

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2639 OF 2017

Shri. Rajaram Abasaheb DeshmukhPetitioner
Versus
The State of Maharashtra & Anr.Respondents

Mr. D.S. Patel for the petitioner.
Mr. P.G. Sawant – AGP for the State.

**CORAM : RANJIT MORE AND
SMT. ANUJA PRABHUDESSAI, JJ.**

DATE : 12th FEBRUARY, 2018

P.C. :

1. Heard Mr. D.S. Patel, learned counsel for the petitioner and Mr. P.G. Sawant, learned AGP for the State.

2. The petitioner, by this petition, filed under Article 226 of the Constitution of India is challenging the order dated 29th October, 2015 whereby the Respondent No.2 - Deputy Collector (Rehabilitation), Pune has held that the petitioner is not entitled for an alternative land since he is holding more than 16 acres of land.

3. The petitioner's father was holding land admeasuring about 11 H and 26 G. The petitioner's father had given application to delete his name and to mutate the names of his sons in the revenue records. Accordingly, under mutation entry no. 29 dated 01st March, 1988, the

name of Aba Yeshwant Deshmukh was deleted and the names of the petitioner and his two brothers were mutated in the revenue records. A separate account no. 138 and extract no.8A was also issued jointly in the names of the petitioner and his two brothers. The entire land holding admeasuring 11H and 26G was therefore, jointly held by the petitioner and his two brothers.

4. The provisions of the Resettlement Act, 1986 was made applicable to the Bheema Asakhed Project on 11th January, 1994 and thereafter, the notice under section 11(1) of the said Act was issued and Village Deshmukhwadi, where the petitioner's land was situated and was included in the affected zone of the said project.

5. The land admeasuring about 1 H 98 R was thereafter acquired from all the three brothers by passing an award dated 01st December, 1999 and the compensation was equally disbursed to the petitioner and his two brothers. In terms of policy of the Government, petitioner alongwith his brothers were entitled for an alternative land and accordingly, 65% of the amount was deducted from the compensation received by the Petitioner and his two brothers.

6. The petitioner had filed an application for allotment of land. However, the said application was rejected by the impugned order dated 29th October, 2015 issued by the Respondent No.2. The petitioner was informed that he is not entitled for an alternative land as he is holding more than 16 acres of the land.

7. It may be mentioned that the said land was jointly held by the petitioner and his two brothers. In other words, the petitioner was not the sole owner of the entire land which is admeasuring more than 16 acres. The petitioner's share in the land was less than 4 acres and hence, his request could not have been rejected on the ground that his holding was more than 16 acres. Even otherwise, there is no such restriction under the Resettlement Act. Therefore, *prima facie* we are of the opinion that the petitioner would be entitled for a proportionate share in the alternative land.

8. Since the impugned order is passed without taking into consideration the facts narrated hereinabove, we have no alternative but to set aside the same and remand the matter back to the Rehabilitation Officer. We accordingly dispose of the petition by passing the following order :-

(i) The order dated 29th October, 2015 passed by the Deputy Collector (Rehabilitation), Pune is quashed and set aside and the matter is remanded to the Respondent No.2 - Deputy Collector (Rehabilitation), Pune. The Deputy Collector shall pass an appropriate order after hearing the petitioner and in the light of the observations made hereinabove. Needless to mention that such order shall be passed as expeditiously as possible and preferably within a period of six weeks from the receipt of copy of this order.

9. The petitioner shall remain present before the Respondent No.2 - Deputy Collector (Rehabilitation), Pune on 27th February, 2018 alongwith the relevant record and copy of this order in order to enable him to comply with this order.

(SMT. ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)