

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1892 OF 2019

Kanaylal Ramchand Purswani ... Petitioner
Vs.
State of Maharashtra and another ... Respondents

Ms Minal Chandnani i/b. J. S. Chandnani Associates for Petitioner.
Mr. C. D. Mali, AGP for Respondents-State.

CORAM : UJJAL BHUYAN, J.
DATE : DECEMBER 18, 2019

P.C. :

Heard Ms Chandnani, learned counsel for the petitioner and Mr. Mali, learned AGP for both the respondents-State.

2. In view of subsequent development post filing of the writ petition in the form of rejection of the claim of the petitioner by respondent No.2 on 10.12.2018, leave to amend the writ petition is granted to the petitioner. Amendment be carried out forthwith.

3. Initially, the writ petition was filed seeking a direction to respondent No.2 to provide alternate site to the petitioner as part of his rehabilitation. In the meanwhile, respondent No.2 rejected the application of the petitioner dated 07.09.2018 vide order dated 10.12.2018 on the ground that the said application was made after the Displaced Persons (Compensation and Rehabilitation) Act, 1954 was repealed by the Displaced Persons Claims and Other Laws Repeal Act, 2005.

4. It is seen that in similar circumstances, this Court has passed a number of orders setting aside such rejection orders and remanding the matter back to respondent No.2 for reconsideration of the prayers of the petitioners after giving them opportunity of hearing primarily on the contention made that such rejection orders were passed without giving

an opportunity of hearing to the claimants; also it is the stand of the claimants that their claim to rehabilitation was much prior to repealment of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and the applications made after the repealment were only continuation of the earlier applications.

5. In *Dileep Hotchand @ Mohan Sharma Vs. State of Maharashtra, Writ Petition No.11787 of 2019*, which also raised identical grievance, this Court had passed order on **11.12.2019**, relevant portion of which is extracted hereunder:

“2. By filing this petition under Articles 226 and 227 of the Constitution of India, petitioner seeks quashing of order dated 18th November, 2019 passed by respondent No.2.

3. By order dated 18th November, 2019, application of the petitioner dated 9th May, 2019 for rehabilitation as a displaced person was rejected on the ground that the Displaced Persons (Compensation and Rehabilitation) Act, 1954 was repealed by the Displaced Persons and other Laws Repeal Act, 2005. Since the application was filed after repealment, therefore, the same was rejected by taking the view that only those cases upto the date when the Act was repealed can be taken into consideration.

4. Learned counsel for the petitioner submits that in identical matters this court had set aside such order while remanding the matter back for reconsideration on the ground that rejection of the application for rehabilitation was without hearing the applicant and thereby in violation of the principles of natural justice. In this connection, learned counsel has placed before the court a copy the order dated 16th October, 2019 passed by this court in Writ Petition No.8381 of 2019 **Ekta Bhagwan Rajai Vs. Managing-cum-Sub-Divisional Officer, Ulhasnagar Sub-Division.**

5. On a query by the court she submits that petitioner has been making such claim to rehabilitation since long back, much prior to the date of repeal and the application dated 9th May, 2019 was only the last of the applications.

6. Mr.N.C.Walimbe, learned AGP submits that whether petitioner had submitted applications prior to the repeal date would have to be gone into by the authority.

7. Submissions made have been considered.

8. This court in **Ekta Bhagwan Rajai (supra)** took note of the grievance of the said batch of petitioners while allowing the writ petitions in the following terms:-

“4. By the said applications, petitioners had sought for their rehabilitation under the Compensation and Rehabilitation Act, 1954. On the ground that the said Act was repealed by the Displaced Persons and other Laws Repeal Act, 2005, the said applications were rejected. In the rejection orders reference was made to a letter dated 17th September, 2014 of the Government of India in the Revenue and Forest Departments, wherein it was clarified that Section 6 of the General Clauses Act, 1897 would be applicable to the Displaced Persons and other Laws Repeal Act, 2005.

5. Learned counsel for the petitioners submits that had the petitioners been given an opportunity, petitioners would have satisfied the authority that they had been persistently pursuing the matter since a long time. Applications dated 11th January, 2019 were only the last of the applications, which were in continuation of the earlier applications. He, therefore, submits that impugned order dated 11th January, 2019 is in violation of the principles of natural justice and therefore, should be set aside by directing the Managing Officer to reconsider the matter after hearing the petitioners. In this connection, learned counsel for the petitioners has placed reliance on a Division Bench decision of this Court dated 21st August, 2019 passed in **Writ Petition No.2203 of 2019 (Jaiprakash Hiranand Kalyani and ors. Vs. State of Maharashtra and anr.)** and submits that in that case also matter was remanded to the Managing Officer for reconsideration after hearing the petitioners.

6. Considering the above, impugned order dated 11th January, 2019 is hereby set aside. Respondent No. 1 i.e. Managing Officer-cum-Sub-divisional Officer, Ulhasnagar is directed to reconsider the prayer of the petitioners after giving them an opportunity of hearing and thereafter, to take a decision one way or the other within a period of eight weeks from the date of receipt of an authenticated copy of this order.”

9. In the light of the above, impugned order dated 18th November, 2019 is set aside, Managing Officer cum Sub-Divisional Officer, Ulhasnagar is directed to reconsider the prayer of the petitioner after giving him an opportunity of hearing and thereafter, to take a decision one way or the other in accordance with law within a period of eight weeks from the date of receipt of an authenticated copy of this order.”

6. Considering the above, order dated 10.12.2018 passed by respondent No.2 is set aside. Respondent No.2 is directed to reconsider the prayer of the petitioner after giving him an opportunity of hearing and thereafter to take a decision one way or the other in accordance with law within a period of 8 weeks from the date of receipt of an authenticated copy of this order.

7. Writ petition is accordingly disposed of.

(UJJAL BHUYAN, J.)

Minal Parab