent No.4 indicates that there are no allegations made against the petitioner of any fraud or suppression of the fact that the residual cultivable land of the grandfather of the petitioner was more than 1 Hectare as per Government Resolution dated 1/1/1980. In our view, even if the residual cultivable land of the grandfather of the petitioner was more than 1 Hectare on the date of acquisition of the said land by the Government, the petitioner cannot be blamed for such erroneous order passed by the respondent No.3. Based on the said certificate of project affected

person, dated 19/5/1995, the petitioner has been already appointed as Junior Clerk on 4/7/1996 and has been made permanent on 5/2/2003. The action initiated by the respondent No.2 was after a period of 13 years and that also without any blame to the petitioner for issuance of such certificate dated 19/5/1995. In our view, the petitioner thus cannot be punished for issuance of such project affected person's certificate.

11. Learned counsel for the petitioner, during the course of arguments, fairly stated that, none other member of the family of his grandfather had made any claim in respect of such certificate. He submits that, if this Court comes to the conclusion that the said certificate dated 19/5/1995 issued by the respondent No.3 was in the teeth of the Government Resolution dated 1/1/1980, though the petitioner was not responsible for issuance of the said project affected person's certificate dated 19/5/1995, he would not claim any benefit under the said certificate if his services with the respondent No.5, which is continued since 19/5/1995 is protected by this Court.

12. The learned A.G.P. though was justified in pointing out the Government Resolution dated 1/1/1980, could not satisfy this Court on the issue as to whether the petitioner was at all

responsible or had made any suppression or had committed any fraud in obtaining such project affected person's certificate dated 19/5/1995 and as to why an action was initiated for the first time after 13 years of issuance of such certificate. In our view, a right is accrued in favour of the petitioner based on such project affected person certificate, which cannot be disturbed at this for no fault of the petitioner. The statement made by learned counsel for the petitioner that henceforth the petitioner would not claim any benefit under the project affected person's certificate dated 19/5/1995, is accepted.

13. We, therefore, pass the following order :

ORDER

- (i) The respondents shall not take any adverse action against the petitioner based on the impugned order dated 8/9/2008, passed by the respondent No.4 either in respect of the employment of the petitioner with the respondent No.5 or otherwise.
- (ii) It is made clear that, the petitioner shall not claim any benefit under the said certificate of project affected person, dated 19/5/1995 henceforth, nor any other

family member of the grandfather of the petitioner Ganu Sakharam Janjale would be eligible to claim any benefit under the said certificate of project affected person, dated 19/5/1995.

- (iii) It is made clear that, we are not interfering with the impugned order dated 8/9/2008 in view of the relief granted aforesaid.
- (iv) Writ Petition is disposed of in aforesaid terms. Rule is made absolute in aforesaid terms. No order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE

fmp/