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

WRIT PETITION NO. 12527 OF 2017

Bhausahab s/o Sahebrao Mane,
Age: 52 years, Occ: Agri.,
R/o.Kashti, Tq. Shrigonda,
Dist. Ahmednagar. ..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Acquisition and Rehabilitation
Department, Mantralaya,
Mumbai – 32.
2. The District Collector,
Ahmednagar. ..RESPONDENTS

Mr Rahul O. Awasarmal, Advocate for petitioner;
Mr S.S. Dande, A.G.P. for respondent/State;

**CORAM : PRASANNA B. VARALE
AND
MANGESH S. PATIL, JJ.**

DATE : 19th NOVEMBER, 2018

ORAL ORDER :

Heard learned Counsel appearing for the
petitioner.

2. The petitioner is before this Court

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challenging the order dated 23rd February, 2017 passed by respondent No.2 – District Collector, Ahmednagar.

3. On hearing learned Counsel appearing for the petitioner and on perusal of the material placed on record, the facts giving rise to the petition can be summarized as follows :

The petitioner is son of Sahebrao Mane. Sahebrao Rajaram Mane was possessing the property i.e. land situated in Survey No.576 at village Kashti, Taluka Shrigonda, District Ahmednagar. The said land was acquired for 33/11 K.V. Sub Station.

4. Learned Counsel appearing for the petitioner invited our attention to the consent letter. Copy of the same is placed on record. Perusal of this document shows that the land was acquired with the consent of the land owner. The petitioner submitted application to the District Settlement Office, Ahmednagar with a prayer that

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his son Nikhil Bhausahab Mane, who is in search of employment, a certificate of Project Affected Person in favour of the petitioner be issued.

5. Learned Counsel appearing for the petitioner also invited our attention to the certificate issued by the Deputy Collector (Land Acquisition) No.14, Ahmednagar to submit that the land of Mr. Sahebrao Rajaram Mane to the extent of 1 Hectore out of Survey No. 576 was acquired. The certificate is dated 30th January, 2015 issued by the office of the Deputy Collector (Land Acquisition) No.14, Ahmednagar. Then death certificate issued by the Village Development Officer in the name of Sahebrao Rajaram Mane is also placed on record to submit that Sahebrao Rajaram Mane expired on 15th January, 2014. Learned Counsel appearing for the petitioner submitted that on 10th August, 2016 Deputy Collector (Rehabilitation), Ahmednagar turned down the request for grant of certificate for project affected person and the reasons assigned in the

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order namely; (1) For the said K.V. 35 sub station center, Rehabilitation Act is not applicable, (2) K.V. sub station is not an independent energy project and the authority can issue certificate only when land is acquired for an independent energy project. The third ground is re-iteration of first ground.

6. The petitioner being aggrieved by this order approached first appellate authority – Additional Collector, Ahmednagar taking recourse to the Maharashtra Right to Public Services Act, 2015 and the first appellate authority, by order dated 2nd January, 2017 dismissed the appeal. Being aggrieved by the said order, the petitioner preferred second appeal before second appellate authority – District Collector, Ahmednagar. By order dated 23rd February, 2017 the second appellate authority dismissed the second appeal.

7. Learned Counsel appearing for the petitioner submitted that though both the appellate

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authorities were apprised of decision of this Court in Writ Petition No. 2816 of 1997 and by inviting our attention to the copy of said order submitted that in identical circumstances, the petitioner in Writ Petition No. 2816 of 1997 approached this Court and the Division Bench of this Court considering the provisions of the Project Affected Persons Rehabilitation Act, 1986 and more particularly the definition of 'Project' under Section 2(1)(b) thereof found that the order impugned is unsustainable. He then submitted that the first appellate authority on erroneous reading of the facts dismissed the appeal. The first appellate authority relying upon certain Government circulars gave go bye to the observations of the Division Bench. The second appellate authority-District Collector, Ahmednagar also committed the very error. Learned Counsel then submitted that both these authorities only on a technical reading of the provisions of Maharashtra Right of Public Services Act, 2015 dismissed the appeals, as such, the orders passed by the first appellate authority

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as well as second appellate authority be quashed and set aside.

8. Per contra, Mr. Dande, learned A.G.P. submitted that the petitioner has not raised challenge to the order passed by the Deputy Collector (Rehabilitation), Ahmednagar dated 10th August, 2016 but the petitioner approached the appellate authorities taking recourse to the provisions of Maharashtra Right to Public Services Act, 2015. As the authorities were called upon to pass orders in these two appeals, the authorities committed no error in observing that under the provisions of Maharashtra Right to Public Services Act, 2015, the authorities were unable to decide the issue of grant of certificate namely Project Affected Person's certificate. Thus, learned A.G.P. supports the orders passed by the appellate authorities.

9. Considering these rival submissions, in our opinion, ends of justice would be met by

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quashing and setting aside the order passed by the Deputy Collector (Resettlement), Ahmednagar dated 10th August, 2016. The Deputy Collector (Resettlement), Ahmednagar in the order dated 10th August, 2016 failed to take into consideration the judicial pronouncement of this Court by way of order dated 20th August, 1987 in Writ Petition No.2816 of 1997. The petitioner was justified in placing heavy reliance on the order of this Court dated 20th August, 1997 and was also justified in submitting that the petitioner is similarly circumstanced with the petitioner in Writ Petition No.2816 of 1997.

10. In view of these facts, we set aside the order dated 10th August, 2016 passed by the Deputy Collector (Resettlement), Ahmednagar and direct the Deputy Collector (Resettlement), Ahmednagar to pass orders afresh on the application of the petitioner dated 29th June, 2016 on the backdrop of order of the Division Bench of this Court dated 20th August, 1997 in Writ Petition No. 2816 of

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1997. This exercise of passing orders afresh be undertaken and be concluded within twelve weeks from the date of this order.

11. With this direction, the petition is disposed of.

(MANGESH S. PATIL)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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