

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITIONER NO. 3128 OF 2014

Kalu s/o Malik Pathan

...Petitioner

Versus

The State of Maharashtra and others

...Respondents

WITH
WRIT PETITIONER NO. 10749 OF 2014

Vaijanath s/o Haribhau Niware

...Petitioner

Versus

The State of Maharashtra and others

...Respondents

...

Mr. S. B. Ghatol Patil, Advocate for petitioners

Mr. A. S. Shinde, Assistant Government Pleader for respondents

CORAM: SUNIL P. DESHMUKH &
R. G. AVACHAT, JJ.

DATE: 4th APRIL, 2019

ORDER :

1. Learned counsel for petitioners Mr. Ghatol Patil submits that the facts and circumstances in present writ petitions are same *mutatis mutandis* as involved in writ petition no. 11906 of 2018. He submits that the lands of the petitioners had been acquired for public purpose i.e. for Jayakwadi Project, Aurangabad. He submits that petitioners had filed applications for allotment of alternate lands as they had been rendered landless and their requests had not been attended to.

2. Learned Assistant Government Pleader purports to point out that neither the applications had been filed within prescribed period nor 75% of the amount of compensation has been deposited as required under sub-section 2(b) of section 16 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 ("the Act") providing for allotment of the land and further that the applications have not been filed under section 16(1) of said Act.

3. Learned Assistant Government Pleader further purports to submit that the applications are without reference to any provisions and further that provisions of the Act would not apply as claims of petitioners are in respect of period prior to the Act.

4. Perusal of order dated 29th January, 2019 in writ petition no. 11906 of 2018 shows that similar resistance had been put in front with respect to claims made by the petitioner therein and the division bench after taking stock of the situation and referring to that learned counsel for the petitioner had relied on a judgment of a division bench in writ petition no. 269 of 2012 with connected matters rendered on 17th July, 2012 as well as judgment of another division bench at Aurangabad in the case of *Ramshankar Deshmukh vs. State of Maharashtra* in writ petition no.

8385 of 2010 dated 2nd May, 2011, had quoted extract from said decision in *Ramshankar Deshmukh* (supra) reading, thus;

"The statutory provisions are very clear and therefore limitation stipulated in subsection (2) of section 16 of the Act will begin to run only after the Collector serves a notice upon the land losers as provided in section 16(2) (a). The learned AGP sought to contend that 65% amount is required to be deposited at the time when the land loser received compensation as provided under clause (b) of section 16(2). It is not possible to accept the above contention for the simple reason that the land loser will come to know about the entitlement to get alternate land only when he receives the notice in that behalf from the Collector as specifically provided under clause (a) of subsection (2). Hence, it has to be held that for a land loser to forfeit his right to get alternate land under the provisions of the above Act, mere non deposit of 65% of the compensation at the time of receiving the compensation is not sufficient unless the land loser was given the notice under section 16(2)(a) by the Collector in the first place. In view of the above discussion, the petitions are allowed."

5 Learned counsel for petitioners points out that time against petitioners pursuant to section 16(2)(a) of the Act would begin to run from the date of receipt of notice from the Collector. He submits, moreover, as in said case, no orders had been passed by the Collector on the applications filed by the

petitioners.

6. We, therefore, consider it expedient to follow the same suit as in said order under paragraph no. 6 of decision by division bench in writ petition no. 11906 of 2018 in present writ petitions. As such, following order;

- (a) The Collector, Aurangabad, shall give notice to the petitioners under Section 16(2)(a) of the Maharashtra project Affected Persons Rehabilitation Act, 1999, for grant of allotment of land, upon verifying the factual aspects about the entitlement of the petitioners to alternate land.
- (b) If the Collector finds that the petitioners are entitled for allotment of alternate land, then, the Collector shall issue notice by Registered Post Acknowledgment Due to the petitioners, within a period of 6 months.
- (c) Impugned letters are quashed and set aside.
- (d) Writ petitions are accordingly disposed of. No costs.

[R. G. AVACHAT]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE